

C J D A 38.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.1238 of 2013
(Raiyet Ali vs. The State & another)

&

Criminal Revision No.723 of 2013
(Muhammad Yahya Vs. Raiyet Ali & another)

J U D G M E N T

Date of hearing.	13.02.2020
Appellant by:	Mr. Muhammad Kashif Saeed Bhatti, Advocate.
State by	Ch. Muhammad Ishaq, Additional Prosecutor General.
Complainant, as well as, petitioner in Crl. Revision No.723 of 2013 by	M/s Zafar Masud, Advocate and Ch. Abdul Hameed Gujjar, Advocate.

Malik Shahzad Ahmad Khan, J:- This judgment shall dispose of *Criminal Appeal No.1238 of 2013*, filed by Raiyet Ali (appellant) against his conviction and sentence, as well as *Criminal Revision No.723 of 2013*, filed by Muhammad Yahya petitioner/complainant for enhancement of sentence awarded to the Raiyet Ali (respondent No.2), from imprisonment for life to death, as both these matters have arisen out of the same judgment dated 27.06.2013, passed by learned Additional Sessions Judge, Chunian, District Kasur.

2. Raiyet Ali (appellant) was tried in case F.I.R. No.381/2010 dated 17.09.2010, registered at police station Kangan Pur in respect of

offence under section 302 PPC. After conclusion of the trial, the learned trial Court *vide* its judgment dated 27.06.2013, has convicted and sentenced the appellant as under: -

Under section 302(b) PPC to imprisonment for life. The appellant was also directed to deposit an amount of Rs.2,00,000/- (Rupees two hundred thousand only), as compensation in the bank account of the daughter of Mst. Khursheed Bibi (deceased) 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.

3. Brief facts of the case as given by the complainant Muhammad Yahya (PW-1) are that the sister of the complainant namely Mst. Khursheed Bibi (deceased) was married with Raiyet Ali (appellant) for the last fourteen years and from the said wedlock, a daughter was born, where-after the deceased remained issue-less, due to which Raiyet Ali (appellant), was annoyed and he used to beat Mst. Khursheed Bibi (deceased). The complainant party several times asked the appellant to contract second marriage due to his desire of having more kids. Mst. Khursheed Bibi (deceased), didn't leave the house of the appellant for the sake of her daughter. Raiyet Ali (appellant), was having illicit relations with other women but even then Mst. Khursheed Bibi (deceased), continued to live with the appellant just for the betterment of her daughter. On the preceding night of registration of FIR i.e., 17.09.2010, Raiyet Ali (appellant), committed the murder of Mst. Khursheed Bibi (deceased), either through strangulating her neck or through some other way but he (appellant) told everyone that Mst. Khursheed Bibi (deceased), died due to the electric shock. After committing murder of Mst. Khursheed Bibi (deceased), Raiyet Ali (appellant) informed his (appellant's) brother and then his (appellant's) sister-in-law about the death of his wife due to the electric shock,

however, he (appellant) did not tell this fact to the complainant party, though the house of the complainant party was situated near to the house of the accused (appellant). On coming to know about the occurrence at 3.30 a.m, the complainant along with Hafiz Muhammad Tariq (PW-2), Mst. Surraya Bibi daughter of Muhammad Younis, Asghar and Mst. Surayya Bibi wife of Muhammad Yahya (PWs since given-up), reached at the house of the deceased, where Mst. Khursheed Bibi (deceased) was lying dead in naked condition in the bathroom. The complainant party covered the dead body with a cloth and shifted the same on a cot and while doing so, they noticed ligature mark around the neck of the deceased, hence the abovementioned FIR.

On 22.09.2010, the complainant implicated Muhammad Aslam (co-accused), while moving application (Ex.PB), with the allegation that he (complainant), lodged the abovementioned case as his brother-in-law Raiyat Ali (appellant), committed murder of her sister namely Mst. Khursheed Bibi (deceased) through strangulating her neck but before committing murder, he (appellant) took intoxicated tablets from a fake doctor namely Muhammad Aslam (co-accused since acquitted) and administered the same to Mst. Khursheed Bibi (deceased) and her daughter Nadia Bibi, so that they could not offer any resistance. It was further alleged by the complainant in his application (Ex.PB), that Muhammad Aslam (co-accused since acquitted), is also involved in commission of offence of murder of his sister as strip of intoxicated tablets was found present in the dustbin, however, the learned trial Court acquitted the said Muhammad Aslam (co-accused since acquitted) while giving him the benefit of doubt vide the impugned judgment dated 12.10.2012.

4. The appellant was arrested in this case by the police 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 to which he pleaded not guilty and claimed trial. In order to prove its case the prosecution produced eight 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 27.06.2013, found the appellant guilty, convicted and sentenced him as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that there was no eye-witness of the occurrence and the prosecution case is based upon mere suspicions; that even there is no circumstantial evidence on the record against the appellant and the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Tariq (PW-2), merely expressed their suspicion against the appellant; that it was the case of the prosecution that the appellant informed the complainant party through a mobile phone while giving a false information regarding the death of Mst. Khursheed Bibi, due to an electric shock but neither the mobile phone of the complainant party nor the mobile phone of the appellant has been taken into possession by the investigating Officer; that even no data of the mobile phone numbers mentioned by Hafiz Tariq (PW-2), has been taken into possession by the Investigating Officer; that time of death of the deceased as given by Lady Dr. Tasneem Naqvi (PW-5), does not coincide with the time of death of the deceased, as given by the prosecution witnesses; that according to the prosecution case, Raiyet Ali (appellant), made a disclosure that he had first given some material to Mst. Khurshid Bibi (deceased), which caused intoxication to her and thereafter the

appellant committed her murder by strangulating her neck but viscerae of the deceased were not sent to the Punjab Forensic Science Agency for detection of any material therein, which can cause intoxication; that even otherwise the abovementioned prosecution evidence is based on the alleged extra judicial confession of the appellant, while in police custody, which is in-admissible in evidence; that the alleged recovery of *Dupatta* (P-1), has been planted against the appellant in order to strengthen the weak prosecution case; that according to Imran Shahid 1144/C (PW-6), *Dupatta* (P-1), was of common pattern, which was not stained with any incriminating material, therefore, the alleged recovery of *Dupatta* (P-1), from the possession of the appellant is of no avail to the prosecution; that the motive as alleged by the prosecution against the appellant has also not been proved in this case; that the prosecution has 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 charge.

7. Learned Deputy Prosecutor General assisted by learned counsel for the complainant, opposed this appeal on the grounds that the prosecution has fully proved its case against the appellant beyond the shadow of any doubt; that the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Tariq (PW-2), being brother and maternal nephew of Mst. Khursheed Bibi (deceased) had no previous enmity with the appellant to falsely implicated him in this case; that substitution in such like cases is a rare phenomena; that the dead body of Mst. Khursheed Bibi (deceased), was recovered from the house of the appellant, therefore, it was duty of the appellant to explain regarding the cause of death of the deceased but the appellant neither lodged any FIR nor informed the police regarding the cause of un-natural death of the deceased rather he fled away from the spot after the occurrence and as such the conduct of the appellant has proved that

he was guilty in this case; that the prosecution witnesses stood the test of lengthy cross examination but their evidence could not be shaken; that the prosecution case against the appellant is further supported by the medical evidence, which shows the un-natural death of the deceased by strangulating her neck and fracture of hyoid bone of the deceased; that the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), are natural witnesses in this case because they are residents of close-by houses, which were situated near to the place of occurrence; that the prosecution case against the appellant is further corroborated by the recovery of weapon of offence *i.e.*, *Dupatta* (P-1), on the pointation of the appellant; that the motive as alleged by the prosecution has also been proved through straightforward and confidence inspiring evidence of the prosecution witnesses; that the prosecution has proved its case against the appellant beyond the shadow of any doubt; that there is no substance in this appeal, therefore, the same may be dismissed. It is added by learned counsel for the complainant that there was no mitigating circumstance in this case, therefore, while accepting the *Criminal Revision No.723 of 2013*, filed by the complainant the sentence awarded to the appellant by the learned trial Court may be enhanced from imprisonment for life to death.

8. I have heard the arguments of learned counsel for the parties, as well as, the learned Additional Prosecutor General and have also gone through the evidence available on the record with their able assistance.

9. Since there is no direct evidence and prosecution case hinges on the circumstantial evidence, therefore, utmost care and caution is required for reaching at a just decision of the case. It is settled by now that 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 another”** (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 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 neck of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.”

Keeping in view the parameters, laid down in the above-mentioned judgments, I will discuss each part of the prosecution evidence, separately.

10. The prosecution case is based on the following pieces of evidence:-

- (i) Circumstantial evidence produced by the prosecution through Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), on account of a false information allegedly given by Raiyet Ali (appellant) to the complainant party regarding the death of Mst. Khursheed Bibi (deceased), due to electric-shock and disappearance of Raiyet Ali (appellant) after the occurrence.
- (ii) Motive
- (iii) Recovery of weapon of offence *i.e.*, Dupatta (P-1), on the pointation of Raiyet Ali (appellant), as well as, recovery of dead body of Mst. Khursheed Bibi (deceased), from the house of Raiyet Ali (appellant).
- (iv) Medical Evidence.
- (v) Evidence of extrajudicial confession of Raiyet Ali (appellant) before Muhammad Yahya complainant (PW-1), while in police custody.

11. *(i) Circumstantial evidence produced by the prosecution through Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), on account of a false information allegedly given by Raiyet Ali (appellant) to the complainant party regarding the death of Mst. Khursheed Bibi (deceased), due to electric-shock and disappearance of Raiyet Ali (appellant) after the occurrence.*

Insofar as the evidence of prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), is concerned, it is an admitted fact that both the abovementioned witnesses are not the eye-witnesses of this case. They are also not the witnesses of last seen evidence and their evidence is

mainly based upon the suspicion against the appellant, which was developed in the minds of above-referred prosecution witnesses due to alleged false information given by Raiyet Ali (appellant) to the complainant party regarding the cause of death of his wife namely Mst. Khursheed Bibi (deceased), because of electric-shock and conduct of the appellant subsequent to the occurrence as he (appellant) statedly fled away from the spot after the occurrence and did not report the matter to the police. It is noteworthy that Hafiz Muhammad Tariq (PW-2), during his examination-in-chief stated regarding the information given to him by Raiyet Ali (appellant) regarding the death of Mst. Khursheed Bibi (deceased), due to electric-shock in the following words:-

“At about 3.30 AM (night) accused Rayyat Ali telephonically informed me about death of Khurshed Bibi by electric shock”

Furthermore, Hafiz Muhammad Tariq (PW-2), mentioned the cell phone number of Raiyet Ali (appellant), as well as, his own cell phone number during his cross examination, while appearing in the witness-box. Relevant part of his statement in his cross examination reads as under:-

“The cell phone number of Rayyat Ali at the relevant time was 0300-6545733. My cell No. is 0302-6106180. I do not remember as to whether I have given my cell No. as 0306-4311127 to the police for the purpose of any contact with me. My cell No.’s SIM is on my name. I got recorded the fact of telephone call by Rayyat Ali accused on my cell phone, giving information about the death of deceased. Confronted with Ex.DA, where it is not so recorded. I got recorded in my statements u/s 161 Cr.P.C that when I received the information, we while going to the house of Rayyat Ali made hue and cry and on hearing Muhammad Yahya complainant and Mst. Surrya Bibi (Mamani) came out and joined us. Confronted with Ex.DA, where it is not so recorded”

It is, therefore, evident that Hafiz Muhammad Tariq (PW-2), has given his own cell phone number, as well as, the cell phone number of

Raiyet Ali (appellant), during his cross examination but neither the said cell phone sets were taken into possession by the Investigating Officer nor their *Data* was collected by him, in order to establish that any wrong information was given by Raiyet Ali (appellant), regarding the death of Mst. Khursheed Bibi (deceased) to the complainant party. It is further noteworthy that the above-mentioned fact regarding giving information by Raiyet Ali (appellant) with regard to the cause of death of Mst. Khursheed Bibi (deceased), due to electric-shock **through phone** was not mentioned in the FIR or in the statement (Ex.DA) of Hafiz Muhammad Tariq (PW-2), recorded by the police under section 161 Cr.P.C. Hafiz Muhammad Tariq was confronted with his previous statement and the dishonest improvements made by him in this respect were duly brought on the record. It is true that the dead body of Mst. Khursheed Bibi (deceased) was recovered from the house of the appellant and as per prosecution case, Raiyet Ali (appellant), did not inform the police regarding the death of his wife namely Mst. Khursheed Bibi (deceased) and he statedly fled away after the occurrence but the abovementioned facts are not sufficient to convict and sentence the appellant under the capital charge. The abovementioned circumstances at the most may create a suspicion against the appellant but it is by now well settled that suspicion how so ever strong cannot take place of conclusive proof, which is required for convicting and awarding sentence to an accused for a capital charge. In the case of **“Muhammad Jamshaid and another Vs. The State and others”** (2016 SCMR 1019), in paragraph No.3, of the judgment, the Apex Court of the country was pleased to observe as under:-

3.....It is trite that suspicion howsoever grave or strong can never be a proper substitute for proof beyond reasonable doubt required in a criminal case.....”

Similar view was taken by the Hon'ble Supreme Court of Pakistan in the case reported as "Vijant Kumar and 4 others Vs. State through Chief Ehtesab Commissioner, Islamabad and others" (PLD 2003 Supreme Court 56).

12. (ii) Motive.

According to the prosecution case as set forth in the FIR (Ex.PA/1), the motive behind the occurrence was that only a female child was born from the wedlock of Raiyet Ali (appellant) and Mst. Khursheed Bibi (deceased), during the subsistence of their marriage for fourteen (14) years due to which the appellant was unhappy with his wife Mst. Khursheed Bibi (deceased). It was also alleged in the FIR (Ex.PA/1) that Raiyet Ali (appellant) had illicit relations with the other ladies and due to the abovementioned reason, he committed murder of Mst. Khursheed Bibi (deceased). It is noteworthy that the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), did not mention the above-referred motive while appearing in the witness box and Hafiz Muhammad Tariq (PW-2), only stated in his examination-in-chief that the attitude of Raiyet Ali (appellant), was not cordial towards Mst. Khursheed Bibi (deceased). He had not given any reason whatsoever for the abovementioned attitude of the appellant with the deceased. Muhammad Yahya complainant (PW-1), has conceded during his cross examination that he had not mentioned the name of any woman with whom Raiyet Ali (appellant) had illicit relationship. Relevant part of his statement in this respect reads as under:-

"I did not mention the name of any woman, with whom Rayyat Ali has alleged illicit relations during his marriage time with my sister. It is incorrect that this fact is unfounded and I do not have any cogent reference in this regard"

He further admitted that he never convened any *Punchait* to resolve the alleged issue of beating of Raiyet Ali (appellant) to Mst. Khursheed Bibi (deceased) or to resolve the issue of illicit relations of the appellant with any woman. Relevant part of his statement in this respect reads as under:-

“No panchayat was ever convened to resolve the issue of beatings, given by the accused to my deceased sister as well as his illicit relations with the different women of easy excess”

Similarly Hafiz Muhammad Tariq (PW-2), conceded during his cross examination that Raiyet Ali (appellant), never gave beating to his aunt Mst. Khursheed Bibi (deceased), in his presence. Relevant part of his statement in this respect reads as under:-

“Rayyat Ali never gave beatings to my aunt in my presence. Volunteer, that she disclosed so to me”

Perusal of the statement of Hafiz Muhammad Tariq (PW-2), shows that his statement was based upon hearsay evidence as he himself never witnessed Raiyet Ali (appellant), while beating to his wife Mst. Khursheed Bibi (deceased) and he stated that he was told by Mst. Khursheed Bibi (deceased), regarding the abovementioned motive. No woman was named by the abovementioned prosecution witnesses with whom Raiyet Ali (appellant) had alleged illicit relationship. It is also an admitted fact that Mst. Khursheed Bibi (deceased) was living along with her minor daughter in the house of Raiyet Ali (appellant), till her death. It is further noteworthy that no family or civil suit filed by Mst. Khursheed Bibi (deceased), against Raiyet Ali (appellant), was produced in the evidence to establish that there was any matrimonial dispute between the parties. Both the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), never stated that Mst. Khursheed

Bibi (deceased), came to the house of her parents due to any dispute with the appellant. Keeping in view all the abovementioned facts, I have come to this irresistible conclusion that the motive as alleged by the prosecution has not been proved in this case.

13. **(iii) Recovery of weapon of offence i.e., Dupatta (P-1), on the pointation of Raiyet Ali (appellant), as well as, recovery of dead body of Mst. Khursheed Bibi (deceased), from the house of Raiyet Ali (appellant).**

According to the prosecution case, Dupatta (P-1), was used by the appellant for strangulating the neck of Mst. Khursheed Bibi (deceased). According to the evidence of Lady Doctor Tasneem Naqvi (PW-5), there was a bruise on the neck of Mst. Khursheed Bibi (deceased). It is also noteworthy that as per prosecution case, the dead body of Mst. Khursheed Bibi (deceased) was initially lying in the bathroom of the house of appellant in naked condition, however, the same was covered with a cloth by the ladies of the complainant party and was put on a cot. In order to prove the recovery of Dupatta (P-1), on the pointation of Raiyet Ali (appellant), the prosecution has produced Imran Shahid 1144/C (PW-6), in the witness box. The said witness has stated during his cross examination regarding the abovementioned recovery as under:-

“I cannot describe the place, where “Petti” was lying as well as room from where Dopatta P-1 was recovered, however, Dopatta was of common pattern which was easily available from the market. It is correct that P-1 Dopatta was not stained with mud, blood or soap”

It is evident from the statement made by Imran Shahid 1144/C (PW-6), that he was even unable to describe the place, from where the recovery of Dupatta (P-1), was effected. He was also unable to describe the room where-from the said Dupatta (P-1), was recovered, which shows that he never visited the place of recovery, therefore, he

was unable to describe the same. He has also admitted that *Dupatta* (P-1), was of common pattern, which was easily available in the market. He further conceded that *Dupatta* (P-1), was neither stained with mud, blood or soap and as such no incriminating material was available on *Dupatta* (P-1). Keeping in view all the abovementioned facts and as *Dupatta* (P-1), was not stained with any incriminating material and as *Dupatta* (P-1), was of common pattern, which is available in almost every house, therefore, the said recovery is inconsequential for the prosecution. Insofar as the recovery of dead body of Mst. Khursheed Bibi (deceased), from the house of Raiyet Ali (appellant), is concerned, I have already given my findings in this respect in paragraph No.11, of this judgment. The appellant cannot be convicted and sentenced merely on the ground that he happened to be the husband of the deceased. At the cost of repetition, it is observed that by now it is well settled that in absence of other reliable and cogent evidence, mere recovery of dead body of the deceased from the house of an accused by itself is not sufficient to convict and sentence him under the capital charge. In the case of **“Nasrullah alias Nasro Vs. The State”** (2017 SCMR 724), in paragraph No.5, of the judgment, the Hon’ble Supreme Court of Pakistan observed as under:-

5.....the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and no one else who would have committed that murder.....”

Reliance in this respect may also be placed on the judgments reported as **“Nazir Ahmad Vs. The State”** (2018 SCMR 787), **“Asad Khan Vs. The State”** (PLD 2017 Supreme Court 681), **“Nazeer Ahmed Vs. The State”** (2016 SCMR 1628), **“Muhammad Jamshaid and another Vs. The State and others”** (2016 SCMR 1019) and **“Abdul Majeed Vs. The State”** (2011 SCMR 941).

14. **(iv) Medical evidence.**

Insofar as the medical evidence of the prosecution is concerned, I have noted that the same is also in-conflict with the ocular account of the prosecution because the time of death of Mst. Khursheed Bibi (deceased), as given by Lady Doctor Tasneem Naqvi (PW-5), does not coincide with the time of death given by the prosecution witnesses namely Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2). According to the prosecution case as set forth in the FIR (Ex.PA/1), the complainant party received information regarding the death of Mst.Khursheed Bibi (deceased), on the night of 17.09.2010 at 3.30 a.m. According to the statement of Lady Doctor Tasneem Naqvi (PW-5), she conducted the postmortem examination of the dead body of Mst. Khursheed Bibi (deceased) on 17.09.2010 and the time of postmortem examination mentioned in the postmortem report (Ex.PF), is 3.30 p.m. Lady Doctor Tasneem Naqvi (PW-5), stated that according to her opinion, the probable time that elapsed between the injury and death was immediate, whereas the probable time that elapsed between the death and postmortem examination was 7 to 8 hours. As postmortem examination was conducted on 17.09.2010, at 3.30 p.m, therefore, according to the evidence of Lady Doctor Tasneem Naqvi (PW-5), Mst. Khursheed Bibi (deceased), died approximately between 7.00 a.m to 8.00 a.m on 17.09.2010 but as mentioned earlier, in the FIR (Ex.PA/1), it was alleged that on 17.09.2010, at 3.30 a.m, the complainant party received the information regarding the death of Mst. Khursheed Bibi (deceased). Even Muhammad Yahya complainant (PW-1) and Hafiz Muhammad Tariq (PW-2), while appearing in the witness box has categorically stated that they heard the news regarding the death of Mst. Khursheed Bibi (deceased) at about 3.30 a.m (night). It is, therefore, evident that time of death of Mst. Khursheed Bibi (deceased), given by the abovementioned prosecution witnesses does

not coincide with the time of death of Mst. Khursheed Bibi (deceased), as given by Lady Doctor Tasneem Naqvi (PW-5) and as such there is conflict between the ocular account and the medical evidence of the prosecution. Furthermore, it is by now well settled that medical evidence is a type of supporting evidence, which may confirm the ocular account 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 cases of “Muhammad Tasaweer Vs. Hafiz Zulkarnain and 2 others” (PLD 2009 SC 53), “Altaf Hussain Vs. Fakhar Hussain and another” (2008 SCMR 1103) and “Mursal Kazmi alias Qamar Shah and another Vs. The State” (2009 SCMR 1410).

15. (v) Evidence of extrajudicial confession of Raiyet Ali (appellant) before Muhammad Yahya complainant (PW-1), while in police custody.

Insofar as the alleged extrajudicial confession of Raiyet Ali (appellant) before Muhammad Yahya complainant (PW-1), while in police custody is concerned, it is by now well settled that confession of an accused while in police custody is inadmissible in evidence. Reliance in this respect may be placed on the judgment reported as “Sajjan Solangi Vs. The State” (2019 SCMR 872), wherein in paragraph No.3, of the judgment, the Apex Court of the country was pleased to observe as under:-

3.....Sikandar Ali Malkani claimed that on 24.09.2003 petitioner Sajjan Solangi while in police custody during interrogation made extra judicial confession before him and the other witness but admittedly under the Qanun-e-Shahadat Order, 1984 the said disclosure under the custody before the police is inadmissible whereas Muhammad Nawaz (PW-3) who is also a witness of the said confession, did not utter any word regarding such confession. The reliance

made by the Courts below on such inadmissible evidence was unfortunate aspect of this case.....”

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 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 **“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”

Similarly in **‘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.”

17. In the light of above discussion, I **accept** Criminal Appeal No.1238 of 2013 filed by Raiyet Ali (appellant), set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Chunian, District Kasur vide impugned judgment dated 27.06.2013 and acquit him of the charge under Section 302(b) PPC by extending him the benefit of doubt. Raiyet 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.723 of 2013**, filed by Muhammad Yahya (complainant) for enhancement of sentence, awarded by the learned trial Court against Raiyet 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 15 of this judgment and Raiyet 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

Aitazaz

(Approved for reporting)

(Malik Shahzad Ahmad Khan)
Judge