

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

**Criminal Appeal No.1036 of 2013**

Waheed Khan Vs. The State & another

**Criminal Revision No.724 of 2013**

Tariq Mehmood Vs. Waheed Khan etc.

**JUDGMENT**

Date of hearing:	<b>10.03.2021.</b>
Appellant by:	Mr. Muhammad Mumtaz Faridi Advocate.
State by:	Ch. Muhammad Ishaq, Additional Prosecutor General.
Complainant by:	Syed Tahir Abbas Advocate.

**Malik Shahzad Ahmad Khan, J:-** This judgment shall dispose of *Criminal Appeal No.1036 of 2013*, filed by Waheed Khan (appellant) against his convictions and sentences, as well as *Criminal Revision No.724 of 2013*, filed by Tariq Mehmood complainant for enhancement of sentence awarded to Waheed Khan (respondent No.1 of said criminal revision) from imprisonment for life to death sentence, as both these matters have arisen out of the same judgment dated 26.06.2013, passed by learned Additional Sessions Judge, Mianwali.

2. Waheed Khan (appellant) along with his co-accused was tried in case F.I.R. No.383/2010 dated 09.10.2010, registered at police station City Mianwali in respect of offences under sections 302/392/397/411 PPC. After conclusion of the trial, the learned trial

Court *vide* its judgment dated 26.06.2013, 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.1,00,000/- (Rupees one hundred thousand only), as compensation to the legal heirs of Asif Mehmood (deceased) as envisaged under section 544-A Cr.P.C and in case of default to further undergo six months simple imprisonment.*

*Under section 364 PPC to ten years with fine of Rs.25,000/- and in case of default to further undergo one month simple imprisonment.*

*Under section 392 PPC to three years with fine of Rs.25,000/- and in case of default to further undergo one month simple imprisonment.*

*Benefit of section 382-B Cr.P.C was also extended to the appellant and all the sentences awarded to the appellant were ordered to run concurrently.*

(It is pertinent to mention here that the nature of sentences i.e. rigorous or simple imprisonment, awarded to the appellant for offences under sections 364 & 392 PPC has not been mentioned in the impugned judgment of the learned trial Court.)

However, vide the same impugned judgment, Khan Ameer Khan, Amanullah Khan and Quadratullah Khan (co-accused), were acquitted by the learned trial Court while extending them the benefit of doubt.

3. Brief facts of the case as given by the complainant Tariq Mehmood (PW-16) in his complaint Ex.PS on the basis of which, the formal FIR Ex.PS/1 was chalked out, are that he (complainant) was employee of Irrigation department. Asif Mehmood (deceased) was his younger brother, who was driver of Shahzor “Dala” bearing registration No.SGS-1333. On 05.10.2010, at about 4.00 p.m, Asif Mehmood (deceased) told one Ghulam Abbas, who was also a driver of “Dala” bearing registration No.SGP-2165, that he (Asif Mehmood deceased) along with the companions of one Nazeer alias Jeera was going to village Blot Sharif in order to get vegetables. Asif Mehmood deceased did not return back to his house on that day. On 09.10.2010,

the complainant along with Raza Muhammad (PW-13) and Attaullah (PW since given-up) went to village Blot Sharif in search of Asif Mehmood (deceased) and in the way, they came to know that dead body of an unknown person was present in Nala Umarwala near Chasma Barrage. The complainant along with the PWs reached at the abovementioned place and identified the dead body Asif Mehmood deceased. They (PWs) shifted the dead body to the Civil Hospital, Mainwali on "Dala". There was also a rope around the neck of the deceased and no shirt was present on the dead body rather the same was lying near the dead body. The complainant further alleged that the unknown accused committed the murder of his brother while strangulating his neck.

Initially the FIR was lodged against the unknown accused but subsequently, on the basis of statements of the witnesses of last seen evidence, namely, Muhammad Imran (PW-4), Muhammad Nawaz (PW-5), Ghulam Hassan, 2265/C (PW.12), the appellant along with Khan Ameer Khan, Amanullah Khan and Quadratullah Khan (co-accused since acquitted) was implicated in this case. The prosecution subsequently also introduced the evidence of eye-witnesses in this case through Raza Muhammad (PW.13) and Dost Muhammad (PW.14), as well as, evidence of identification of the appellant and his co-accused during the identification parade through the above-referred eye-witnesses.

4. The appellant was arrested in this case by the police on 21.10.2010 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 twenty two witnesses. Prosecution also produced documentary evidence in the shape of Ex.PA to Ex.PZ. 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, however, no defence evidence was produced by the appellant in this case.

5. The learned trial Court *vide* impugned judgment dated 26.06.2013, found the appellant guilty, convicted and sentenced him as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that statements of Raza Muhammad (PW.13) and Dost Muhammad (PW.14) who were subsequently introduced by the prosecution as eye-witnesses of the occurrence, are not trustworthy because the said witnesses remained mum for a period of eight days after the occurrence and for a period of four days after attending funeral ceremony of Asif Mehmood (deceased); that apart from the evidence of above mentioned eye-witnesses, the prosecution case is based upon very weak type of circumstantial evidence which is not worthy of reliance; that the prosecution witnesses of last seen evidence also made their statements before the police with considerable delay and as such their evidence is highly doubtful; that the learned trial Court has rightly disbelieved the statements of the alleged eye-witnesses of the occurrence, as well as, witnesses of last seen evidence in Paragraphs No.18 to 28 of the impugned judgment but the appellant has been convicted and sentenced on the basis of evidence of Ghulam Hassan, 2265/C (PW.12) who was also the witness of last seen evidence; that the above mentioned witness did not state that he saw the appellant in the company of Asif Mehmood (deceased) and he only stated that he saw the appellant in the company of a driver of "Dala" bearing registration No. SGS-1333 but he did not disclose the name of the said driver; that even the above mentioned "Dala" (carry van) was not recovered from the possession of the appellant or his co-accused; that no motive could be proved against the appellant by the prosecution witnesses and alleged recovery of Rs.21,500/- from the possession of the appellant is inconsequential because there was no allegation that any cash amount was snatched by the accused persons from the deceased; that there is no evidence of extrajudicial

confession or evidence of “Wajtaker” against the appellant or his co-accused; that the prosecution could not 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. On the other hand, it is argued by learned Additional Prosecutor General for the State assisted by learned counsel for the complainant that the prosecution has proved its case against the appellant beyond the shadow of any doubt through reliable and trustworthy circumstantial evidence, as well as, evidence of eye-witnesses, namely, Raza Muhammad (PW.13) and Dost Muhammad (PW.14), therefore, he was rightly convicted and sentenced by the learned trial Court; that the appellant was also identified by Raza Muhammad (PW.13) and Dost Muhammad (PW.14) during the identification parade; that the prosecution case against the appellant is further proved through the statements of prosecution witnesses of last seen evidence, namely, Muhammad Imran (PW.4), Muhammad Nawaz (PW.5) and Ghulam Hassan, 2265/C (PW.12); that the motive of snatching of vehicle of the deceased by the appellant and his co-accused and sale of the said vehicle to Khan Ameer Khan, co-accused (since acquitted) was also proved through reliable evidence of Pervaiz Iqbal (PW.17) and Nematullah (PW.22); that the prosecution case against the appellant is also corroborated by the recovery of Rs.21,500/- from the possession of the appellant which was sale proceed of “Dala” snatched from the deceased; that the appellant could not establish any mala-fide against the prosecution witnesses for his false involvement in this case; that there is no substance in the appeal of Waheed Khan (appellant), therefore, the same may be dismissed. Insofar as Crl. Revision No.724 of 2013 is concerned, learned counsel for the complainant has argued that there was no mitigating circumstance in this case, therefore, normal penalty of death may be awarded to the convict.

8. Arguments heard and record perused.

9. The detail of the prosecution case has already been given in paragraph No.3 of this judgment, therefore, there is no need to repeat the same.

10. The prosecution case is based upon the following two types of evidence:

- A) Direct evidence of eye-witnesses and identification of the appellant and his co-accused during identification parade through the eye-witnesses.
- B) Circumstantial Evidence.

First of all, I take up the evidence of eye-witnesses and identification of the appellant by said witnesses in identification parade.

**A) Evidence of eye-witnesses and I.D. Parade**

11. Insofar as the prosecution evidence of eye-witnesses of the occurrence produced through Raza Muhammad (PW.13) and Dost Muhammad (PW.14) is concerned, I have noted that both the above mentioned prosecution witnesses stated that on 05.10.2010 at 8:30 P.M., they were coming back towards their village after paying “salam” at the Shrine of Bolt Sharif and when they reached on the eastern “Patri” of canal Umarwala, they saw three unknown accused persons who were giving beating to a person and they (accused) had also put a rope around his neck. The above mentioned prosecution eye-witnesses further stated that within their view, the said three unknown accused persons threw the body of the above mentioned person in the canal and thereafter went away while boarding on a Shahzor “Dala”. They also stated that they did not intervene as they were threatened by the above mentioned unknown accused persons. They further stated that later on, they identified the appellant and his co-accused during the identification parade held on 28.10.2010.

It is evident from the perusal of the statement made by Raza Muhammad (PW.13) during his cross-examination that Asif

Mehmood (deceased) was 'Bhanja' as well as, 'Damad' of the said witness. Relevant part of his statement in this respect reads as under:-

“After offering Janaza prayer of Asif Mehmood deceased when I was in graveyard I came to know from the participants of Janaza prayer about the name of the deceased. (This portion of the statement of witness read over to witness, he stated that he did not state so rather he stated that as deceased Asif Mehmood was my Bhanja and Damad and he has already knowledge of the name of deceased.”

Raza Muhammad (PW.13) claimed that he alongwith Dost Muhammad (PW.14) had seen three unknown accused persons while giving beating to a person on the night of occurrence i.e. on 05.10.2010 at 8:30 P.M. and also identified the said unknown accused persons with the help of their features and ages in the light of his motorcycle but surprisingly he could not identify his own 'Damad' and nephew, namely, Asif Mehmood (deceased) at that time. He did not state that he also identified that it was Asif Mehmood (deceased) who was being beaten by the unknown accused persons and his dead body was thrown in the canal. He simply stated that he saw the accused persons while beating a person, and throwing his body in the canal. It is further noteworthy that Raza Muhammad (PW.13) and Dost Muhammad (PW.14) saw the occurrence of a heinous crime of murder on 05.10.2010 but they made their statements before the police for the first time on 13.10.2010 i.e. with the delay of eight (08) days from the occurrence. Both the above mentioned prosecution eye-witnesses stated that they also attended funeral ceremony of Asif Mehmood (deceased) on 09.10.2010 but even then they remained mum till 13.10.2010 i.e. for a period of four days even after attending funeral ceremony of the deceased and did not make the statements before the police. Relevant parts of the statements of the above mentioned prosecution eye-

witnesses in this respect are reproduced hereunder for ready reference:-

**Raza Muhammad (PW.13)**

“On 09.10.2010 we came to the funeral prayer of Asif Mehmood deceased and we told Tariq Mehmood that we had seen the Dala and killing of Asif Mehmood on 05.10.2010 and we went to the P.S. on 13.10.2010 where I made my statement before Abdul Ghafoor SI.”

**Dost Muhammad (PW.14)**

“On 09.10.2010 we went to perform funeral ceremony of Asif Mehmood deceased of this case where we told Tariq Mehmood complainant about what we had seen on 05.10.2010 at the Patri canal Umarwala. I made my statement to the IO on 13.10.2010.”

It is evident from the perusal of the statements of the above mentioned eye-witnesses that they remained mum for a period of eight (08) days after the occurrence and even after attending funeral ceremony of Asif Mehmood (deceased), they remained mum for a period of four days. They did not give any plausible reason for remaining silent during the above mentioned period. The said delay in making statements before the police by the above mentioned prosecution eye-witnesses has created serious doubt regarding the truthfulness of their evidence. Reliance in this respect may be placed upon the judgments reported as “Muhammad Safdar Bhatti Vs. The State” (1987 SCMR 1215) and “Muhammad Sharifan Bibi Vs. Muhammad Yasin and others” (2012 SCMR 82).

It is true that both the above mentioned prosecution witnesses claimed that they identified the appellant during the identification parade but it is noteworthy that the appellant was nominated in this case through the statements of witnesses of last seen evidence, namely, Muhammad Imran (PW.4) and Muhammad Nawaz (PW.5) on 12.10.2010, whereas the identification parade of the appellant was



held on 28.10.2010. Under the circumstances, identification of the appellant through identification parade after his nomination in this case is highly doubtful and unreliable. Reference in this context may be made to the judgments reported as “Amanat Ali alias Amanti Vs. The State” (2013 YLR 1959), “The State Vs. Mukhtar Ahmad and 5 others” (2015 M LD 1840) and “Naseeb Ullah Vs. The State” (2012 YLR 2570).

Moreover, it is not understandable that if direct evidence of eye-witnesses was available with the prosecution then as to why the circumstantial evidence was also produced in this case. It shows that the prosecution itself was doubtful about the credibility of evidence of above mentioned eye-witnesses, therefore, it also chose to produce circumstantial evidence in this case. I have further noted that the evidence of the above mentioned prosecution eye-witnesses, namely, Raza Muhammad (PW.13) and Dost Muhammad (PW.14) has also been disbelieved by the learned trial Court in paragraph No.24 of the impugned judgment. I am, therefore, of the view that the evidence of the above mentioned prosecution eye-witnesses and evidence of identification of the appellant during the identification parade held on 28.10.2010 through the above-referred eye-witnesses are not worthy of reliance.

**B) Circumstantial Evidence**

12. Insofar as the circumstantial evidence produced in this case by the prosecution is concerned, 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 KaramElahi 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.’

Seeking guidance from the above-referred judgments of the Apex Court of the Country, I proceed to discuss separately, every piece of circumstantial evidence produced in this case by the prosecution. It is noteworthy that the circumstantial evidence of the prosecution is based upon the following pieces of evidence:-

- 1) Last seen evidence.

- 2) Motive & recovery of Rs.21,500/- from the appellant.
- 3) Recovery of pistol.
- 4) Medical evidence.

**Last seen evidence.**

13. Last seen evidence of the prosecution has been produced through Muhammad Imran (PW.4), Muhammad Nawaz (PW.5), Ghulam Hassan, 2265/C (PW.12). I have noted that Muhammad Imran (PW.4) and Muhammad Nawaz (PW.5) stated that on 05.10.2010 at 4:30 P.M. they saw Asif Mehmood (deceased) in the company of appellant and his co-accused at Kundian Filling Station situated at Chashma Barrage road. They further stated that on 10.10.2010, they came to know that Asif Mehmood (deceased) had been murdered, whereupon they proceeded to Mianwali and reached there on 11.10.2010 whereafter they informed the complainant. They next stated that they made their statements before the police on 12.10.2010. Muhammad Imran (PW.4) during his examination-in-chief stated that he alongwith other PW went to the house of the complainant for giving information on 11.10.2010 at 11:00 P.M. but during his cross-examination, he stated that they (PWs) reached the house of the complainant on 11.10.2010 at 5:30 A.M. He further stated during his cross-examination that police station was situated only at a distance of 2/3 kilometers from the residence of the complainant but even then they made their statements before the police on 12.10.2010 i.e. on the next day. Both the above mentioned prosecution witnesses also stated during their cross-examination that they remained busy in conversation with each other regarding the facts of occurrence after reaching the house of the complainant on 11.10.2010. The relevant parts of the statements of Muhammad Imran (PW.4) and Muhammad Nawaz (PW.5) read as under:-

**Muhammad Imran (PW.4) (examination in chief):**

“On 10.10.2010 we came to know that Muhammad Asif has died and his dead body was recovered. On receiving this information we left our oil tanker at Mahmood Koat

and came back to Mianwali on a car and went to the house of Tariq Mahmood complainant. we reached Mianwali on 11.10.2010 and informed complainant at 11:00 p.m. that we saw Asif deceased in the company of Waheed, Qudrat Ullah and Aman Ullah. I recorded my statement before the police on 12.10.2010.”

Relevant parts of the statement of Muhammad Imran (PW.4) made during his cross-examination, read as under:-

“We went to the house of complainant for giving information on 11.10.2010 at 5:30 a.m.”

.....

.....

“P.S is at the distance of 2/3 kms from the residence of complainant. I have not made statement before the police on 11.10.2010. Before making statement before the police I remained in the house of complainant for night. We remained busy in conversation with each other regarding the facts of the occurrence. I went to police for making statement on 12.10.2010.”

**Muhammad Nawaz (PW.5) (examination in chief)**

“On 10.10.2010 we came to know that Asif has died. We received this information when we were at Mahmood Koat. Muhammad Imran handed over his oil tanker to driver and I alongwith him left for Mianwali on a car and reached Mianwali early in the morning on 11.10.2010. We remained busy in Qul ceremony of the deceased and later on we informed complainant this fact after performing Qull Sharif. I recorded my statement before the police on 12.10.2010.”

Relevant part of the statement of Muhammad Nawaz (PW.5) made during his cross-examination, reads as under:-

“We reached the house of complainant on 11.10.2010 at Fajr time. About 100 persons were present at the house of complainant at that time. We talked about the occurrence after Qull on that day. Qull ended at about 8:00 a.m. I made

statement before the police on 12.10.2010. We remained busy in talking with each in the house of complainant about the facts of occurrence.”

It is, therefore, evident from the perusal of above mentioned evidence that in-spite of reaching in the house of the complainant on 11.10.2010 at 5:30 A.M/Fajr time, both the above mentioned prosecution witnesses did not inform the police that they had lastly seen Asif Mehmood (deceased) in the company of the appellant and his co-accused on 05.10.2010, rather both the above mentioned witnesses and the complainant remained busy in talking with each other about the occurrence in the house of the complainant and made their statements before the police on 12.10.2010. The police station was situated at the distance of only 2/3 K.Ms from the house of the complainant. Under the circumstances, there was every possibility of deliberations and concoctions and the evidence of the above mentioned prosecution witnesses of last seen evidence is not free from doubt.

The delay in making statements by the above mentioned prosecution witnesses before the police without any valid reason has created serious doubt regarding the truthfulness of their evidence. In the light of above, the prosecution’s last seen evidence produced through Muhammad Imran (PW.4) and Muhammad Nawaz (PW.5) is untrustworthy and the same has rightly been disbelieved by the trial Court in Paragraph Nos.18 to 20 of the impugned judgment.

It is however, noteworthy that the learned trial Court convicted and sentenced the appellant on the basis of last seen evidence of Ghulam Hassan 2265/C (PW.12). Insofar as the evidence of last seen produced by the prosecution through Ghulam Hassan, 2265/C (PW.12) is concerned, it is noteworthy that Ghulam Hassan 2265/C (PW.12) stated that on 05.10.2010, he was on duty at Check Post, Eastern Head Chashma when he stopped Shahzor “Dala” bearing Registration No.SGS-1333 coming from Mianwali side. He further stated that on presentation of I.D. Card by Waheed

Khan, Constable/appellant, who was present in the above mentioned Shahzor “Dala”, he permitted the appellant and his co-accused to proceed ahead. He next stated that a driver was also present in the above-referred Shahzor “Dala”. The statement of Ghulam Hassan, 2265/C (PW.12) is of no avail to the prosecution because he did not name the driver of the above mentioned vehicle. He did not state during his entire statement that Asif Mehmood (deceased) was driving the above-referred vehicle at the relevant time, therefore, it cannot be held on the basis of mere guesswork that it was Asif Mehmood (deceased) who was seen by the said witness in the company of the appellant on the day of occurrence. It is further noteworthy that Shahzor “Dala” bearing registration No.SGS-1333 has not been recovered from the possession of the appellant or his co-accused during the investigation of this case.

Keeping in view all the above mentioned facts, the prosecution’s last seen evidence is not worthy of reliance.

**Motive & Recovery of Rs.21,500/-**

14. Prosecution evidence qua motive and recovery of Rs.21,500/- are interconnected, therefore, I proceed to discuss these pieces of evidence together. The learned Additional Prosecutor General for the State assisted by learned counsel for the complainant has argued that during the investigation of this case, it transpired that the appellant and his co-accused committed the murder of Asif Mehmood (deceased) as they snatched Shahzor “Dala” bearing Registration No.SGS-1333 from the deceased and sold the said vehicle to Khan Ameer Khan, co-accused (since acquitted) but as mentioned earlier, the above mentioned vehicle has not been recovered from the possession of the appellant or his co-accused during the investigation of this case. The prosecution has produced the evidence of alleged motive through Pervaiz Iqbal (PW.17) and Nematullah (PW.22). Both the above mentioned prosecution witnesses stated that on 05.10.2010, they both were taking tea at a hotel situated at Adda Blot Sharif, where they saw that Khan Ameer Khan, co-accused (since

acquitted) gave Rs.85,000/- to Qudrat Ullah, co-accused (since acquitted) whereupon Qudrat Ullah, co-accused (since acquitted) delivered key of Shahzor "Dala" bearing registration No.SGS-1333 of the deceased to Khan Ameer Khan (co-accused since acquitted). They further stated that Waheed Khan (appellant) was also present alongwith his above mentioned co-accused at that time. Pervaiz Iqbal (PW.17) stated in his cross-examination that information regarding murder of Asif Mehmood (deceased) was received by him on 09.10.2010 and even his 'Beithak' was used for the funeral ceremony of Asif Mehmood (deceased) but he made his statement before the police on 14.10.2010. Relevant parts of the statement of Pervaiz Iqbal (PW.17) read as under:-

"On 09.10.2010 information of murder of Asif Mehmood, deceased was received to me. Information was furnished to me by my family members. My family members including women of my family and my brothers might be attended funeral ceremonies of Asif Mehmood deceased. It is correct that my Baithak was being used in the funeral ceremony of Asif Mehmood deceased."

"On 14.10.2010 I and Naimatullah PW went to Tariq Mehmood complainant and during talk we told the complainant that on 05.10.2010 accused Waheed Khan etc. were selling a Shahzor Dala No.SGS-1333 to Khan Ameer Khan accused then the complainant told us that Shahzor Dala SGS-1333 was sold to Khan Ameer Khan by Waheed Khan, Qudratullah Khan and Amanullah Khan accused and it was the same Dala on which my deceased brother was a driver."

The statement of Nematullah (PW.22) is also on the same lines except that Nematullah (PW.22) stated that he received the information regarding the murder of Asif Mehmood (deceased) on 14.10.2010. It is, therefore, evident from the perusal of the statements of the above mentioned prosecution witnesses that Pervaiz Iqbal (PW.17) received the information of the murder of

Asif Mehmood (deceased) on 09.10.2010 and even 'Baithak' of the said witness was used for funeral ceremony of the deceased but he did not make statement before the police till 14.10.2010 i.e. for a period of five days. Nematullah (PW.22) was a conductor at the wagon of Pervaiz Iqbal (PW.17). It is not probable that if, Pervaiz Iqbal (PW.17) had received the information regarding the murder of Asif Mehmood (deceased) on 09.10.2010 and his 'Baithak' was also used for the funeral ceremony of Asif Mehmood (deceased) then Nematullah (PW.22) would not get the information regarding the murder of Asif Mehmood (deceased) till 14.10.2010. The delay in making statements before the police by the above mentioned prosecution witnesses without any valid reason has also made their statements highly doubtful and un-reliable.

15. Insofar as the recovery of Rs.21,500/- from the possession of the appellant is concerned, it is noteworthy that according to the prosecution case, the above mentioned amount was recovered from the possession of the appellant as the same was sale proceed of the vehicle of the deceased i.e. Shahzor "Dala" SGS-1333 which was sold by the appellant and co-accused to Khan Ameer Khan, co-accused (since acquitted). The evidence produced by the prosecution in this respect through Pervaiz Iqbal (PW.17) and Nematullah (PW.22) has already been held to be highly doubtful and unreliable due to the reasons mentioned in Paragraph No.14 above. As mentioned earlier, the above-referred vehicle has not been recovered from the possession of the appellant or the above mentioned Khan Ameer Khan, co-accused. No documentary proof regarding sale/purchase of the vehicle in question by the appellant and his co-accused to the above mentioned Khan Ameer Khan, co-accused has been produced in evidence by the prosecution. It is not believable that Khan Ameer Khan, co-accused (since acquitted) would purchase vehicle from the appellant and his co-accused without any documentation. None of the prosecution witnesses mentioned in their statements recorded by the learned trial Court any specific identification marks, denominations or the numbers of the currency



notes which were handed over by Khan Ameer Khan, co-accused to Qudrat Ullah, co-accused. Moreover, as per prosecution evidence, the amount of Rs.85,000/- was handed over by Khan Ameer Khan, co-accused to Qudrat Ullah, co-accused and the said amount was not handed over to the appellant. The appellant was merely present at the relevant time. In the light of above discussion, the motive alleged by the prosecution could not be proved in this case and alleged recovery of Rs.21,500/- from the possession of the appellant is inconsequential.

### **Recovery of Pistol**

16. Insofar as the recovery of pistol (P-10) from the possession of the appellant is concerned, it is an admitted fact that the said pistol was not used during the occurrence because as per prosecution case and medical evidence, the death of Asif Mehmood (deceased) was caused by asphyxia due to strangulation. In the light of above, the alleged recovery of pistol (P-10) from the possession of the appellant is of no avail to the prosecution.

### **Medical evidence**

17. Insofar as the medical evidence of the prosecution is concerned, it is by now well settled that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the cases of “Muhammad Tasaweer Vs. Hafiz Zulkarnain and 2 others” (PLD 2009 Supreme Court 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).

18. I have considered all the aspects of this case and have come to this irresistible conclusion that the prosecution could not prove its case against the appellant (Waheed Khan) beyond the shadow of doubt.

19. In the light of above discussion, I **accept** **Criminal Appeal No.1036 of 2013** filed by the appellant (Waheed Khan), set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Mianwali *vide* impugned judgment dated 26.06.2013 and **acquit** him of all the charges by extending him the benefit of doubt. Waheed Khan (appellant) is in custody, he be released forthwith, if not required in any other case.

20. Insofar as Criminal Revision No.724 of 2013 filed by the complainant is concerned, I have already disbelieved the prosecution evidence for the reasons recorded in paragraphs Nos.11 to 16 of this judgment, consequently, the appellant has been acquitted from the charge by giving him the benefit of doubt, therefore, the instant criminal revision without any substance, is hereby dismissed.

**(Malik Shahzad Ahmad Khan)**  
**Judge**

**Approved for Reporting**

**(Malik Shahzad Ahmad Khan)**  
**Judge**

**Farman Ali**