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**Judgment Sheet**  
**IN THE LAHORE HIGH COURT,**  
**MULTAN BENCH, MULTAN**  
**(JUDICIAL DEPARTMENT)**

**Criminal Appeal No. 620 of 2016**  
*(Tanveer Abbas vs. The State & another)*

**JUDGMENT**

<b>Date of Hearing</b>	09.02.2022
<b>For petitioner</b>	Prince Rehan Iftikhar Sheikh Advocate
<b>State by</b>	Mr. Muhammad Laeeq ur Rehman Assistant District Public Prosecutor
<b>Complainant by</b>	Mr. Khawar Siddiq Sahi and Malik Sajjad Haider Maitla Advocates

Tanveer Abbas (*appellant*) along with Faqeer Hussain, Munir Hussain, Anwaar Hussain and Jahangir had faced trial in a private complaint filed by Nazran Bibi (*Pw-I*) on the allegations of abduction of Allah Ditta (*brother of complainant*) and his '*Qatal-i-Amad*<sup>1</sup>'. On conclusion thereof vide judgment dated 10.06.2016 passed by the learned Additional Sessions Judge, Mianchannu<sup>2</sup>, he was convicted and sentenced as under:-

- i. **Under Section 302(b) PPC**<sup>3</sup> to imprisonment for life as '*Tazir*' with direction to pay an amount of Rs.100000/- (one lac) as fine which shall be paid to the legal heirs of deceased.
- ii. **Under Section 201 PPC** to undergo 3 years RI and fine of Rs.20000/- (twenty thousand). In default of fine he was ordered to further undergo three months SI<sup>4</sup>.

2. The sentences of appellant were directed to run concurrently. His period of detention already served in jail was also ordered to be computed in terms of Section 382-B Cr.P.C<sup>5</sup>.

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<sup>1</sup> Murder (Defined under Section 300 PPC)

<sup>2</sup>Sub-division of district Khanewal. It was named after a Sufi saint, Baba Mian Channu who lived and buried there. ([https://en.wikipedia.org/wiki/Mian\\_Channu](https://en.wikipedia.org/wiki/Mian_Channu))

<sup>3</sup> Pakistan Penal Code (XLV of 1860)

<sup>4</sup> Simple Imprisonment (Section 60 PPC)

<sup>5</sup> Code of Criminal Procedure Code (Act V of 1898)

On the strength of same decision co-accused of appellant were acquitted from the case.

3. Feeling aggrieved from conviction, appellant has approached this Court through the instant criminal appeal.

4. Facts of the case are that by filing the complaint, on 02.04.2012, Mst. Nazran Bibi (*Pw-1*) against Tanveer Abbas (*appellant*) and his co-accused beside one Muhammad Irshad (*Proclaimed Offender*) for their prosecution under Sections 364/302/201/404/148/149 PPC, it was alleged that on 29.07.2011 at about 08:30 pm, she/Nazran Bibi along with her parents and brother Allah Ditta (*deceased*) were present in their house; in the meantime Tanveer Abbas (*appellant*) while standing at the door of the house called Allah Ditta who went out; she/complainant also came out and saw Tanveer Abbas (*appellant*), Muhammad Irshad (*PO*) and Faqeer Hussain (*accused*) present on two motorbikes; Allah Ditta (*deceased*) accompanied them but did not return; at about 11:00 pm, she associating her parents started search of Allah Ditta; when they reached at the house of Tanveer Abbas (*appellant*), no one was present there; they moved further to explore and on the way Muhammad Wasil (*Pw-3*) as well as Khizar Abbas (*not produced*) met them who told that at about 11:00 pm, when they were sitting at the hotel of Muhammad Ramzan, they had seen Allah Ditta (*deceased*) with Tanvir Abbas (*appellant*), Munir Hussain, Anwaar Hussain and Muhammad Irshad (*PO*) and all they were stepping towards Canal 15/L; she/complainant had been searching Allah Ditta but of no success; she had a strong belief that her brother was abducted by assailants with an intention of his '*Qatal-i-Amd*' or after committing his murder they/accused had screened the dead body; motive was that Allah Ditta (*deceased*) was an employee of Tanvir Abbas (*appellant*) which he/Allah Ditta discontinued about one month earlier for the reason that Tanvir Abbas (*appellant*) conceived a suspicion about illicit relations of his wife with Allah Ditta (*deceased*); about the abduction of

Allah Ditta, she got recorded FIR<sup>6</sup> No.320 on 03.08.2011 under Section 364 PPC at Police Station Sadar Mianchannu; while reporting the matter as she was under agony therefore, she missed some important facts with regard to Allah Ditta, so she made a supplementary statement that Allah Ditta was in possession of a black colored wallet having his original CNIC, Rs.500/-, a handkerchief of blue lined colour with embroidery of his name 'Allah Ditta'; there was also a silver ring in his/Allah Ditta finger with his name engraved; after registration of case at about 03:00 pm, Muhammad Wasil (*Pw-3*) and Khizar Hayat also told her that Tanveer Abbas (*appellant*), Muhammad Irshad and Faqeer Hussain came to his house; they asked for pardon; they, turn by turn, admitted that on 29.07.2011 after abduction, Allah Ditta was taken to the house of Tanveer Abbas (*appellant*) where he was murdered by way of a fire with pistol 30 bore made by Tanveer Abbas (*appellant*); they further disclosed that while leaving Muhammad Irshad and Faqeer Hussain for guarding the dead body, Tanveer Abbas (*appellant*) went to the house of Jahangir (*accused*) and obtained from him a 'Kassi'<sup>7</sup> (کسی) and jute bag; with the help of Muhammad Irshad and Faqeer Hussain the dead body was wrapped in jute bag and brown colored *Chadar*<sup>8</sup>; while sitting on the motorbike (*KWB-3243*) they had taken the dead body in the Canal 15/L opposite to Chak No.43/15-L, where they threw it near the Canal and then all three escaped from there; after making said confession they left the house of Muhammad Wasil. Ultimate version of complainant was that police had made connivance with assailants who declared Munir Hussain and Anwaar Hussain as innocent so she was compelled to file the private complaint.

5. After issuance of processes by the learned trial court, appellant and his co-accused including Muhammad Irshad (*PO*)

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<sup>6</sup> First Information Report (Section 154 Cr.P.C)

<sup>7</sup> An instrument of wide iron blade attached with a long wood handle to be used to dig the earth

<sup>8</sup> A piece of fabric used for covering the body

turned up to face the trial. As during proceedings Muhammad Irshad disappeared, so he was declared as an absconder.

6. It is important to mention here that, on 03.08.2011, Mst. Nazran Bibi (*Pw-1*) also submitted an application (*PA*) to SHO<sup>9</sup> Police Station Sadar Mianchannu, where she only alleged that Tanvir Abbas etc. had taken with them Allah Ditta and they were also seen later on by Muhammad Wasil and Khizar Hayat when they were going towards Canal. She further declared that the abduction of her brother was with an intention to kill by the assailants. Motive attributed was the same as referred earlier.

7. On the basis of above stated application, FIR No.320, on 03.08.2011, under Sections 364/302/404/201/148/149 PPC was registered at Police Station Sadar Mianchannu.

8. A charge under Sections 302/404/201/148/149 PPC framed against appellant and his co-accused, on 06.09.2012, was not pleaded guilty by them and they demanded the trial.

9. In order to prove her case, Nazran Bibi/complainant got her statement recorded as *Pw-1*<sup>10</sup>. She too produced Abdul Aziz (*Pw-2*) and Mohammad Wasil (*Pw-3*).

10. Learned trial court also examined Muhammad Ameen Constable (*Cw-1*)<sup>11</sup>, Dr. Muhammad Shahbaz (*Cw-2*), Shabbir Ahmad ASI<sup>12</sup> (*Cw-3*), Raja Ghulam Fareed Janjua/Draftsman (*Cw-4*), Muhammad Ashraf HC<sup>13</sup> (*Cw-5*) and Muhammad Latif SI<sup>14</sup> (*Cw-6*).

11. Khizar Hayat, Intizar Manzoor, Zainab and Zulfiqar were given up being unnecessary by the prosecution. Subsequent to production of expert reports (*PT and PT/I*), prosecution's evidence was closed.

12. Appellant and his co-accused pleaded their false involvement in the case.

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<sup>9</sup> Station House Officer. (Also called Officer Incharge of a Police Station under Section 4(p) Cr.P.C)

<sup>10</sup> Pw-Prosecution Witness

<sup>11</sup> Cw-Court Witness

<sup>12</sup> Assistant Sub-Inspector of Police

<sup>13</sup> Head Constable of Police

<sup>14</sup> Sub-Inspector of Police

### **13. HEARD**

**14.** Case in hand is based on circumstantial evidence. This Court in Allah Rakkha' case<sup>15</sup> referring to definition of circumstantial evidence, had observed as under: -

- i. Evidence of facts or circumstances from which the existence or non existence of fact in issue may be inferred.*
- ii. The proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence.*
- iii. As a series of circumstances leading to the inference or conclusion of guilt, when direct evidence is not available.*
- iv. It falls short of directly establishing a fact in issue, but which is admissible by reason of its relevance to the fact in issue.*
- v. A particular set of circumstances may lead to the appropriate inference being drawn.*
- vi. A theory, supported by a significant quantity of corroborating evidence.*
- vii. It simply means that when there is no direct evidence of a problem, it's a good idea to look around for any other evidence that might be useful.*

**15.** While differentiating the direct and circumstantial evidence it was also observed that: -

*“Sometimes it is easier to understand the difference with an example. If your brother comes to you and says he saw it snow today, then there is direct evidence that it was snowing. If your brother told you that he woke up and saw snow on the ground, then there is circumstantial evidence that it snowed. He did not see it snow, but it is a reasonable inference that if there is snow on the ground, it must have snowed”*

**16.** The honorable Supreme Court of Pakistan in its landmark judgment<sup>16</sup> has also been pleased to formulate the following principles to appreciate the circumstantial evidence: -

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<sup>15</sup> Allah Rakkha vs. The State & another (Criminal appeal No. 445 of 2013) decided on 05.10.2021 (approved for reporting) {<https://sys.lhc.gov.pk/appjudgments/2021LHC5167.pdf>}

<sup>16</sup> Naveed Asghar & 2 others vs. the State PLD 2021 SC 600

- i. *Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined.*
- ii. *Circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused is drawn.*
- iii. *The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy.*
- iv. *This danger points need for great caution in accepting proof of the facts and circumstances, before they are held to be established for the purpose of drawing inferences there from.*
- v. *A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, can create a specious appearance, leading to fallacious inferences.*
- vi. *It is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established.*
- vii. *A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.*
- viii. *There are chances of fabricating evidence in cases that are based solely on circumstantial evidence; therefore, the court, in such cases, should take extra care and caution to examine the evidence with pure judicial approach on strict legal standards to satisfy itself about its proof, probative value and reliability.*
- ix. *When there are apparent indications of possibility of fabricating evidence by the investigating officer in making the case, the court must be watchful against the trap, which may misled to drawing a false inference, and satisfy itself about the fair and genuine collection of such evidence. The failure of the court to observe such care and caution can adversely affect the proper and safe administration of criminal justice.*
- x. *The settled approach to deal with the question as to sufficiency of circumstantial evidence for conviction of the accused is this: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of accused can be suggested, the case is fit for conviction on such conclusion; however, if such facts and circumstances can be reconciled with any reasonable hypothesis compatible with the innocence of the accused, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused.*

- xi. Circumstantial evidence, in a murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused.*
- xii. No link in chain of the circumstances should be broken and the circumstances should be such as cannot be explained away on any reasonable hypothesis other than guilt of accused.*
- xiii. Chain of such facts and circumstances has to be completed to establish guilt of the accused beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable and in that event, conviction cannot be safely recorded, especially on a capital charge.*
- xiv. If the circumstantial evidence is found not of the said standard and quality, it will be highly unsafe to rely upon the same for conviction; rather, not to rely upon such evidence will a better and a safer course.*

**17.** Applying the above referred principles on the subject, I proceed to examine the various pieces of evidence relied upon by the prosecution.

**18.** The main focus of prosecution is that, Tanveer Abbas (*appellant*) and his co-accused got recovered the dead body on 11.08.2011 from the Canal. But unfortunately the focus remained blurring as what prosecution had desired to prove, it could not.

**19.** To discuss this evidence, date of arrest of Tanveer Abbas (*appellant*) and his co-accused is quite relevant. According to Mst. Nazran Bibi (*Pw-1*), Tanveer Abbas (*appellant*) and Muhammad Irshad (*PO*) were arrested on 04/05.08.2011 and she was confident about it. She further responded she met both the accused in Police Station on these dates. Muhammad Wasil (*Pw-3*), in his examination-in-chief, stated the date of arrest of Tanvir Abbas (*appellant*) as 11.08.2011 when he joined Khizar Hayat Inspector. This date is in complete contrast to the date given by Mst. Nazran Bibi. Muhammad Wasil was also self conflict when he, in cross-examination, specifically replied that

*‘as per his information accused were arrested in case after 5/6 days of the occurrence’.* From this angle the dates becomes the same which Nazran Bibi (Pw-1) maintained in her deposition. On the other hand, Muhammad Latif SI (Pw-6) without any ambiguity and in clear words claimed that on 11.08.2011 at about 07:00 am he arrested Tanveer Abbas (*appellant*) and Muhammad Irshad (PO) from Chak No.44/15-L. Taking into account this contradictory position, subsequent story of recovery of dead body, has come under serious doubts.

**20.** Whether the dead body was recovered at the instance of appellant or any other accused, this is also a mystery. Mst. Nazran Bibi (Pw-1), in her examination-in-chief, maintained that on 11.08.2011 in presence of her and Muhammad Latif SI, Tanvir Abbas (*appellant*) got recovered the dead body of Allah Ditta from Canal which she had identified. In cross-examination, she further stated that the dead body was brought out from the Canal by appellant with his own hands.

**21.** When Muhammad Wasil (Cw-3) made his examination-in-chief, he added that Tanveer Abbas (*appellant*), Muhammad Irshad (PO) and Faqeer Hussain (*accused*) led to the recovery of dead body. Undoubtedly this statement is in full contrast to the account of Mst. Nazran Bibi. However the declaration of Muhammad Latif SI is entirely different who was never of the view that appellant or his co-accused got recovered the dead body. What he narrated in his examination-in-chief that was as under: -

*“On the same day I along with accused Tanveer Abbas, Faqeer Hussain and Muhammad Irshad proceeded to Canal 43/15-L where accused got recovered Chaddar P15 which was blood stained. I made it into sealed parcel, took the same into possession vide recovery memo Exh.Cw-6/4 and attested the recovery memo by PWs Muhammad Wasil and Khizar Hayat and recorded their statements under Section 161 Cr.P.C. We searched for dead body in the Canal within the area of 128-Pull, the dead*



*body of the deceased Allah Ditta was recovered”*

**22.** Even in his cross-examination, there is nothing to suggest that, if the dead body was recovered either at the instance of appellant or any of his co-accused.

**23.** I have also gone through the identification memos prepared by the Investigating Officer. None of these documents indicates with clarity that appellant or his co-accused after disclosure led the police party to the Canal and got recovered dead body. All these documents at the most show that either the place of murder or the venue of Canal was pointed by appellant and his co-accused.

**24.** The Investigating Officer, in cross-examination, responded that before 11.08.2011, it was not in the knowledge of complainant that the dead body was thrown in Canal. If this was the real position, what the prosecution has explanation about the important words came out from the mouth of Mst. Nazran Bibi (Pw-1) that on 29.07.2011 somebody informed her that accused persons had murdered Allah Ditta and the dead body was thrown in Canal. How prosecution will come out from this challenge when Muhammad Latif SI in cross-examination answered that: -

*“It is correct that the complainant of this case remained in search the dead body of deceased Allah Ditta from the date of occurrence till the arrest of accused in the Canal”*

**25.** It is therefore concluded that in view of above infirm, weak, shaky, contradictory and self contradictory evidence the recovery of dead body at the instance of appellant or any of his co-accused has not been proved by the prosecution.

**26.** Moving the discussion to the next piece of evidence that is the extrajudicial confession, which has already been referred in opening paragraphs of this judgment, Muhammad Wasil (Pw-3) asserted that Tanveer Abbas (appellant), Muhammad

Irshad (*PO*) and Faqeer Hussain (*accused*) came to him on 03.08.2011 and made the confession turn by turn. On confrontation from his statement recorded under Section 161 Cr.P.C and cursory declaration he has been found under improvement when he added that appellant and his co-accused made confession turn by turn. In his earlier statements it was appearing to be joint extrajudicial confession which under the settled principles of law has no evidentiary value<sup>17</sup>.

27. The conduct of Muhammad Wasil (*Pw-3*) is highly objectionable for the reason that if on 03.08.2011 he got the important information, why he did not appear before the police on the same day and why he came forward on 04.08.2011 for his statement under Section 161 Cr.P.C? On this area the principles cannot be ignored that delayed statement of an important witness without offering any explanation is not reliable<sup>18</sup>.

28. Extrajudicial confession also under the recognized principles is the weakest type of evidence and no conviction can be recorded on the basis thereof<sup>19</sup>.

29. According to next hook of chain of evidence on the arrest of Tanveer Abbas (*appellant*), he was found in possession of CNIC of Allah Ditta (*deceased*). Even here prosecution has to face defeat and for this its' own witness Mst. Nazran Bibi (*Pw-1*) is contributory who, in cross-examination, replied that CNIC was in the wallet of deceased on recovery of his dead body.

30. Damage to prosecution is further multiplied when the statement of Abdul Aziz (*Pw-2*) is also found under heavy smoke of doubts. He claimed that, on 29.02.2011, at midnight he had seen that Jahangir (*accused*) was handing over a 'Kassi' and jute bag to Tanveer Abbas (*appellant*). It appears that this evidence has been introduced with a specific purpose to give a

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<sup>17</sup> The State vs. Kamal Khan alias Maloo & others 1993 SCMR 1378

<sup>18</sup> Muhammad Sadiq & another vs. the State PLD-1960-SC-223; Gull Muhammad alias Gullu & another vs. the State & another 1974 PCRLJ-400; Allah Din & another vs. the State 1976-PCRLJ-249; Muhammad Iqbal vs. the State 1984-SCMR-930; Syed Saeed Muhammad Shah & another vs. the State 1993-SCMR-550

<sup>19</sup> Noor Muhammad vs. The State PLD 1991 SC 150; Azeem Khan & another vs. Mujahid Khan & others 2016 SCMR 274

so-called strength to the so-called extrajudicial confession, where it was stated that Tanveer Abbas (*appellant*) had gone to Jahangir (*accused*) for taking ‘Kassi’ and jute bag and it was used to move the dead body to Canal. If, on 29.07.2011, this gentleman had witnessed what he stated and he told this fact to complainant on 30.07.2011 as responded in cross-examination, the complainant was supposed to disclose this important fact while reporting the matter to police so on this reason alone statement of Abdul Aziz is of no consequence for the prosecution.

**31.** An empty was recovered at the instance of appellant on 11.08.2011 whereas pistol was recovered on 17.08.2011. It appears that both the recoveries most probably were made from the same place so it is a serious question that if the appellant got recovered empty on 11.08.2011 what was the hurdle in his way also to get recovered the pistol on that day. This fact has smashed the authenticity of the positive report of firearm expert (*PJ*) which now at the most is a piece of paper with no supportive outcome for prosecution.

**32.** When all other hooks of the chain have been destroyed and broken, this Court has no option but to say the last seen evidence ‘Goodbye’ which too repeatedly has been considered as the weakest type of proof<sup>20</sup>.

**33.** Last but not least the allegations of abduction and the murder of Allah Ditta, was almost against all accused including the appellant. Four out of five accused have been acquitted by the learned trial court by disbelieving the statements of witnesses so no question arises to believe the same evidence qua the appellant<sup>21</sup>.

**34.** Taking into consideration whatever has been referred, discussed, deliberated, evaluated and appreciated above, this

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<sup>20</sup> Fazal Elahi alias Sajawal vs. The Crown PLD 1953 FC 214; Karamat Hussain vs. The State 1972 SCMR 15; Naqibullah & another vs. The State PLD 1978 SC 21; Ghulam Mustafa alias Ziaul vs. The State PLD 1991 SC 718; Mst. Reshman Bibi vs. Sheerin Khan & others 1997 SCMR 1416,

<sup>21</sup> Sardar Bibi & another vs. Munir Ahmed & others 2017 SCMR 344; Imtiaz alias Taj vs. The State 2018 SCMR 344; Akhtar Ali & others vs. The State 2008 SCMR 6; Liaqat Ali & others vs. The State 2021 SCMR 455; Tariq Mehmood vs. The State 2021 SCMR 471

Court finds that prosecution has badly failed to prove its' case beyond reasonable doubt against Tanveer Abbas (*appellant*), therefore, this criminal appeal is **allowed**. Impugned judgment dated 10.06.2016 to the extent of convicting the appellant is **set aside**. He is **acquitted** from the case. He is on bail. His surety is discharged from the terms and conditions of bail bonds. Case property shall be dealt with in the same manners as directed by the learned trial court.

**35.** Before parting with this judgment, I want to observe that the learned Additional Sessions Judge also sentenced the appellant to pay fine despite the fact that under Section 302(b) PPC no such punishment has been provided, therefore, copy of this judgment shall be sent to the learned Additional Sessions Judge wherever he is posted for his information and guidance in future.

**(Sohail Nasir)**  
**Judge**

**Approved for Reporting**

**(Judge)**

Afzaal