

## JUDGMENT

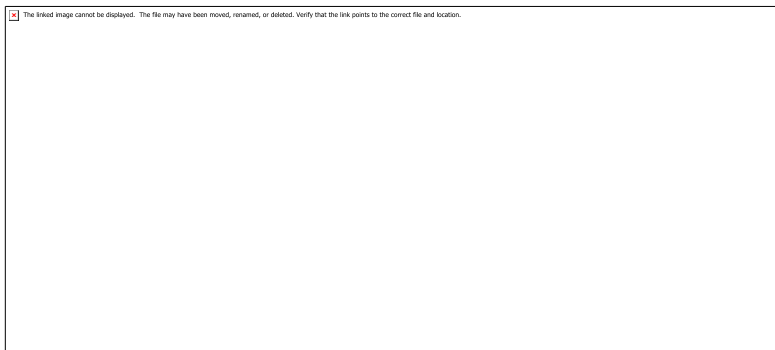
Through this single judgment, I intend to decide the captioned two criminal appeals and criminal revision as the same have arisen out from FIR No.334, dated 09.09.2015, under sections 302, 342, 34, P.P.C., P.S. Industrial Area, Islamabad.

2. Through the captioned Criminal Appeal No. 107/2019, appellant Amir Sajjad has assailed the judgment dated 12.04.2019, passed by learned Sessions Judge (West), Islamabad, whereby Amir Sajjad/ appellant was convicted and sentenced to pay Diyat of Rs.16,80,270/- to the legal heirs of deceased and shall also undergo for 04 years' R.I as Tazir under section 316, P.P.C. Appellant was also convicted under sections 344/34, P.P.C. to undergo 03 years' R.I with fine of Rs.50,000/-. In default of payment of fine, he shall further undergo six months' S.I.

3. In Criminal Appeal No. 240/2019, appellant Abdul Hafeez has assailed the judgment dated 29.06.2019, passed by learned Sessions Judge (West), Islamabad, whereby Abdul Hafeez/appellant was convicted and sentenced to pay Diyat Rs.16,80,270/- to the legal heirs of deceased and shall also undergo for 04 years' R.I as Tazir under section 316, P.P.C. Appellant was also convicted under sections 344/34, P.P.C. to undergo 03 years' R.I with fine of Rs.50,000/-. In default of payment of fine, he shall further undergo six months' S.I.

4. Complainant Muhammad Asif filed criminal revision against the judgment dated 12.04.2019, passed by learned Sessions Judge (West), Islamabad in case of Amir Sajjad and prayed for enhancement of sentence upto 14 years of RI in terms of sections 302/34, P.P.C., in addition to above a sentence of RI four years with fine of Rs. 50,000/- in terms of sections 344/34, P.P.C.

5. Brief facts referred in the complaint Ex.PM (Ex.PK in the second trial) submitted by PW-10 Zulfiqar Ahmed, Inspector (PW-11 in second trial) are as under:-



6. The complaint has been converted into FIR No.334, dated 09.09.2015, under sections 302/34, P.P.C., P.S. Industrial Area, Islamabad referred as Ex.PN (Ex.PK in second trial), whereby matter was investigated by Muhammad Rafique Inspector/PW-12 and subsequently by PW-13 Ashiq Shah, SI who arrested both the accused/appellants and submitted challan under section 173, Cr.P.C. whereby trial Court framed the charge under sections 319/34, P.P.C. in case of Amir Sajjad and in case of Abdul Hafeez the charge was framed under section 302, P.P.C. separately vide order dated 26.05.2016 and 11.06.2019 respectively, however, trial Court while recording the evidence of 13 PWs in the trial of Amir Sajjad and 12 PWs in case

of Abdul Hafeez/appellant, convicted the appellants under sections 316/344, P.P.C. through two different judgments by declaring the appellants as guilty of Qatl Shibh-i-Amd. Hence, these two appeals have been filed by the appellants. On the other hand legal heirs of deceased Irfan (Muhammad Asif, real brother) filed Criminal Revision No.72/2019 for enhancement of sentence of Amir Sajjad only.

7. Learned counsel for the appellants contends that appellants are innocent and they were convicted on the basis of surmises and conjecture as there was no direct evidence against the police for causing qatl-i-amd or qatl shibh-i-amd in any manner, even prosecution has failed to link the appellants with the crime; that there was no independent witness in this case and trial Court has not appreciated the medical condition of deceased who was suffering from ulcer as well as enlargement of liver and the injuries noted in the post mortem are only superficial and are bruises, which could not cause death to any person in the ordinary course of nature; that deceased was arrested on 09.09.2013 in case under section 392, P.P.C. whose health condition was deteriorated during the period of physical remand and appellants took the deceased to hospital but he took his last breath on his way and as such appellants have provided due care to the deceased due to his medical condition and as such appellants are not guilty of offence.

8. Conversely, learned counsel for the legal heirs of deceased contends that deceased was illegally arrested from the jurisdiction of Police Station in District Attock and was taken to CIA Center, Islamabad where he was tortured, abused and assaulted by the appellants, even he died in the judicial custody and the dead-body was lying in a car, as such the conduct of the appellants require maximum punishment who violated the police orders as well as constitutional guarantees provided to the citizens of Pakistan including the deceased; that petitioner has prayed for enhancement of sentence of principal accused Amir Sajjad in terms of section 316, P.P.C. as R.I. for 14 years being the maximum punishment.

9. Arguments heard, record perused.

10. Perusal of record reveals that appellants arrested the deceased Irfan for investigation in criminal case FIR No.79, dated 11.03.2015, under section 392, P.P.C., P.S. Sihala, Islamabad being I.O of the said case who were performing their duties in CIA Centre, Islamabad, however, the said accused/deceased was ill and while shifting to hospital for treatment was died. Both the appellant left the deceased in car No.LEA-4128, at street No.5, 1-9/3, Islamabad. The information was given by the CIA staff Moharir to the Inspector Zulfiqar Ahmed/ PW-10/PW-11 in the second trial who lodged the complaint Ex.PN/PK with the allegations that on the information they reached at street No.5, I/9, Islamabad along with constable Waseem Iqbal where they found dead body of Irfan on the back seat of the car and as such he declared Abdul Hafeez ASI and Amir Sajjad ASI of CIA being guilty of murder. The autopsy of deceased was conducted by Dr. Muhammad Naseer, CMO PW-1 on 09.09.2015 and following injuries were found on the dead body of deceased:-

Injury No. 1	Both feet were reddish in colour i.e. fleshing of red skin.
Injury No. 2	There were contusion marks on the left thigh in its upper 1/3 antero-laterally measuring 6 x 3 x 3 cm.
Injury No. 3	Contusion on the front of left iliac fossa measuring 2 x 1 cm.
Injury No. 4	Contusion marks on right thigh and antero-laterally 8 x 3 x 3 cm in its upper 1/3.

Injury No. 5	Contusion marks on the right arm right lumber region measuring 2 x 2 cm.
Injury No. 6	Abraded area on right wrist antero-laterally 4 x 1.5 x 1 cm.

### OPINION

Stomach and aesophafus has got engorgement of veins and aesophafus varieeces. Liver colour was not normal. All the organs mentioned above i.e. liver spleen, kidney piece of small instine and stomach with its content were taken for any intoxication and were histo-pathological examination. Final opinion was not given regarding the cause of death till the receipt of chemical examiner report.

The probable time between death and post mortem 6 to 6-1/2 hours.

Postmortem report Exh.PA/1-4, is my handwriting and bears my signatures. On the back of page No. 4 as the samples of stomach and its content, small instine liver, spleen and kidney were sent to Punjab Forensic Laboratory Lahore for any intoxication and histo-pathological examination. Report of histo-pathologist shows stasis of bile in a canaliculi with fatty degeneration and the renal section reveals vascular congestion.

Cause of death could not be determined as it was negative autopsy.

11. During the course of cross-examination, PW-1 acknowledged that deceased was patient of ulcer and injuries so caused on the dead body of the deceased are not fatal in nature or could cause death in ordinary course of nature. However, he acknowledged that as per his experience the injuries might be result of police torture. The medical board was also constituted and even chemical examination report disclosed no poison or drug detected from sample. He also confirmed that contusion can occur due to fall on ground or due to any blunt trauma injury. The injury No.v is a contusion mark on the right arm, lumber region measuring 2 x 2 cm. He confirmed that medical board completely agreed with his opinion given in the post mortem report Ex.PA.

12. Besides the evidence of doctor prosecution produced Nasreen Bibi, mother of deceased Irfan who stated that he was employee at Petrol pump, Tarnol and was unmarried. On 26.08.2015 her son Muhammad Asif on gate knock came inside and told that two persons are standing out of the house and asking for Irfan on which Irfan went towards the gate, hue and cries started and men standing outside the house abducted him whereupon her son Basit, maternal cousin Abdullah present inside the house rushed towards the gate along with Asif and followed the abductors but till their reaching outside her son was taken away by those persons in their vehicle. She went to police station Basal along with her relatives and official of the police told them that two persons from Islamabad police are Amir Sajjad and Abdul Hafeez, who took the deceased, whereafter application was submitted by Abdullah, which was filed in the said police station, then they contacted Islamabad Police where deceased Irfan was detained and Amir Sajjad present in the court demanded Rs.5,00,000/- from them for release of her son, however, on 09.09.2015 at about 10:00 p.m. Abdullah was informed through mobile phone that Irfan died in police custody.

13. PW-2 stated that when she saw the dead body, whereby number of torture marks on the dead body were present and blood was coming from nose and ears. During the course of cross-examination she acknowledged that when she came out of house accused persons have already

taken her son in the vehicle. She also saw her son Irfan in the building of CIA on 27.08.2015, however, she stated that she did not see the accused Amir Sajjad with her own eyes while torturing her son in the CIA building.

14. The prosecution has also produced Abdullah PW-6, who reiterated the same facts brought on record by the real mother of deceased, who stated that he has submitted complaint to the P.S. Basal for the abduction of deceased Irfan by the appellants. He confirmed that he identified two persons who brought Irfan deceased from their house as Abdul Hafeez, ASI and Amir Sajjad, ASI. He further stated on oath that both the accused demanded Rs.5,00,000/- for release of Irfan and subsequently demanded Rs.3,00,000/- for his release. During the course of cross-examination he confirmed that his statement was recorded on 10.09.2015 by the I.O and no identification parade of any of the accused was arranged during the course of investigation. However, he denied the involvement of deceased Irfan in number of criminal cases, even he denied suggestion that Irfan was proclaimed offender wanted by police.

15. Similarly, Muhammad Asif appeared as PW-7, who is real brother of deceased Irfan and stated that on 26.08.2015 when he came outside the house saw that appellants were standing and asking for the deceased and when Irfan came outside the house these two persons kidnapped him forcibly. He further stated that he informed P.S. Basal that Irfan was taken into custody by the police officials of CIA, Islamabad. During the course of cross-examination he acknowledged that he is employee of Highway department. He was cross-examined at length but nothing important has been extracted.

16. Defense side has cross-examined PW-7 with particular question that as to whether appellants were dressed in police uniform, while answering the question at the first instance he said yes but subsequently stated that they were wearing civilian dress but on 27.08.2015 they were in uniform in P.S.

17. The prosecution has also produced Ghulam Rasool constable who stated that he was present in Industrial Area and received information that dead body was lying in the vehicle parked. Rafique Inspector took photographs of the dead body and prepared inquest report, then shifted the deceased to PIMS for autopsy. He stated that post mortem was not conducted on the same day due to late time on refusal of Dr. Naseer, which was conducted on the very next day. However, during the course of cross-examination he acknowledged that taking of pictures of dead body lying in the car was not referred in Ex.DA.

18. The case has been investigated by Ashiq Shah, S.I/I.O/ PW-13, who interrogated Amir Sajjad appellant stated that during his investigation it was found that appellant arrested the deceased on 09.09.2013 from vicinity of chungi No.26 and during shifting to CIA head office Irfan deceased stated that he was ill and was not feeling well and colour of his face was changed, and was being taken to hospital but he died on his way. Further confirmed that both the appellants have denied the issue of torture and stated that deceased died due to his medical condition. During the course of cross-examination he confirmed that he changed the offence under section 302, P.P.C. which was not made out, same was converted into section 319, P.P.C. and challan was submitted in this regard. The said I.O. was declared hostile on the request of prosecution. During the course of cross-examination he acknowledged that he has not obtained CCTV footage of 27.08.2015 from CIA building, further confirmed that location of accused persons were available on the CDR at Basal, Attock on 26.08.2015. He also confirmed that post mortem report reveals that there were contusion marks on the dead body of deceased. He

further confirmed that he converted section 302, P.P.C. to 319, P.P.C. after getting confirmation from PDSP branch, sanction of SDPO and the District Attorney.

19. The appellant Amir Sajjad recorded his statement under section 342, Cr.P.C. and denied the case of prosecution and even denied the arrest of deceased. He also stated that car in which dead body was lying No.LEA-4128 belongs to Abdul Hafeez ASI. Similarly, Abdul Hafeez ASI while recording statement under section 342, Cr.P.C. answered question No.9 in the following manner:-

Ans. Deceased Irfan was a notorious criminal and was wanted in different crimes to different police stations for Islamabad and Punjab. He was arrested on 09.09.2015 by me along with police party from Chungi No. 26 on a tip of informer and deceased was arrested in presence of Syed Shujat Kazmi, Syed Farasat Kazmi, Wajid Hussain, Shed Shahrukh, Tariq Aziz, Malik Rabnawaz and Abdul Waheed who are residents of the place where from deceased was arrested. By the time he was arrested, deceased was terminally ill and I have informed about his state of affairs to my superiors and under their direction, I took Irfan to PIMS hospital. At the main entrance of PIMS, there was agitation of PIMS employees and they had blocked the entrance to the hospital. Deceased expired and I and Ameer Sajjad ASI (convict) was directed by our seniors to fetch the dead body of deceased to CIA centre. In the meantime, news was fletched on TV channels and the superior officers with intent to save their own skin and to avoid the consequences of passing away of deceased in police custody promptly lodged false and fake case against me and another. I am innocent.

20. Abdul Hafeez appellant has also appeared as defense witness in his favour in terms of section 340(2), Cr.P.C. on oath and recorded the following statement:-

On 09.09.2015 I had arrested the deceased from Chungi No. 26, Islamabad at about 02:15/02:30 p.m. on receipt of secret information. He was sick and he also vomited in my presence. I immediately informed my high ups about his condition. I was taking him to PIMS hospital on the asking of Moharrar however on the way I was asked to bring Irfan to CIA but his condition was worsening therefore I took him to PIMS hospital. As there was strike of Para-medical staff so the main gate of hospital was closed. Despite my best efforts I could not enter there and in the meantime Irfan had died. I informed Moharrar and thereafter on the direction of DSP I shifted dead body to CIA. I brought the vehicle at street No. 5 that was the parking of CIA from where I proceeded further. Later on I was falsely involved in this case.

21. The appellant was cross-examined by the prosecution side, whereby he acknowledged that they were on private car No.LEA-4128, which was owned and driven by him and Amir Sajjad was also sitting in the car. He also confirmed that he had no warrants of arrest at the time when he arrested Irfan deceased, although he made entry in the P.S. Basal regarding his arrival and departure.

22. The entire case of prosecution revolves around the allegation of torture of deceased Irfan who was arrested from the territorial jurisdiction of P.S. Basal, as such there was no warrants of arrest with the present appellants who claimed to be I.O of FIR No.79/2015, under section 392, P.P.C., P.S. Sihala, Islamabad rather deceased was arrested on suspicion in terms of section 54, Cr.P.C. as admitted by appellant Abdul Hafeez in his statement under section

340(2), Cr.P.C. The deceased was taken to CIA Centre within the territorial jurisdiction of Industrial Area and was found dead in the vehicle No.LEA-4128, Toyota Corolla at street No.5, I/9, Islamabad. The report was lodged on the complaint of Zulfiqar Ahmed, Inspector/PW-10 (PW-11 in second trial) being officer of CIA through Ex.PN (Ex.PK in the second trial), who took the dead body of deceased to the hospital. Autopsy was conducted by PW-1/Dr. Naseer, who confirmed injuries on the dead body which are simple in nature and are contusion marks around left thigh, feet, iliac fossa, lumber region and wrist, although these injuries were not enough to cause death in ordinary course of nature. There is no denial that all the injuries were caused due to torture, which has been confirmed by the Dr. Naseer/PW-1. The cause of death remained mystery in this case and as such there was no evidence to confirm the exact cause of death.

23. The matter was investigated by Muhammad Rafique Inspector/PW-12 and Ashiq Shah, S.I/PW-13, who arrested the accused persons/appellants. The deceased family has lodged a complaint at P.S. Basal, whereby it was revealed that deceased was taken by CIA staff/present appellants. On the minute scanning of prosecution evidence viz-a-viz statement recorded under section 342, Cr.P.C. there is no denial that deceased was under investigation in case FIR No.79/2015, under section 392, P.P.C., P.S. Sihala, Islamabad by Abdul Hafeez ASI and Amir Sajjad ASI (present appellants) and this fact was confirmed by the I.O Muhammad Rafique, Inspector and Ashiq Shah, S.I. The arrest of deceased was referred at Chungi No.26 which is incorrect statement on the part of appellants.

24. While considering the above details it is the duty of I.O of any case to provide due medical assistance when required to any accused under custody, even no one is allowed to abuse or physically torture to any accused under custody and as such both the appellants are found guilty of physical abuse and torture on the basis of evidence of Dr. Naseer/PW-1. The only question for determination for the trial Court was as to whether it is murder under section 302, P.P.C. or it is in terms of section 316, P.P.C. as such, there is no direct evidence of committing murder of deceased, even it is not the case of prosecution that deceased was murdered by appellants in technical manner in line with the requirements in terms of section 302, P.P.C.

25. I have gone through the judgment of the learned Trial Court, whereby the appellants have been convicted under sections 316/34, P.P.C. in terms of qatl shibh-i- amd, therefore, it is necessary to go through section 315, P.P.C. which defines the qatl shibh-i- amd:

Whoever, with intent to cause harm to the body or mind of any person causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl shibh-i- amd.

26. The above mentioned offence i.e. Qatl Shibh-i-Amd is applicable in those cases where death was caused but the injuries would not result into death in ordinary course of nature, such aspects have been given weightage in 2020 YLR 985 (Ghulam Nabi v. The State), 2020 PCr.LJ Note 53 (Hidayat Ullah v. The State), 2018 YLR 2181 (Hafiz Amjad Saeed v. The State), 2016 PCr.LJ 1928 (Nisar Ahmad v. The State), 2014 PCr.LJ 165 (Jumman v. The State), 2007 PCr.LJ 440 Lahore (Ahmad Sher v. The State), 2003 MLD 1409 Lahore (Muhammad Nawaz v. The State), 2000 YLR 2909 Lahore (Asma Bibi v. The State) and 1996 MLD 204 Quetta (Jalal-ud-Din v. The State), whereby it has been settled that:

- (a) The weapon of offence which has been used would not be called as a weapon of offence in technical sense;
- b) The injuries would not cause death in ordinary course of nature;
- c) The injury is on non-vital part;
- d) An intention to commit Qatl-i-Amd was not reflected from the circumstances of the case; and,
- e) Where cause of death is not known.

27. In view of above case law, I have gone through the injuries referred in the medical evidence of Dr. Muhammad Naseer CMO, PW-1 clearly spells out that such injuries, which in the ordinary course of nature are not likely to cause death. The appellants who have exclusive knowledge qua the condition of deceased, who remain in their custody, even the sign of torture on the body of deceased is visible which have been corroborated by the evidence of PW-1 Dr. Muhammad Naseer, therefore, the appellants have a special knowledge of a particular fact i.e. condition of the deceased as he was in custody of the appellants, hence in terms of Article 122 of the Qanun-e-Shahadat Order, 1984, the only piece of evidence which comes on record from the appellants perspective is the statement of appellant Abdul Hafeez, who categorically stated in his statement under section 340(2), Cr.P.C. that deceased condition was worsening and he was taken to PIMS hospital, but on the said date there was strike of paramedical staff and the main gate of hospital was closed and during this effort deceased died in his vehicle No.LEA-4128, which was being driven by him and co-accused Amir Sajjad was also along with him.

28. The above referred facts and statements clearly spells out that firstly the deceased Muhammad Irfan was in the custody of the appellants, secondly, he was taken to hospital on vehicle LEA-4128 by both the appellants, and thirdly they left the deceased in the said vehicle in street No. 5, Sector I/9 Islamabad and deceased was found dead in the vehicle by the Investigation Officer.

29. There is no justification for six injuries available on the body of deceased as recorded by PW-1/Dr. Muhammad Naseer. The appellants have taken a special plea that they have taken the deceased to the hospital in vehicle No. LEA-4128 for medical assistance, but same could not be extended to him in PIMS Hospital, resultantly the deceased died in the vehicle, such special knowledge of a particular fact has to be proved by the appellants and its onus is upon the appellants however, the burden was not discharged by the appellants in terms of Qanun-e-Shahadat, Order, 1984 through any independent evidence.

30. The torture on the dead body of the deceased is apparent which is in line with medical evidence. The custody of deceased was taken by the appellants from territorial jurisdiction of P.S. Basal without any warrants of arrest and even the appellants have failed to provide due medical care and attention to the deceased, in this backdrop the police officials i.e. appellants who are custodian of the life and property of citizens are negligent in their duties and are involved in criminal activities, therefore, such kinds of police officials have to be taken to task as held in PLD 2020 SC 310 (Saddam Hussain v. The State). Even the Police Order, 2002 provides exhaustive mechanism to prosecute such police officials, who have extended torture to the deceased, whereby Article 113 of the Police Order, 2002 can be applied to those police officials as held in 2010 SCMR 624 (Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro).

31. In view of above, the trial Court has rightly convicted the appellants for qatl shabih-i-amd of Muhammad Irfan deceased and even charge under section 344, P.P.C. has rightly been imposed for wrongful confinement of the deceased, as such the appellants are the officials of police Department, whereby heavy onus lays upon them to prove that they are performing the official duties in accordance with law, as such, they have failed to justify any such actions, rather were found guilty of criminal misconduct, though no such charge was framed.

32. While considering the case of enhancement of sentence to the extent of Amir Sajjad, there is no distinction drawn by the petitioner in Criminal Revision No.72/2019 (Muhammad Asif v. The State and others) as to why the sentence of Amir Sajjad be enhanced from 04 years to 14 years' R.I. As such, sentence awarded by the trial Court fulfills the requirement in this case, therefore, while maintaining the conviction, Criminal Appeal No.107/2019 (Amir Sajjad v. The State) and Criminal Appeal No. 240/2019 (Abdul Hafeez v. The State and others) as well as Criminal Revision No.72/2019 (Muhammad Asif v. The State and others) (for enhancement of sentence) are hereby DISMISSED. The appellant Amir Sajjad, who is present before this Court on bail is taken into custody to serve his remaining sentence, the bail bonds stand discharged.

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