

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Criminal Appeal No.1263-P/2022 with
Murder Reference No.28-P of 2022

Wajid Ali & others
Vs
The State & another

Date of hearing.....**24-05-2023**.....

Appellant(s): Mr. Hussain Ali, Advocate.

State: Mr. Jalal-ud-Din Akbar-e-Azam Garah, AAG.

Respondent(s): Mr. Shabbir Hussain Gigyani, Advocate.

JUDGMENT

SAHIBZADA ASADULLAH, J.- This common judgment shall decide the instant as well as connected **Cr.R No.276-P/2022**, titled “**Shaukat Hussain Vs Jamshid and another**”, being filed against the same judgment dated 30.11.2022, passed by the learned Additional Sessions Judge-II/Judge Model Criminal Trial Court (MCTC), Charsadda, whereby the appellants have been convicted in case FIR No.433, dated 18.07.2018, charged u/s 302/201/109/120-B/148/149 PPC, Police Station Sardheri (Charsadda). The operative para of which is reproduced below:

“So, in the light of available record, accused Wajid Ali and Nadeem are convicted and sentenced under section 302(b) PPC, and awarded sentence of death. They be hanged from neck till they are dead. Execution of the sentence shall be subject to the confirmation by the Hon’ble Peshawar High Court, Peshawar, under section 374, Cr.P.C. The convicts shall also pay fine to the tune of Rs.500,000/- (five lac rupees)/each. The amount of fine if realized, shall be paid to the legal heirs of the deceased, as compensation under section 544-A Cr.P.C. In case of non-payment of fine, the convicts Wajid and Nadeem shall further undergo simple imprisonment for a term of One (01)-year/each. The amount of fine shall be recoverable as arrears of land revenue from the person and estate of convicts.

Both the accused Wajid and Nadeem are further convicted and sentenced under section 201-PPC and awarded rigorous imprisonment for Five (05)-years/each and fine to the tune of Rs.100,000/- (one lac rupees)/each and in case of non-payment of fine, both the convicts Wajid Ali and Nadeem shall further undergo simple imprisonment for six (06) months.

Furthermore, accused Wajid Ali is also convicted u/s 15-AA and sentenced to undergo three (03)-years simple imprisonment with a fine of Rs.20,000/- (twenty thousand) and in default of payment of fine, he shall further suffer three (03) months simple imprisonment.

Accused Jamshaid on the basis of mitigating circumstances, is convicted under section 302(b) read with section 120-B/109 PPC, and sentenced to imprisonment for life and compensation amount of Rs.500,000/- (five lac rupees) to the legal heirs of the deceased under section 544-A Cr.P.C. The compensation amount shall be recoverable from convict Jamshaid as arrears of the land revenue and in case of non-payment, he shall undergo simple imprisonment for period of one (01) year.

Benefit of section 382-B Cr.P.C, is extended to all the three accused, so convicted and all the sentences shall run concurrently. All the three convicts be taken into custody and be sent to jail alongwith conviction warrants to carry out their sentences.”

2. Brief facts giving rise to the instant criminal appeal are that the complainant-Shaukat Hussain reported to the local police of Police Post Chamtar to the effect that his brother went missing

on 17.07.2018, and that in that respect the information was entered in Naqal Mad No.07, dated 19.07.2018, with police post Chamtar, district Mardan. After receiving information, the inquiry was permitted u/s 156(3) Cr.P.C, but, during inquiry it surfaced that the deceased was last found in village Doshera and thereafter the link was broken, as such the incharge PP Chamtar reported the matter to the police high-ups and requested for transfer of the inquiry to the concerned police station and as such permission was granted and the inquiry was handed over to the police of Police Station Sardheri, District Charsadda. It was during the inquiry that the local police of Police Post Aziz Abad contacted several suspects including the appellants and others. It was during inquiry that the appellant-Wajid Ali admitted the murder of the deceased in collusion with his other co-accused including, one Nadeem s/o Jamshed, and Jamshed s/o Abdur Razak, alongwith Mst. Shaheen w/o Jamshed. He further disclosed that after the deceased was killed, his dead body was buried with the help of the co-accused-Nadeem and that the motorcycle and slippers (chappal) of the deceased were thrown away from the place of his killing. Motive was disclosed as illicit

relationship between the deceased and Mst. Safia. The convict-appellant led the police party to the place where the dead body was buried and after confirming the same, the murasila was drafted on the spot, which was incorporated in the FIR ibid.

3. During investigation, accused-Wajid Ali, Jamshed & Nadeem were arrested, whereas the co-accused could not be arrested as they went into hiding. Challan was submitted, formalities u/s 265-C Cr.P.C, were complied with by handing over the requisite record to the accused. Charge was framed, to which they did not plead guilty and claimed trial. Trial commenced, which ended into the conviction of the appellant vide the impugned judgment.

4. Heard. Record perused.

5. It was on 19.07.2018, when one Shoukat Hussain reported the matter regarding the missing of his brother, to the incharge of Police Post Chamtar, which was incorporated in Daily Dairy No.7. The complainant while reporting the matter explained the circumstances in which the deceased left the house and did not come back. On the basis of information conveyed by the complainant, inquiry u/s 156 (3) Cr.P.C, was initiated and that in

that respect the statements of numerous people were recorded. Though initially, no positive evidence was available with the prosecution, but when the SIMs in possession of the deceased were tried, the investigating agency succeeded in tracing him near Doshera Bazar, District Charsadda. The matter was probed into and ultimately it surfaced that the deceased was last found in the vicinity of police station Sardheri, and thereafter the link was broken. When the police realized that the case pertains to the Police Station Sardheri, District Charsadda, it was on request of the incharge of the Police Post Chamtar, that the inquiry was handed over to the police of district Charsadda, for further probe. The task was finally assigned to the incharge of police post Aziz Abad and as such the process of inquiry was kept continued. Numerous people including the appellants were asked to appear and as such on their appearance, they were interrogated regarding their relationship with the accused, and after getting satisfied numerous suspects were exonerated, whereas it was during inquiry that the appellant-Wajid Ali admitted his guilt and explained the circumstances which led to the death of the deceased and as such he pointed out the place where the dead

body was buried and on his pointation a .30 bore pistol near from the place of occurrence was recovered and a spade from inside the sugarcane crop. The police of police station Risalpur succeeded in taking into possession the motorcycle belonging to the deceased and his footwear (chappal) were also taken into possession, the same was later on handed over to the police of the concerned police station. During investigation the appellant disclosed the names of his co-accused and as such they were also implicated as accused in the instant case. It is pertinent to mention that the appellants-Nadeem & Jamshed, were arrested and out of the two it was the appellant-Nadeem who pointed out the place of incident and the place where the spade was thrown, but nothing was recovered on his pointation. When the appellant led the police party to the place where the dead body was buried and when the place was confirmed, then the investigating officer requested the District & Sessions Judge, Charsadda, for permission to disinter the dead body. The application was allowed and the concerned Judicial Magistrate was directed to do the needful, who in turn permitted the Area Magistrate to go for exhumation and to arrange the needed officials. It was one Akbar

Ali, Senior Civil Judge, who undertook the errand on 18.08.2018.

The magistrate visited the spot in the company of the police officials, the doctor, forensic expert and also the legal heirs of the deceased, and as such the process of exhumation was carried out, the dead body was unearthed and the postmortem was conducted.

It is pertinent to mention that though some portion of the body was decomposed, yet rest of the body was perfect and identifiable. These were the legal heirs of the deceased who identified the dead body and the learned Judicial Magistrate prepared a comprehensive report in that respect. The report was duly exhibited and the learned Magistrate highlighted the material aspects of the case, right from their arrival to the spot till the dead body was handed over to the legal heirs. The report is comprehensive which contains the details regarding the precautions taken by the concerned Magistrate and also the fulfillment of legal formalities for the purpose. From the place of the incident, blood stained earth was collected and also a portion from the blood stained garments of the deceased was taken into possession. The collected pieces were sent to the laboratory, a report was received that the same were of the same human group.

6. When the period of granted custody expired, the appellant was produced before the court of Judicial Magistrate where he opted to confess his guilt and as such his confessional statement was recorded, where he explained the manner in which the deceased was done to death and the manner in which the dead body was pointed out and thereafter he was sent to the concerned judicial lockup, the trial commenced and on conclusion of the trial, the appellants were convicted vide the impugned judgment.

7. The learned Trial Court took into consideration the material aspects of the case and also took pain to go through the record of the case as well as statements of the witnesses, and ultimately, after application of its judicial mind, convicted the appellants. There is no denial to the fact that the instant case hinges upon the circumstantial evidence and the confessional statement of the appellant-Wajid Ali, but there is no denial to the fact that in support of its claim the prosecution succeeded in collecting different pieces of evidence which ultimately decided the fates of all responsible. Though one of the appellant confessed his guilt and that it was he who led the police party to the place where the dead body was buried, to the place

wherefrom a .30 bore pistol was recovered and to the places where the motorcycle and footwear of the deceased were thrown and were taken into possession by the local police. We are confident in holding that the evidence collected by the prosecution is circumstantial and that sole reliance cannot be placed on the same until and unless corroborated. Besides, the circumstantial evidence, we have the confessional statement of the appellant, which must be read in juxtaposition with the circumstantial evidence and thereafter this Court would be in a better position to determine as to whether the prosecution succeeded in bringing home guilt against the appellants and as to whether both pieces of evidence supported each other to such an extent which led to the conviction of the appellants. This Court is to determine as to whether the collected pieces of evidence were from independent sources and that the confessional statement of the appellant was true and voluntary. True that the learned Trial Court was influenced with certain recoveries and the confessional statement of the appellant, but equally true that the courts of law must seek for independent corroboration, so that miscarriage of justice could be avoided. As in the case in hand the learned Trial

Court awarded the normal penalty of death, so this Court deems it its obligation to scan through the record to know, as to whether the approach of the learned Trial Court was correct and was in accordance with law.

8. The questions for determination before this Court are as to whether the incident occurred in the mode, manner and at the stated time, as to whether the prosecution succeed in collecting different pieces of evidence and the knitted net, led to the involvement of the accused charged; as to whether the dead body was recovered on pointation of the appellant-Wajid Ali and as to whether the legal requirements for the same were complied with. This Court is further to see as to whether the co-accused were in league with the appellant-Wajid Ali, and as to whether the deceased was done to death owing to his illicit relationship with Mst. Safia d/o Jamshed. We are further to see as to whether the accused/appellant (Wajid Ali) confessed his guilt and that the learned Magistrate observed the legal formalities.

9. The prosecution is to tell as to whether it was the appellant who killed the deceased and as to whether the appellant was in league with his co-accused and that the motive was the illicit

relationship between the deceased and his sister-in-law. It is interesting to note that the deceased was engaged to one Mst. Sana, daughter of the appellant-Jamshed, but the family was suspecting the deceased of having illicit relationship with the sister of his fiancée. True that the investigating officer failed to collect independent evidence in respect of the alleged motive and equally true that neither the statements of Mst. Sana, nor that of Mst. Safia were recorded, but that by itself is not sufficient to discard the collected evidence on file. We are conscious of the fact that the case is hinging upon the circumstantial evidence and that the prosecution is under the boundened duty to prove on record that the circumstances when brought together created an organic whole. We are further to see that what led to the conviction of the appellant and that what evidence was taken into consideration. There is no denial to the fact that it was the appellant-Wajid Ali, who during inquiry disclosed that it was he who killed the deceased with the help and connivance of his other co-accused. Not only he admitted his guilt, at the time of his arrest, but also led the police party to the place where the dead body was buried and to the places where the pistol and spade

were thrown. It was on his pointation that the dead body was recovered. It was voiced for the appellant that neither independent evidence was produced, nor the circumstantial evidence was collected from the independent sources and that the impugned judgment is the outcome of haste and without the application of judicial mind. It was further submitted that despite the fact that the most relevant witnesses were available with the prosecution, but their statements were not recorded and that an adverse inference can be drawn. We are not persuaded with what the learned counsel for the appellant submitted, as it was the accused/appellant who led the police party to the place where the deceased was killed and his dead body was buried and that it was the accused/appellant on whose pointation the weapon of offence and the spade used for burial of the deceased were recovered. Even the appellant-Wajid Ali led the police party to the places where the motorcycle and footwear of the deceased were thrown. As the prosecution had no malafide and the complainant was nourishing no grudge against the accused charged, so the circumstantial evidence, more particularly, the recovery of the dead body on pointation of the appellant cannot be discarded.

The complainant charged the accused/appellants after the guilt was admitted and the recoveries were affected. Had the complainant mala fide to charge, then the accused would have been charged at the earliest, but when he got satisfied regarding the involvement of the appellants, then he recorded his statement u/s 164 of the Criminal Procedure Code. Had this been the case of direct evidence, then the non-recording of the statements of both the sisters would have played a decisive role, but as the case rests upon the circumstantial evidence, so the absence of their statement would hardly favour the appellants. We cannot lose sight of the fact that the place from where the dead body was recovered is situated inside the fields hardly visited by the common people and hardly known to the appellants, more particularly, to the appellant-Wajid Ali. As there was no visible sign of a grave, so neither we can expect that the local police would know earlier to the pointation made by the appellant, so the recoveries & discoveries pursuant to the pointation of the appellant are the circumstances which should be and which must be taken into consideration. Even the weapon of offence was

recovered when the appellant led the police party to the place where it was disposed of and also the spade.

10. The witnesses appeared before the Trial Court whose statements were recorded, but despite searching cross examination nothing detrimental to the prosecution case, could be extracted from their mouths. The witnesses were asked and confronted with different pieces of evidence, but their sequence could not be broken and no inconsistency could be brought in their statements. We cannot forget that for exhumation of the dead body the legal requirements were complied with and it was after getting permission from the competent court of law, that the dead body was unearthed, that too, in supervision of the concerned Judicial Magistrate. The Area Magistrate appeared before the Trial Court as PW-10, who in his examination-in-chief explained the circumstances in which the permission was granted and the dead body was dug out. This witness was examined on material aspects of the case and he succeeded in bringing on record that the proceedings were conducted in accordance with law and that the dead body was duly identified by the legal heirs. Apart from the Area Magistrate, the concerned doctor, who

conducted autopsy on the dead body of the deceased was also examined, who confirmed that the deceased died due to firearm injury and that the dead body despite decomposition was identifiable. When this part of evidence is read in juxtaposition with the recoveries and discoveries made on pointation of the appellant, no ambiguity is left that it was the appellant who killed the deceased and that it was the appellant on whose pointation the dead body was recovered. Apart from the legal heirs the forensic report further confirmed the identity of the dead body.

11. We are to see as to what interest the appellant had, in killing the deceased. The record tells that the accused-Wajid Ali is the son-in-law of the appellant-Jamshed and that he was equally related to the family as the deceased was. As the unfortunate deceased was suspected of having illicit relations with the sister of his fiancée, so it infuriated the family, more particularly, the appellant-Wajid Ali, as he thought it a stigma to his family and as such he committed to kill the deceased. Apart from the circumstantial evidence, we have the confessional statement of the appellant which was recorded on 20.08.2019, soon after his arrest. As the prosecution succeeded in collecting

the most reliable pieces of evidence and when the same were placed together a chain was formed with no link missing. This Court lurks no doubt in mind that the circumstantial evidence, where most of the evidence was collected on pointation of the appellant, is sufficient to hold the appellant responsible for the tragedy. Reliance is placed on judgment of the Apex Court reported as **P L D 2008 Supreme Court 503**, in case title **“MUHAMMAD LATIF Vs the State”**, which reads as follows:-

“11. As far the contention of the learned counsel that upon circumstantial evidence, one cannot be convicted and awarded the penalty of death, this plea is also misconceived because there is no bar or hindrance to pass the sentence upon a killer of three human beings when the chain of guilt is found not to be broken and irresistible conclusion of the guilt is surfacing from the evidence, which is connecting the accused with the commission of that offence without any doubt or suspicion. If the circumstantial evidence brought on the record is of such nature than the conclusion would be in the shape of conviction and no other conclusion shall be drawn by any stretch of imagination in such a case, for the guilt of the accused, penalty of death or life imprisonment shall be a normal event. The following judgments can be cited with benefits for this proposition.”

12. The record tells that on 20.08.2019, the appellant was produced before the court of Judicial Magistrate where he opted to confess his guilt and as such his confessional statement was recorded. As the confessional statement of the appellant plays a

pivotal role in the instant case, so we deem it essential to go through the same and to get it confirmed that the same was true, voluntary and that the legal requirements were fulfilled by the learned Judicial Magistrate.

13. There is no denial to the fact that the appellant was produced before the court of competent jurisdiction and that he opted to confess his guilt. It is pertinent to mention that as per law the questionnaire was prepared, the relevant questions were put to the appellant and that sufficient time was given to the appellant to recompose himself. The record further tells that a 30-minute time was provided to the appellant and that the learned Judicial Magistrate disclosed his identity to the appellant. Every step was taken to remove the influence from the mind of the appellant with an assurance that in case he refuses to confess, he would not be handed over to the police related to the case. The learned Judicial Magistrate put his appearance before the Court as PW-8, who stated that on the relevant day the appellant was produced before him; surplus people including the police were asked to leave; that he disclosed his identity to the appellant and assured the appellant that in case he did not confess his guilt his

custody would not be handed over to the investigating officer or other police officials belonging to the same police station. The learned Magistrate was cross examined on material aspects of the case, but nothing could be extracted from his mouth that would go against the case of the prosecution. We also went through the requisite formalities observed by the learned Magistrate, where we did not come across any illegality or irregularity, rather the learned Magistrate took extra care and extra measures for his satisfaction and that of the appellant as well. The confessional statement of the appellant was gone through where we found that the appellant narrated the events as it occurred and he also disclosed that it was on his pointation that the dead body was recovered. He further disclosed that he also led the police party to the place where the pistol was thrown and to the place where the spade was disposed of. The coherence in events disclosed by the appellant while confessing his guilt confirms that the confessional statement is voluntary and true. The confessional statement of the appellant lends support to the prosecution case and it has increased the authenticity of the circumstantial evidence, which came to surface on the pointation of the

appellant. This court lurks no doubt in mind that the appellant confessed his guilt and that his confessional statement is not only voluntary but true as well. We are benefited from the observations rendered by the Apex Court in case titled **“MUHAMMAD TALHA HUSSAIN alias NOMAN and another Versus the STATE, (PLD 2008 Supreme Court 115),** which is reproduced herein below:-

In the confessional statements the petitioners have also disclosed their motives i.e. killing of deceased Syed Zafar Hussain for sectarian reason, which clearly goes to indicate that they had made confession voluntarily and true. So far as delay of 10 days in recording of confessional statement is concerned, it would not be fatal in view of the facts and circumstances of the case because, per se, for this reason, confessional statement cannot be discarded.

14. The cumulative effect of what has been stated above leads this Court nowhere but to hold that the prosecution succeeded in bringing home guilt against the appellant and that the learned Trial Court was fully justified to convict the appellant-Wajid Ali for the death of the deceased.

15. As the appellant got death penalty to his share, so this Court is to see as to whether the learned Trial Court was justified in that respect and as to whether the evidence on file was

sufficient to ask for the same. As the prosecution case hinges on the circumstantial evidence and also upon the confessional statement of the appellant, so this Court is to see as to what prompted the appellant to kill the deceased. It is evident from the record that the appellant-Wajid Ali was equally related to the house as the deceased was and that he was attached to the family more than the deceased. As the deceased lost his life because of the suspected illicit relationship with the sister-in-law of the appellant, so the same turned to be the cause of his annoyance and that the feelings went so deep which prompted the appellant to kill the deceased. On one hand if we are to admit the confessional statement of the appellant, then on the other we are to accept the same in totality. When in his statement the cause is mentioned as the illicit relationship between the two and as the appellant while confessing his guilt confirmed the same to be the cause of killing, so this Court is confident in holding that the appellant was swayed by his emotion and attachment to the family. When such is the state of affairs, this Court lurks no doubt in mind in holding that the learned Trial Court fell into error on this particular aspect of the case and that its approach to

the quantum of sentence is not in accordance with law which calls for interference. In the like circumstances, we are blessed with the observations rendered in case title “**AKHTAR Versus The STATE**”, reported as “**2020 S C M R 2020**”, which reads as follows:-

“8. So far as prayer of learned counsel for the appellant regarding alternate sentence of imprisonment for life instead of death is concerned, it has been observed by us that the prosecution case is based upon circumstantial evidence, as has been discussed in the preceding paragraphs. Although the conviction of appellant under section 302(b), P.P.C. does not call for any interference by this Court, but considering the overall circumstances of the case, we are of the view that instead of death sentence, the alternate sentence of imprisonment for life provided under section 302(b), P.P.C. shall meet the ends of justice.”

16. The instant criminal appeal is *partly allowed*. The conviction of the appellant-Wajid Ali u/s 302(b) PPC is maintained, however, his sentence of death is converted into **imprisonment for life**, with benefit of section 382-B Cr.P.C. The amount of compensation under section 544-A Cr.P.C, as well as the findings of the court on section 15-AA are left intact, however, the appellant, in default of payment of compensation, shall spend **06-months** S.I. When the appeal is partly allowed, so

the **Murder Reference No.28-P of 2022** is answered in **Negative.**

17. It is interesting to note that the appellant has also been convicted under section 201 PPC and this Court is to see, as to whether the approach of the learned Trial Court was justified on this particular aspect of the case, we deem it essential to reproduce section 201 of the Pakistan Penal Code, which reads as follows:-

“201. Causing disappearance of evidence of offence, or giving false information to screen offender__ if a capital offence. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine...”

To appreciate this particular aspect of the case, we deem it essential to note that in section 201 PPC, word ‘*offender*’ is used, which means ‘*a person who is guilty of a crime*’. As in the instant case it was the appellant-Wajid Ali, who killed the deceased, so for all practical purposes in this particular case Wajid Ali is the

offender and that he by himself cannot be punished under this section of law, rather the one who helped and facilitated in the disappearance of evidence shall be held responsible. The approach of the learned Trial Court to this particular aspect of the case is against the law which calls for interference. The conviction & sentence awarded to the appellant-Wajid Ali, u/s 201 PPC, are not sustainable in the eye of law, the same is set-aside and he is acquitted from the charge u/s 201 of the Pakistan Penal Code. The like circumstances came before the Apex Court and the Court was pleased to answer the same in case title **“Ahmad Vs the State”**, reported as **“2015 SCMR 993”**, in the following manner:-

“5. For what has been discussed above this appeal is dismissed to the extent of the appellant's conviction for an offence under section 302(b), P.P.C. recorded and upheld by the learned courts below but the same, is partly allowed to the extent of the appellant's sentence on that count of the charge which is reduced from death to imprisonment for life. The benefit under section 382- B, Cr.P.C. shall be extended to the appellant. We note that the learned trial court had also passed a sentence of fine of Rs. 50,000 against the appellant which was utterly unlawful and what could be done under section 544-A, Cr.P.C, was to order payment of compensation. The said aspect of the appellant's sentence is, therefore, modified and it is ordered that the appellant shall pay a sum of Rs. 50,000 to the heirs of the deceased by way of compensation and in default of payment thereof he shall undergo simple imprisonment for six months. We are also surprised to find that the learned trial court had also convicted the

appellant for an offence under section 201, P.P.C. and had sentenced him to rigorous imprisonment for seven years and a fine of Rs.10,000 for the said offence and in default of payment of fine he was ordered to undergo simple imprisonment for three months. This Court has already clarified that the conviction for an offence under section 201, P.P.C. cannot simultaneously be recorded with a conviction for an offence under section 302, P.P.C. and a reference in this respect may be made to the case of **Nasar Khan v. The State (2000 SCMR 130)**. In this view of the matter the appellant's conviction and sentence for the offence under section 201, P.P.C. are set aside. This appeal is disposed of in these terms.”

While handing down the judgment *supra*, the Apex Court placed its reliance on a judgment of the same court, titled as “**Nasar Khan Vs the State**”, (2000 SCMR 130), which reads as follows:

“12. Keeping in view the circumstances narrated above, the prosecution case stands fully established against the appellant so far as the murder of Siraj I Muhammad deceased is concerned, he was, therefore, rightly convicted and properly punished. However, as regards his conviction under section 201, P.P.C., it may be stated that it is a well-settled proposition of law that an accused charged with the main offence i.e. murder cannot be convicted for disappearance of evidence or offence to screen or save himself. **Farid Muhammad v. The State (PLD 1959 (W.P.) Peshawar 12)** and **Gulazr Khan v. The State (PLD 1963 (W.P.) Peshawar 178)** may be cited in this behalf. In this view of the matter, we accept this appeal to that extent and set aside the appellant's conviction and sentence under section 201, P.P.C. With the above modification the appeal is otherwise dismissed.”

18. Now diverting to the case of the other appellants i.e. Jamshed & Nadeem, as the prosecution could not bring on record any evidence against these appellants, but only the confessional statement of the co-accused, so this Court is under

the obligation to re-assess the evidentiary value of the recorded statements, to know as to whether the learned Trial Court was correct in its approach while convicting these two appellants for the murder of the deceased and that the learned Trial Court validly took into consideration the attending circumstances of the present case. As right from the beginning till the end, no positive evidence could be collected to link the appellant with the death of the deceased and even nothing incriminating was recovered on their pointation, so the only confessional statement of the co-accused cannot be held the basis for their conviction. As the confessional statement of the accused can only be taken a circumstantial evidence against the co-accused who is on joint trial. When the prosecution failed to collect evidence regarding their involvement in the episode and when no recovery or discovery was made on their pointation, then this Court lurks no doubt in mind in holding that the learned Trial Court fell into error on this particular aspect of the case and it misdirected itself both on facts & in law, which calls for interference, as such the criminal appeal to the extent of the appellants i.e. Jamshed &

Nadeem, is *allowed*, they are acquitted of the charge and shall be released forthwith, if not to be detained in any other case.

19. Now diverting to the **Criminal Revision No.276-P/2022**, titled “**Shaukat Hussain Vs Jamshid and another**”, where the complainant has asked for the enhancement of sentence awarded to the appellant-Jamshid, so in such eventuality the instant criminal revision has lost its utility and the same is *dismissed* as such.

Announced.

24.05.2023.

Hafeez Burki, SSS

JUDGE

JUDGE

(D.B) Hon’ble Mr. Justice Ishtiaq Ibrahim & Hon’ble Mr. Justice Sahibzada Asadullah, J.