

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A No. 1049-P of 2022

Mst. Rabia jabeen
Vs
The State

Date of hearing: **19.09.2023.**

Appellant (s) by: Syed Abdul Fayaz, Advocate

State by: Mr. Muhammad Nisar Khan, AAG

Complt: by: Dr. Ameer Ajam Khattak, Advocate

JUDGMENT

SAHIBZADA ASADULLAH, J.- Through this judgment, we intend to decide the instant criminal appeal and the connected **Cr.R No.217-P/2022**, as both the matters are arising out of one and the same judgment dated 13.10.2022, passed by the learned Additional Sessions Judge-VI/JJC/ Child Protection Court, Kohat, whereby the learned Judge found the appellant guilty of the offence and has convicted & sentenced, being involved in case FIR No.324 dated 25.03.2021 under sections 302 PPC /53 of Child Protection & Welfare Act, 2010, Police Station MRS, Kohat in the following manner;

“i. Under sections 302 (b) PPC the appellant was convicted and sentenced to life imprisonment and was ordered to pay Rs.200000/- (two lac) as compensation to each legal heirs of

deceased within the meaning of Section 544-A Cr.P.C.

ii. Under Section 365 PPC the appellant was convicted and sentenced to five years R.I alongwith fine of Rs.50,000/- (fifty thousand), in default whereof she was furthered to undergo 03 months simple imprisonment.

iii. All the sentences shall run concurrently, and benefit of Section 382-B Cr.P.C is extended to the convict/appellant.”

2. Brief but essential facts of the case as per contents of FIR are that complainant Farhad Hussain reported the matter to the local police regarding the missing of his little granddaughter, Hareem Fatima, aged about 3/4 years, daughter of Naveed Iqbal, who went outside the house at about 1400 hours (noon) and did not come back. The complainant could not trace her despite search in the area. On report of the complainant an inquiry under section 156(3) Cr.P.C was initiated. On the next day the police received information about discovery of the dead body of the minor named above, at 06:30 am, from a drain near the wall of Babri Cotton Colony and consequently captioned FIR was registered under section 302 PPC/53 Child Protection Act against unknown accused. During investigation Mst. Rabia Jabeen was charged for the offence on 06.04.2021, while complainant also charged her on 27.04.2021 through his supplementary statement recorded before the police.

3. After arrest of the accused and completion of investigation, complete challan was submitted in the Court. The provisions of 265-C Cr.P.C were complied with. Charge was framed to which she pleaded not guilty and claimed trial. In order to prove its claim, prosecution produced and examined as many as 23 witnesses and after closure of prosecution evidence, statement of the accused was recorded under section 342 Cr.P.C wherein she professed her innocence. The learned trial Court, after full-fledged trial, found the appellant guilty of the charge and convicted and sentenced her, detail of which is mentioned in the earlier part of this judgment, hence, this appeal.

4. We have considered the submissions of the learned counsel for the parties and with their valuable assistance record of the case scanned through.

5. The minor Hareem Fatima went missing on 24.03.2021, when she could not be found, the matter was reported to the local police, by Farhad Hussain, grandfather of the minor, which was noted in the shape of Naqal Mad No.11 dated 24.03.2021 and on the strength of that document an inquiry was permitted under section 156(3) of the Criminal Procedure Code. The matter was investigated and efforts were made to find the missing child, but the attempts went futile. It was on the next day when the dead body of the deceased was found, the same was collected

from the spot by the father of the deceased and was brought to KDA hospital, Kohat, where the police officials also arrived. On receiving the dead body of the deceased, FIR was registered, but nobody was charged, as till that time the accused were not known. The injury sheet and inquest report were prepared, the dead body was sent to the doctor for postmortem examination. The doctor after conducting postmortem examination of the dead body of the deceased found bruises on her hands and legs and also found bruises around her vagina and it was also noted that the hymen was ruptured/incision. Though, the investigating officer prepared the site plan of the house of the complainant, from where the deceased went missing, but no substantial progress could be made in respect of the culprits. The investigating officer continued with the investigation and during investigation, he reached to a hostel, maintained by one Shah Muhammad, as he was the warden of the hostel during those days, as CCTV Cameras were installed, from the said hostel CCTV footages were collected and also the DVR running the system. When the CCTV footages were looked into and video clips were displayed, the unfortunate deceased was noted in the company of a woman, the woman was covered faced putting on Burqa (veil). Before the CCTV Cameras were inspected and the DVR was taken into possession, the investigating officer associated good number of suspects in

the process, they were investigated and their blood samples were collected for the purpose of DNA. It is pertinent to mention that the test samples collected from the suspects and the vaginal swab collected from the deceased, were sent to the Department of Forensic Medicine & Toxicology Khyber Medical College, Peshawar for matching, but the same did not and as such the suspects were not found connected. The negative report prompted the investigating officer to ask for the constitution of a Standing Medical Board, to reconfirm the opinion given by the doctor, at the time of postmortem examination, while honouring the request a Standing Medical Board was constituted and to answer the anxiety. The Board concluded that no sexual activity was done with the minor and as such it excluded the possibility of sexual abuse, the board formed such opinion, as the DNA report was received in negative. The conclusion drawn by the Board influenced the investigation, and further probe in respect of sexual abuse and rape was discontinued, with the only focus on the video clips and CCTV footages. In order to preserve the evidence, the CCTV footages and the video clips were sent via whatsapp to the mobile phone of another police official, who is also the marginal witness of recovery memos. It is pertinent to mention that the video clips and the CCTV footages were sent to the expert, to know as to whether the woman in the photographs and video

recording was the appellant. A report was received in that respect, explaining that due to poor quality of the video recording, no proper assessment could be made, whereas in CCTV footages the woman could be seen, but due to covered face, her identity was not possible. As the investigating officer visited the hostel and recovered CCTV footages and video recording, from the cameras installed on the outer walls of the hostel, so he also recorded the statement of the warden of the hostel, u/s 164 Cr.P.C, and he was also produced before the learned Trial Court, where his statement was recorded. The prosecution mainly relied upon the video recording and CCTV footages and the same was sent to the Forensic Science Laboratory for ascertaining the identity of the lady, but the same could not be established as the expert opined regarding the poor quality of the video recording / clips. When the most relevant evidence failed to convince regarding the identity of the lady as the appellant and as the laboratory declared the collected evidence as deficient, so we are not inclined to take the same into consideration. The like circumstances were taken into consideration in case titled **“RASHED alias CHAND and others Versus The STATE” (2022 P Cr. L J 664)**, which reads as follows: -

“15. Prosecution has also relied upon the evidence of CCTV footage and CDR pertaining to the cell phones of appellants and we have also given our considered thought to the admissibility of such

evidence. So far as, the CCTV Footage is concerned, admittedly, it was not containing the clear visuals of the incident and the facial features of the culprits were also blurred. On this score alone, the evidence of CCTV footage is destined to be discarded. As regards, Call Data Record no person or record keeper of the cellular company appeared in the dock to provide legal sanctity to such evidence, thus we are constrained to declare it too, as inadmissible.”

6. The matter was further investigated and the investigating officer came across two other witnesses, who allegedly transported the appellant and the child to a park known as Masood Park. The names of the witnesses surfaced as Abdur Rasheed and Anwar Iqbal. The investigating officer recorded their statements u/s 161 Cr.P.C and they were also produced before the court of competent jurisdiction, where their statements u/s 164 Cr.P.C were recorded. The witnesses explained the time and the date when the deceased and the child were picked up and dropped. The matter does not end here, rather the investigating officer further probed into the matter and during investigation came across two other witnesses namely, Abdur Raziq and Saleem Badsha. The statements of these witnesses u/s 161 & 164 Cr.P.C were recorded. PW-Abdur Raziq explained in his statement that on 24.03.2021, while standing near the cotton mill, that in the meanwhile a lady wearing borqa appeared with a minor in her hand and that she threw the dead body in the drain. The witness further explained that after dropping the dead body, the lady ran

away and he with the help of one Saleem Badsha informed the complainant and the local police. He went on to say, that the complainant came to the spot and took the dead body of the deceased. PW-Saleem Badsha supported the statement of PW-Abdur Raziq in respect of the manner in which the dead body was disposed of by the lady, and the complainant was informed, who claimed the dead body to be that of the deceased Hareem Fatima, and took the same.

7. The investigating officer examined two more witnesses i.e. Kamran and Khyali Wazir, their statements were recorded u/s 161 & 164 Cr.P.C. In his statement recorded u/s 164 Cr.P.C, Kamran disclosed that he found the dead body of the deceased and asked the help of PW-Khyali Wazir in that respect. PW Khyali Wazir also supported the version of this PW. The investigating officer on the pointation of these witnesses prepared the sketches of different places, where the dead body was thrown and from where the dead body was recovered. After the arrest of the appellant, she pointed out the place where the deceased was done to death and the place where the dead body was thrown. She also led the police party to her house and from the cupboard a pair of shoe, a trouser, and a shirt (qamees), were taken into possession. The record further tells that the appellant claimed the same to be the one she put on, on the day of incident. Though the shoes and garments were taken

into possession, but the same were not examined from the expert, to ascertain as to whether the same matched with the one put on by the lady on the day of the incident, visible in the photographs and video clips. Apart from the above, the CCTV footages and video clips were shown to the appellant and as per the investigating officer, she disclosed her presence in the same.

8. As the entire case is hinging upon the circumstantial evidence, so few witnesses from the house of the complainant were also examined including, Mst. Sumia, aunt of the deceased, Hassan Fawad, uncle and Naveed Iqbal, father of the deceased. The aunt of the deceased recorded her statement u/s 164 Cr.P.C, where she explained the inter-se relationship between the family of the appellant and that of the complainant. She disclosed that on 24.03.2021, the appellant came to her house at 10:00 AM, as she was on visiting terms to them, she further disclosed that the appellant was wearing the clothes and the shoes as are visible in the CCTV footages and the video clips; that the appellant wanted to marry her brother Hassan Fawad, but he refused; that it was the sense of revenge which led the appellant to kill the deceased. Mst. Sumia also recorded her statement before the learned Trial Court. Both, Hassan Fawad & Naveed Iqbal, recorded their statements u/s 164 Cr.P.C, and endorsed the statement of Mst. Sumia, in

respect of the motive and they also charged the appellant for the death of the deceased. When the investigation was completed, challan was submitted, the appellant faced the trial and was convicted and sentenced vide the impugned judgment.

9. The learned trial Court while handing down the impugned judgment took into consideration the material aspects of the case and applied its judicial mind to the evidence on file and thereafter passed the impugned judgment. True that the appellant is not directly charged and that no direct evidence came forward to tell that it was the appellant who killed the deceased, but equally true that the prosecution took pain to investigate the matter and that circumstantial evidence was collected, which ultimately led the learned Trial Court, to hold the appellant responsible for the murder of the deceased. We are as shocked as the others were, but the law does not permit the courts to travel under the influence of emotions, sympathies, and sensitivity, as in that eventuality there would always be an apprehension of miscarriage of justice. Under all circumstances, the Courts of law are under the obligation to dig out the real cause, that too, from the collected evidence. We must not allow our emotions to dictate us, rather we must control our emotions and sentiments, while determining the innocence and guilt of an accused, if we failed to control,

then the results would be drastic and its end would be a chaos, a catastrophe which would take away the matters out of the ambit of the guide lines laid down by the superior courts from time to time and in that eventuality the approach, if any, arrived to, would be against the spirit of law, which has never been permitted and which would never be allowed. The learned Trial Court though found the appellant guilty through a detailed judgment, but this being the court of appeal, is under the obligation to revisit and re-appreciate the collected evidence, so that the guilty could be punished and the innocent could be rescued. We are conscious of the fact that in this particular case, the only evidence against the appellant, is the chain created by the prosecution by collecting different circumstances, but we cannot ignore that when the cases are hinging upon the circumstantial evidence, then it is obligatory for the prosecution to knit a well-knit chain with no link missing. We are to determine the compactness of the chain and the connectivity of the events, and the prosecution is to convince that no link was missing. We are to confirm that both the ends of the chain are touching the neck of the accused and the dead body of the deceased. As in the instant case, on one hand the unfortunate deceased was hardly 3/4 years of age, whereas on the other we have a lady accused, who too, is asking for justice. We feel that this particular case needs extra care

and caution, as an erroneous conclusion would add to the miseries of all concerned.

10. The moot question for determination before this Court is as to whether it was the appellant who killed the deceased and that the evidence collected point with certainty, her involvement in the episode. There is no denial to the fact that the unfortunate victim went missing on 24.03.2021 and her dead body was found on the very next day of the incident, away from her house. The record further tells that nobody was charged soon after the child went missing and instead an inquiry was imitated u/s 156 (3) Cr.P.C, and when her dead body was found, the FIR was registered. As the prosecution at the very inception was clueless regarding any particular accused, so good number of suspects were associated with the process of investigation and the investigating officer collected their blood samples and also collected the blood of the deceased alongwith vaginal swabs, the same were sent to Department of Forensic Medicine & Toxicology Khyber Medical College, Peshawar, for its analysis, more particularly, asking a DNA report. The same were examined by the expert and a report was received in negative.

11. The prosecution continued its search of tracing out the real culprits. It was after a long chase that the prosecution succeeded to trace out the accused and as such the

appellant was held responsible for the murder of the deceased. The appellant was arrested, investigated and at a belated stage the complainant also charged her for the murder of the deceased. There is no denial to the fact that the investigating agency probed into the matter and succeeded in collecting CCTV footages and also the video clips, where the deceased was found in the company of a lady, but the lady could not be identified, as right from the beginning till the end her face remained covered and nobody could tell with exactness that who the lady was. It is for the prosecution to tell that how it identified and that how it picked up the appellant, as the one in whose company the deceased is seen. As the prosecution based its approach, mainly on the statements of the witnesses and the CCTV footages, so we deem it essential to go through the statements of the witnesses and to find out that these were the witnesses who disclosed the identity of the lady / appellant. Two witnesses surfaced who claimed to have transported the deceased and the lady to a park known as Massod Park, situated in the vicinity. PW-Abdur Rashid was examined before the learned Trial Court, who disclosed that on 24.03.2021 it was at 3:00 PM that he picked up a child and a lady and dropped them at Masood Park, situated in the vicinity. PW-Anwar Iqbal disclosed that he picked up the deceased and a lady for Masood Park and the lady paid him

Rs.50/- for the trip. It is surprising to note that two different rickshaw drivers claimed to have transported the deceased and the lady to the same destination, on the same date and at the same time. When the statements of these witnesses are read in juxtaposition, no ambiguity is left that the witnesses were in conflict, as both claimed to have taken the deceased and the lady at the same time, on the same date, to the park in question. This is surprising to note that what for the lady accused went to the same place in two different intervals and that how was it possible that both the rickshaws took them at the same time, on the same date, to the same place. The statements of these witnesses do not appeal to a prudent mind, coupled with the fact, that their statements were recorded at a belated stage. One of the witness disclosed that he hails from district Karak and so the complainant. On one hand the intimacy between the two is established on record, whereas on the other his statement was recorded at a belated stage and his statement is in conflict with that of Abdur Rashid (PW-12), so in such eventuality this Court is still to see the evidentiary value of his statement. Anwar Iqbal (PW-14), in his cross examination disclosed, that he was arrested by the local police, he remained in their custody for three days and also his brothers. It is pertinent to mention that his arrest is not shown on record and his arrest and that of his brothers are

the circumstances which put a question mark over the impartiality of the investigating agency in general and on the investigating officer in particular. None of the witnesses disclosed regarding the identity of the lady and the investigating officer did not arrange for the identification parade. As the witnesses could not tell regarding the identity of the lady and as her face was not exposed, so the appearance of these witnesses would hardly help the prosecution, more particularly, when their statements were recorded, after a considerable long time of the incident and of the recovery of the dead body. The delayed statements are often taken out of consideration by the Superior Courts, as is held in case titled **“BASHIR MUHAMMAD KHAN Versus The STATE”, (2022 SCMR 986)**, which is reproduced here in below: -

“Delayed recording of statement of PW under section 161, Cr.P.C. reduces its value to nil unless and until it is explained rendering justiciable reasonings. Reliance is placed on the judgment reported as Abdul Khaliq v. The State (1996 SCMR 1553). This judgment was followed by this Court in another judgment reported as Noor Muhammad v. The State (2020 SCMR 1049) as also in an unreported judgment passed in Criminal Petition No. 537/2021. Keeping in view the conduct of the PWs, it would not be safe to only rely upon their statements to sustain conviction of the appellant and there must be some independent corroboration to the extent of his involvement in commission of the crime.”

12. Two other persons namely, Abdul Razak and Saleem Badsha, were examined, their statements were recorded initially u/s 164 Cr.P.C, and thereafter before the learned

Trial Court. In their statements recorded u/s 164 Cr.P.C the witnesses confirmed that on 24.03.2021 while present near the cotton mill a lady wearing *borqa*, arrived with the dead body of the deceased; that she threw the dead body in a drain situated near the mill and ran away; that they informed the local police; the complainant arrived to the spot and collected the dead body. This is surprising that both these witnesses having stout bodies did not resist the throwing of the dead body and no efforts were made to overpower the lady. Had this been so, then under all circumstances the lady would have been overpowered, but she was not and this part of the story does not appeal to a prudent mind. Even these witnesses failed to tell that they saw the face of the lady and that they can identify if she is brought before. On one hand the identity of the lady is still a mystery, whereas on the other the conduct displayed by the witnesses does not appeal to the judicial mind of this Court. The statements of these witnesses were recorded after a good length of time and even they failed to communicate the incident to the local police, on the stated day. We are yet to know, that if these were the witnesses in whose presence the dead body was thrown and in whose presence the dead body was collected, we are still to know that whether the dead body was taken into possession in presence of these witnesses or in presence of the other two namely Kamran and Khyali Wazir.

Both the sets of witnesses claimed its recovery on their pointation, so when the two set of witnesses are placed in juxtaposition, the one negates the other. When the witnesses went in conflict regarding the knowledge and regarding the recovery of the dead body, their this conflict has further complicated the situation and it has further damaged the veracity of the investigating agency. The record also tells that the statements of these witnesses were recorded after a long delay and the prosecution could not explain that why the delay occurred.

13. After arrest of the appellant, she was investigated and during that period she pointed out various places. It was allegedly on pointation of the appellant that the sketches of the places where the deceased was killed and where the dead body of the deceased was thrown, were prepared, but during the entire proceedings no private witness was associated and even the investigating officer did not ask the presence of those witnesses, in whose presence the dead body was thrown. As during her custody no substantial progress could be made and no incriminating article was recovered either from her possession or on her pointation, but only a pair of shoe and the garments, which she allegedly claimed to be putting and wearing on, on the day of the incident, were taken into possession. True that a pair of shoe and garments were taken into possession, but equally

true that the same were never sent to the expert, to compare the same with the one shown in the photographs and in the video clips. When the investigating officer failed to test its' veracity and when the same were not sent to the expert for comparison, then in such eventuality, mere recovery of a pair of shoe and garments would hardly help the prosecution, more particularly, to identify the lady, as the appellant. As the lady in the pictures was with covered face and as no witness could tell that they had the opportunity to see her face, so in such eventuality the identity of the lady right from the beginning till the end remained a mystery and the prosecution failed to clarify the same. Though the investigating agency at the very earliest took the lady to be the appellant, but the complainant and all related, were not ready to accept the same. Admittedly, the dead body was recovered on 25.03.2021 and the appellant was held responsible, by the prosecution, soon after the dead body was recovered, but the complainant was not ready to charge, as he was uncertain regarding the involvement of the appellant. To our understanding there was a struggle between the law enforcing agency and the complainant, regarding the involvement of the appellant, as the one was confirmed that it was the appellant who killed the deceased and the other was not convinced. It was the indecisiveness on the part of the complainant which led to a belated charge.

The belated charge by the complainant and by the family members of the deceased is a circumstance which cannot lightly be ignored. One Mst. Sumia was examined as PW-11, who was no other than the real aunt of the deceased, but even she surfaced at a belated stage. This witness was cross examined on material aspects of the case, but she could not tell that the lady in the pictures was the appellant, rather she admitted that the face of the lady was not visible. True in her examination in chief she disclosed that on the day of incident the appellant had visited her house at 10:00 AM and that she was wearing the same shoes and the same clothes at the time of her visit to her house, but this by itself is not sufficient to hold the appellant responsible for the killing of the deceased. As on one hand the statement of this witness was recorded after a long delay, that too, when she failed to identify the lady in the pictures. The father of the deceased was examined as PW-19, who confirmed the motive part of the incident and his brother Hassan Fawad, in whom the appellant was interested, also confirmed that it was his refusal to marry which turned to be the basis for killing. The explanation tendered by the witnesses is neither supported by the circumstances, nor could the investigating officer record any independent statement in that respect. We are confirmed that the alleged motive is the brainchild of the witnesses and that of the complainant, which by no stretch of

imagination would alone be sufficient to convict the appellant.

14. Admittedly, the prosecution is not in possession of any direct evidence, rather the entire superstructure has been erected on the circumstantial evidence, so the prosecution is under the boundened duty to create a well connected chain with no link missing. In order to appreciate as to whether the prosecution succeeded in reaching to the neck of the appellant, we deem it essential to take into consideration the most relevant aspects of the case which to our understanding were the medical report of the deceased, the statements of the witnesses who saw the accused while throwing the deceased and the recoveries on the pointation of the appellant. As admittedly no witness could tell regarding the identity of the lady and as admittedly no identification parade was conducted, so the question of identity of the appellant could not be resolved and so the statements of those witnesses played a little role in that respect. The doctor who conducted autopsy on the dead body of the deceased, disclosed numerous injuries on the body of the deceased and that the nature of injuries was fully explained, as is evident from the following: -

External Appearance:Mark of ligature on neck and dissection etc: There was pink colour of clothes, small child of 3-4 years with PM rigidity developed.

Condition of subject: Small child of 3-4 years with post mortem rigidity bruises on face, nose and neck.

Wounds:

1. Bruises on face, nose and neck.
2. Bruises on legs, thigh and knees abraided.
3. Bruises around the vaginal orifice.
4. Hymen ruptured / not present at all.
5. No frothing nasal orifices and mouth, however washer woman signs in the hands and soles due to submersion in water.

As admittedly vaginal swabs were collected and blood sample of various suspects were obtained, but both the samples did not match and as such the DNA report was received in negative. As the doctor disclosed that the hymen was ruptured and as the doctor noted bruises around the vaginal orifice, so in such eventuality, an indication was there that apart from the lady visible in pictures, some male accused also participated, but instead of proceeding further in that direction, the investigating officer asked for the constitution of the Standing Medical Board. The board was constituted and an opinion was rendered. The application was addressed to Dr. Fazal-ur-Rehman, the Medical Superintendent of the concerned hospital, and as such he constituted the Standing Medical Board. The said doctor was examined as PW-21, who explained in the following manner:

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“no exhumation was conducted by the medical board or directed by the court. It is correct that we or any member of the board has not personally examined the dead body of the minor deceased. It is correct that we the board had given general opinion in our report which is called “verbal autopsy” on the basis of postmortem report and department of forensic medical and. Khyber Medical Peshawar self-stated that the detail examination was conducted by the lady doctor”.

On receiving the opinion, the investigating officer did not proceed further in that direction and as such he concentrated over the involvement of a single lady accused in the murder of the deceased. As on one hand the submission of an application for the constitution of a Standing Medical Board was beyond understanding, whereas on the other the report failed to convince and even the deposition of the doctor has questioned the veracity of the board and the conclusion drawn. When admittedly the dead body was not before the board and when admittedly the board based its opinion over the observation of the doctor, who conducted autopsy of the dead body of the deceased, then in our understanding the report is neither conclusive nor the same is the outcome of the independent application of mind, by the members of the board. We are surprised that what convinced the board to take a different view from the one taken by the doctor and that how the sexual abuse or rape with the victim could be excluded. If the mind of the board was satisfied from the observations of the doctor, which she rendered at the time of postmortem examination, then in our understanding the prosecution should have proceeded further in that direction, but it did not, which gives birth to two possibilities, either the prosecution wanted a hasty conclusion or that it was the severe criticism from the people of the area, regarding the performance and efficiency of the department, which

prompted the investigating officer to cut the matter short, but the investigating officer forgot that his this approach may lead to the conviction of an innocent person. As the prosecution postponed to proceed and to confirm the death of the deceased in light of the observations, rendered by the doctor, so to our understanding the prosecution fell into error, as the medical report confirms the involvement of other accused as well. The nature of injuries on the dead body of the deceased would negate the story of the prosecution and it speaks in louder tone that had the appellant killed the deceased, then the nature of injuries would have been other than the noted one, as a female accused with this kind of motive in mind, would hardly struggle to cause such injuries. The attending circumstances of the present case do tell that the deceased was the victim of sexual assault and that the appellant alone would hardly do the same. As the prosecution exercised its option, for closing the most relevant aspect of the case, so his this choice has added to the miseries of the complainant and that of his family.

15. Admittedly, the prosecution case is hinging upon the circumstantial evidence and admittedly the circumstances so collected failed to create a well knit chain, so the links are missing and the missing links would hardly call for conviction. As till the end neither the witnesses nor the

investigating officer could uncover the face of the lady, in whose company the deceased was found, so the identity of the lady could not be established and even no witness claimed to have seen the lady, as her face was covered and no identification parade was arranged for the purpose, when so then this Court is confident in holding that the prosecution failed to connect the appellant with the murder of the deceased. Apart from the above, the recovered garments and shoes were not examined by the expert, to know as to whether the same had any resemblance with the one put on by the lady in the pictures, then in such eventuality this piece of evidence could not be assessed and analyzed and as such, it has further created dents in the prosecution case. As in the instant case no ocular account could be produced, so the case against the appellant is based on circumstantial evidence and in such eventuality the investigating officer was under the boundened duty to collect circumstantial evidence, so that a well-knit chain could be formed, but right from the beginning till the end the identity of the lady could not be established, which is the missing link and as such, the broken links could not be connected which would indicate the involvement of the appellant in the murder of the deceased. In this regard, wisdom can also be derived from the judgment rendered in case titled “**FAYYAZ AHMAD**

Versus The STATE” (2017 SCMR 2026), wherein it was held that:

“5. To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.”

16. The overall atmosphere of the case makes it clear that the prosecution case is full of doubt and that a single doubt, if created or appears, would be sufficient for dislodging of the erected structure. As in this particular case not only a single doubt, but many doubts are available, so in our understanding the benefit must only & only be extended to the accused / appellant. Furthermore, the evidence collected by the investigating officer failed to convince and the witnesses appeared could not explain the incident, in the manner as it occurred and even the witnesses in whose presence the dead body was thrown, failed to tell that they identified the lady, who disposed of the dead body. As the circumstantial evidence is lacking coherence and as the conscious attempt of the investigating agency, has put this Court on guard regarding, the status of the appellant and her involvement in the instant case, so to our understanding the collected evidence is not sufficient to answer the claim of the complainant. The circumstantial evidence so collected, failed to connect the appellant with the murder of the deceased

and the complainant failed to point out the guilt of the appellant. The Apex Court was pleased to answer the like situation in case titled **“FAYYAZ AHMAD Versus The STATE” (2017 SCMR 2026)**, wherein it was held that:

“To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows, To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without any missing link, otherwise at random reliance on such evidence would result in failure of justice.”

17. The cumulative effect of what has been stated above leads this Court nowhere but to hold that the prosecution failed to bring home guilt against the appellant and that the learned Trial Court fell into error while handing down the impugned judgment. The impugned judgment is lacking substance and the reasons given do not find support from the evidence on file, the same calls for interference. The instant criminal appeal is ***allowed*** and the appellant is acquitted of the charges, she shall be released forthwith if

not required to be detained in connection with any other criminal case

18. Now diverting to the connected **Criminal Revision No.217-P/2022**, through which the complainant has asked for enhancement of the awarded sentence. As the appeal against conviction has succeeded and as the appellant earned acquittal, so in such eventuality the instant criminal revision for the enhancement of the awarded sentence has lost its utility and the same is dismissed as such.

19. Above are the detailed reasons for our short order of even date.

Announced

19.09.2023

Hafeez Burki, PS

SENIOR PUISNE JUDGE

JUDGE

(DB) Hon'ble Mr. Justice Ishtiaq Ibrahim & Hon'ble Mr. Justice Sahibzada Asadullah