

Judgment Sheet  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
JUDICIAL DEPARTMENT

**Criminal Appeal No.755 of 2010**  
(Khizer Mehmood Versus The State etc.)

**Criminal Appeal No.172 of 2014**  
(Abid Hussain versus Azhar Mehmood etc.)

and

**Murder Reference No. 94 of 2010**  
(The State Versus Khizer Mehmood)

**JUDGMENT**

<b>Date of Hearing:</b>	<b>02.11.2015</b>
<b>Appellant by:</b>	Malik Muhammad Rafiq Khan, Advocate
<b>Complainant by:</b>	Mr. Fakhar Hayat Awan, Advocate
<b>State by:</b>	Mr. Qaiser Mushtaq, Assistant District Public Prosecutor along with Babar, SI

**Syed Shahbaz Ali Rizvi, J:** - This judgment shall dispose of Criminal Appeal No.755 of 2010 titled as Khizer Mehmood v. The State filed by Khizer Mehmood (appellant) against his conviction and sentence, Criminal Appeal No.172 of 2014 titled as Abid Hussain v. Azhar Mehmood etc. filed by Abid Hussain, complainant against the acquittal of Azhar Mehmood and Arshad Mehmood, accused as well as Murder Reference No.94 of 2010 titled as The State v. Khizer Mehmood transmitted by the learned trial Court for confirmation or otherwise of the sentence of death awarded to Khizer Mehmood (appellant) being originated from the same judgment dated 21.09.2010 passed by the learned Addl. Sessions Judge,

Rawalpindi in case FIR No.86 dated 06.05.2008, offence under Sections 302 and 34 PPC registered at Police Station Rawat, District Rawalpindi, whereby Khizer Mehmood (appellant) was convicted under Section 302(b) PPC and sentenced to death with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure, 1898 and in default thereof, to undergo simple imprisonment for six months.

The learned trial court, however, through the same judgment, acquitted Azhar Mehmood and Arshad Mehmood, co-accused of the appellant while giving them the benefit of doubt.

2. Brief facts of the case, as disclosed by Abid Hassain, complainant (PW-8) in his statement (Exh-PE) on the basis of which formal crime report (Exh-PE/1) was registered, are that he is an employee in WAPDA, Kahuta. His son Babar Hussain aged about twenty-six years was also employed in WAPDA, Kahuta. His son used to go on his duty in the morning and to come back home in the evening. On 06.05.2008, Babar Hussain went to his duty as per routine. He (complainant) was present in his house at about 07.30 p.m. when Waseem (given up PW) came to his house and informed him that Babar Hussain had received fire shots and was lying near the house of one Qazi Ashfaq while smeared in blood, upon which, he along with Zulfiqar Ali and Hassan Akhtar (given up PWs) reached the house of said Qazi Ashfaq and saw that his son Babar Hussain was lying dead on the road while smeared in blood who had fire shots at his neck. He further disclosed that some unknown person/persons had committed the murder of his son by firing with firearm.

On the same night, the complainant, through supplementary statement, on the information furnished to him by Muhammad Fayyaz (PW-5), Multan Khan (PW-6), Muhammad Banaras (PW-7)

and Matloob Hussain (given up PW) implicated the appellant and his co-accused Azhar Mehmood and Arshad Mehmood (since acquitted) in this case.

The complainant also disclosed motive in his supplementary statement that he sold his land to one Ch. Azeem which was under the cultivation of Azhar etc, therefore, they nourished grudge and murdered his son. He further disclosed that Azhar Mehmood wanted to marry his brother Khizer Mehmood (appellant) with his sister-in-law (*Sali*) but she was engaged with Babar Hussain (deceased) and an altercation also took place between Azhar Hussain and Babar Hussain but the matter was patched up by the respectables of the village and that the accused persons have committed the murder of his son.

3. Khizer Mehmood (appellant) was arrested in this case on 22.05.2008 by Sarfraz Khan, SI (PW-14) who, on 30.05.2008, while in police custody after making disclosure, got recovered .30 bore pistol (P-1), which was taken into possession vide recovery memo Exh-PH. The learned trial court after observing all the pre-trial codal formalities, charge sheeted the appellant and his co-accused (since acquitted) to which they pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution produced as many as fourteen witnesses. Abid Hussain (PW-8) is the complainant of the case. Muhammad Fayyaz (PW-5) witnessed the appellant and his co-accused while going towards the place of occurrence. Multan Khan (PW-6) is the witness of last seen. Muhammad Banaras (PW-7) furnished the evidence of *Wajj Takkar* whereas, Mushtaq Ahmad (PW-9) is the witness of extra-judicial confession and recovery of crime weapon at the instance of appellant.

The medical evidence was furnished by Dr. Muhammad Ilyas (PW-1) who, on 07.05.2008 at 03.00 a.m conducted the post mortem

examination on the dead body of deceased Babar Hussain and noted the following injuries:-

- “1. A lacerated penetrating wound of fire arm entry on the front of upper part of chest, right side 1 cm below the right clavical 6 cm on the right side of midline measuring 1.5 cm x 1.5 cm and blackening was present and margins were inverted.
2. A lacerated wound of fire arm exit on the back of the left shoulder 16 cm on the left side of vertibreal midline and 7 cm posteriorly and below the left tip of shoulder measuring 1 cm x 1 cm margin averted.
3. A lacerated wound of fire arm entry on the right side below the right jaw at upper level of the neck 6 cm on the right side from the chin and 8 cm above the wound No.1 measuring ½ cm x 1 cm margins inverted and blackening positive.
4. A lacerated wound of fire arm exit on the left side of skull 5 cm above the left ear measuring 1.5 cm x 1 cm margins were averted.
5. A abrasion blackened (on the front of the root of the neck 3 cm x ½ cm.
6. A abrasion blackened brown below the left side of mandible 5.5 cm long and ½ cm wide and it was 4 cm above the wound No.5.”

In his opinion, the deceased died due to injuries No.1 & 3 caused by firearm, causing damage to the vital organs like brain, left lungs leading to bleeding, hypovolemic shock, Coma and death. All injuries were ante mortem and sufficient to cause death in ordinary course of nature. Probable duration between injuries and death was immediate whereas between death and post mortem examination 5 to 6 hours and he further affirmed possibility that this time could be 7 to 8 hours.

Sarfraz Khan, SI (PW-14) is the Investigation Officer of this case and Mumtaz Haider, Halqa Patwari (PW-4) prepared scaled site plan (Exh-PF) of the place of occurrence whereas rest of the prosecution witnesses are formal in nature.

5. The prosecution gave up Yasir Mehmood, Waseem, Zulfiqar and Hassan Akhtar PWs being unnecessary and after tendering in evidence the report of Chemical Examiner (Exh-PP), report of Serologist (Exh-PQ) and that of Forensic Science Laboratory (Exh-PR) closed its evidence.

6. Statements of the appellant and his co-accused (since acquitted) were recorded under Section 342 of the Code of Criminal Procedure, 1898 wherein they negated the allegations levelled against them and claimed their innocence. In reply to the question as to *“Why this case against you and why the PWs have deposed against you”*, the appellant replied as under: -

“The PWs are related inter-se. They have falsely deposed at the instance of Abid Hussain complainant with the connivance of Police. The complainant tailored the present story and falsely implicated us. FIR is the corner stone of the prosecution version and there is no mention of trifold motive which according to complainant already existed but he omitted to mention it in Ex.PE. The story relating to the narration given by Fiaz, Matloob, Multan and Banaras did not find mention in the Ex.PE, which according to complainant was completed at spot at 11.00 P.M on 06.05.2008. The aforesaid witnesses, according to them reached at the spot at 9.30/9.45 P.M on 06.05.2008 and narrated their part of story to the complainant but the report Ex.PE is silent about these details and no accused is nominated therein. These omissions are also conspicuous in the details of the Inquest Report. The story so given is after thought. How un-natural it appears that both on 13.07.2008 and 16.07.2008, we all the three brothers go to two different sets of PWs and make joint confession before after visiting them at a distance village situated in District Islamabad.

The omissions and additions in rough and scaled site plan cannot be lost sight of.

On 13.06.2008 in the morning myself and my brothers were present in our house in the village. On a knock at the door I came out and my brothers followed. I saw a Sub-Inspector and 2/3 constables alongwith Abid Hussain complainant. There were two other persons in civvies who were holding tags of two dogs. They took us along to the police station and confined us there, when lastly produced in the Court on 22.05.2008. The two other persons holding the

dogs disclosed that they were having private business of Sniffer dogs and they were paid by Abid complainant. They further told that those dogs were at the threshold of our house where they kept standing and did not move and due to that we were taken into custody. It was just a drama staged by Abid complainant with the blessings of Police which was meant to rope us falsely in this case. The case against us is on false and unfounded suspicion, based upon personal grudge.”

7. The appellant neither opted to make statement on oath as his own witness in disproof of the allegations levelled against him as provided under Section 340(2) of the Code of Criminal Procedure, 1898 nor did he produce evidence in his defence.

8. After conclusion of trial, the appellant was convicted and sentenced as mentioned above by the learned trial Court; hence the instant appeal.

9. Learned counsel for the appellant contends that there is delay of two hours in reporting the matter to the police; that the appellant has falsely been implicated in this case and that there is no direct evidence available against the appellant; that there is nothing on the record which could connect the appellant with the commission of crime; that Azhar Mehmood and Arshad Mehmood, co-accused of the appellant have already been acquitted by the learned trial court, therefore, the evidence which has been disbelieved qua the acquitted co-accused cannot be believed against the appellant until and unless its independent ample corroboration is available which is very much lacking in this case; that the evidence of last seen and *Wajj Takkar* are always taken as weak pieces of evidence; that the evidence of extra-judicial confession is also lacking probity; that positive report of the Forensic Science Laboratory is doubtful; that the motive has not been proved against the appellant; that the prosecution has failed to prove its case against the appellant beyond any shadow of reasonable doubt; that this appeal may be accepted, the appellant be

acquitted of the charge levelled against him and Murder Reference be answered in the negative.

10. Conversely, learned Assistant District Public Prosecutor assisted by learned counsel for the complainant vehemently opposes the contentions raised by learned counsel for the appellant and, inter alia, maintains that there is no deliberate and conscious delay in reporting the matter to the police; that though there is no direct evidence available against the appellant yet the prosecution has proved its case through the circumstantial evidence; that the complainant has no ill will or mala fide against the appellant to falsely implicate him in this case; that the prosecution case is corroborated by the medical evidence; that the prosecution case is further corroborated by the recovery of crime weapon supported by the positive report of Forensic Science Laboratory (Exh-PR); that the case of present appellant is distinguishable from his acquitted co-accused; that prosecution has fully proved its case beyond any shadow of doubt; that the appeal in hand may be dismissed and Murder Reference be answered in the affirmative. Further contends that prosecution has also proved its case against Azhar Mehmood and Arshad Mehmood, acquitted accused/respondents in Criminal Appeal No.172 of 2014 and prays that they be also convicted and sentenced under the law.

11. We have heard the learned counsel for the appellant, learned Assistant District Public Prosecutor assisted by learned counsel for the complainant and have gone through the record with their able assistance.

12. We have noticed that it is a matter in which no direct evidence is available with the prosecution to prove its case against the appellant that mainly hinges upon the circumstantial evidence, therefore, utmost care and caution is required to reach at a just decision. It is settled by now that in such like cases prosecution is

required to link each circumstance to the other in a manner that it should form such a continuous chain of circumstances firmly connecting the accused with the alleged offence.

13. The prosecution, in order to prove its case against the appellant through circumstantial evidence, produced the evidence of last seen, the evidence of *Wajj Takkar*, the evidence of extrajudicial confession, motive, medical evidence and evidence of recovery.

To the extent of evidence of last seen, the prosecution has produced Multan Khan (PW-6) who is paternal cousin of the mother of deceased and brother of Muhammad Banaras (PW-7) and also the resident of village Sindhu Sayedan, the place of occurrence. According to his statement after 06.45 p.m. on the day of occurrence, he witnessed Babar Hussain, deceased leaving the shop of Zameer Jafari, barber towards village Sindhu Sayedan in the company of appellant Khizer Mehmood and his brothers Arshad Mehmood and Azhar Mehmood (since acquitted). The statement of this witness, besides being pregnant with dishonest improvements got confronted by the defence, suffers from infirmity and improbabilities as Zameer Jafri barber who shaved deceased Babar Hussain prior to his being seen in the company of the appellant and his co-accused (since acquitted) from out side his shop was never produced by the prosecution during the investigation as well as the trial to verify and confirm the statement of Multan Khan (PW-6). The more surprising is that, as per prosecution case, the occurrence took place at about 07.15 p.m. when Muhammad Banaras (PW-7) heard the sound of fires and witnessed the appellant and his co-accused (since acquitted) briskly appearing from the side of place of occurrence and the complainant was informed at 07.30 p.m. by one Waseem (given up PW) resident of the village regarding the availability of deceased on the road side smeared in blood whereupon, complainant Abid Hussain (PW-8) reached at the spot within five minutes i.e. at 07.35 p.m. and when he reached there according to the complainant



himself, 100/150 persons from the village including the Lumberdar had already gathered there which reflects that the information received by the complainant at 07.30 p.m. had already spread in the village and if it was so, how it was possible that Multan Khan (PW-6) went to the place of occurrence after the arrival of police and dispatch of complaint (Exh-PE) at about 09.30 p.m. The reason given by him that from the barber shop, he went to village Aari Sayedan situated at a distance of one mile from the shop of barber, is not convincing and believable at all as the same was disclosed by the said witness for the first time before the learned trial court that is admitted in his cross examination. Moreover, his evidence of last seen becomes inconsequential as well because of the fact available on record that the appellant and his co-accused Azhar Mehmood and Arshad Mehmood (since acquitted) were seen by Muhammad Fayyaz (PW-5) near the place of occurrence at 07.00 p.m. without the deceased Babar Hussain which reflects that after being seen by Multan Khan (PW-6) at 06.45 p.m. in the company of appellant and his acquitted co-accused, he was no more with them at 07.00 p.m. while the occurrence took place at 07.15 p.m. So, the evidence furnished by Muhammad Fayyaz (PW-5) is good for nothing except to render the testimony of Multan Khan (PW-6) irrelevant and the same has also broken the chain of circumstances against the appellant and his co-accused persons.

14. So far as the evidence of *Wajj Takkar* furnished by Muhammad Banaras (PW-7) who is brother of Multan Khan (PW-6) and paternal cousin of mother of the deceased is concerned, we have noticed that as per his statement, he along with Matloob Hussain (given up PW) heard the sound of firing at 07.15 p.m. as discussed above while according to Muhammad Fayyaz (PW-5) at 07.00 p.m, the deceased was not in the company of the appellant and his co-accused persons (since acquitted), they only saw Khizer Mehmood, appellant along with Azhar and Arshad, not armed with any weapon

going in hurry and on seeing him and Matloob Hussain (given up PW), they changed their way towards the fields and the firing was heard by them from a distance of about 140 yards as is reflected in the site plans, rough (Exh-PN) and scaled (Exh-PF). According to site plans, no obstacle between points No.1 and 3 i.e. the place where the occurrence took place and the place at which Muhammad Banaras (PW-7) and Matloob Hussain (given up PW) saw the accused persons hurriedly going and they heard the sound of firing but neither they asked three of the accused persons qua the fire shots from the side they were coming nor they attracted to the place of firing which was within their view and range and they silently and mysteriously proceeded to their houses situated in the village adjacent to the place of occurrence as maintained by Mumtaz Haider, Patwari Halqa (PW-4). It is not at all believable, as mentioned above, that the people of the village, 100/150 in number approximately reached at the place of occurrence prior to 07.35 p.m. when the complainant came there but despite close relationship with the complainant and deceased, Muhammad Banaras (PW-7) and Matloob Hussain (given up PW) did not come to the crime scene prior to the arrival of the police and dispatch of complaint (Exh-PE) as the complaint (Exh-PE) is not carrying anything about the evidence of last seen and *Wajj Takkar* which is even otherwise not believable. Abid Hussain, complainant (PW-8), during his cross examination, maintains that his statement (Exh-PE) was completed at 11.00 p.m. on 06.05.2008 and that Matloob Hussain (given up PW), Muhammad Fayyaz (PW-5), Multan Khan (PW-6) and Muhammad Banaras (PW-7) reached at the spot at 09.30/09.40 p.m. on 06.05.2008. Had it been so then why the complaint (Exh-PE) is devoid of the information given by the said witnesses. In view of above, we are of the considered opinion that had the said witnesses been truthful witnesses and had they witnessed whatever they stated before the police and the learned trial court, the complaint recorded not earlier than 09.30 p.m. would have been pregnant with the

information provided by them to the complainant. These self negating and contradictory statements of the witnesses reflect that the witnesses are not truthful and they are supporting the afterthought, fabricated and concocted story meant to create incriminating evidence to strengthen the case of an un-witnessed occurrence against the appellant and his co-accused persons (since acquitted).

Moreover, as per statement of Abid Hussain, complainant (PW-8), available at page 54 of the paper book, Agha Ali Asghar (given up PW) and Habibullah (PW-12) accompanied the dead body dispatched by the police at 09.00/09.15 p.m. to the hospital which transpires that both the witnesses who were residents of different villages situated at a distance of 7/8 and 10 kilometers, respectively reached at the place of occurrence on receiving information but unbelievable is that the witnesses of last seen and *Wajj Takkar* Multan Khan (PW-6) and Muhammad Banaras (PW-7), respectively who were admittedly residents of the same village adjacent to the place of occurrence, could not reach the said place prior to 09.30/09.45 p.m.

15. As regards the evidence of extrajudicial confession furnished by Habibullah (PW-12), husband of maternal aunt of the deceased and Shaheen Akhtar (PW-13) we have noticed that per statement of Habibullah (PW-12), the place where the appellant and his co-accused persons went to make extrajudicial confession on 13.05.2008 was the house of Agha Ali Asghar (given up PW) which reflects that it was Agha Ali Asghar, selected by the accused persons to confess their guilt but the prosecution preferred to give up the said witness. Moreover, Habibullah (PW-12), during his cross examination, admits that confession by Azhar (since acquitted) was made in presence of other accused. Per prosecution case, on 16.05.2008, the appellant and his co-accused again went to Shaheen Akhtar (PW-13) and confessed their guilt jointly i.e. in presence of

each other. Moreover, the seat of injuries and number of fire shots have not been narrated in the extrajudicial confession allegedly made by the appellant and his co-accused persons and as per statement of Shaheen Akhtar (PW-13), the accused persons made their statements jointly. The relevant part of his cross examination, for better appreciation, is reproduced as under: -

“...My statement was recorded before the police on 16.5.2008. I have correctly stated before the police that I alongwith Ashfaq Ali was present in my house and that Arshad Mehmood, Khizer Mehmood, Azhar Mehmood, came to my house and told me Ashfaq Ali that they had committed biggest blunder as much that they on 6.5.2008 at about 7:15pm, due to the hand and land committed murder of Babar Hussain on the road side in the limits of Sindhu Syedan. My statement was correct...”

Furthermore, despite their close relationship with the deceased and complainant, none of them tried to get the arrest of the accused persons effected by the police nor they themselves tried to apprehend them despite of the fact that as per their own case, none of the accused including the appellant was armed at that time. In view of above, we are of the considered opinion that the evidence of extrajudicial confession furnished by Habibullah (PW-12) and Shaheen Akhtar (PW-13) is not reliable, trustworthy and the same is after thought and fabricated just to strengthen the prosecution case. Even otherwise, having guidance from the esteemed judgments passed in the case of *Imran alias Dully and another v. The State and others* (2015 SCMR 155), we are of the opinion that the witnesses of last seen and that of *Wajj Takkar* are to be assessed as chance witnesses. Besides being weak type of evidence as declared by the Hon’ble Supreme Court of Pakistan in the case of *Israr Ali v. The State* (2007 SCMR 525), the evidence of *Wajj Takkar*, extra-judicial confession and last seen in the case in hand has also been disbelieved by the learned trial court to the extent of co-accused persons Arshad Mehmood and Azhar Mehmood (since acquitted) and being so, the statements of witnesses have lost integrity and their testimony is not

to be relied upon with regard to the appellant Khizer Mehmood unless amply corroborated by the other pieces of independent evidence. In this regard, reference is made to the venerated judgment of the Hon'ble Supreme Court of Pakistan in the case of Nasir Mehmood and another v. The State (2015 SCMR 423).

There is another important aspect of this case that the person who could be the most relevant and material witness of this case was Waseem who informed the complainant regarding the availability of the deceased smeared in blood at the place from where the dead body was recovered. Similarly, the place of occurrence, as maintained by Muhammad Fayyaz (PW-5) is surrounded by the houses of Qazi Ishfaq, Qazi Naeem, Manzoor Hussain, Muhammad Ali, Qazi Afsar, Waseem, above mentioned and Bagh Ali but none of them was produced during the investigation as well as the trial to verify the case of the prosecution against the accused persons. Likewise, Nazeer, Lumberdar who informed the police telephonically even according to the complainant himself was neither joined with the investigation nor with the proceedings of trial to support the prosecution case which reflects that the prosecution has withheld the material and independent witnesses of the case that leads us to draw an adverse inference against the prosecution.

16. As far as the medical evidence is concerned, it is by now well settled law that medical evidence may confirm the other available evidence with regard to the seat and nature of injury, the kind of weapon used in the occurrence but it would not itself identify the accused. Reference in this respect may be made to the case of Muhammad Tasaweer versus Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Mursal Kazmi alias Qamar Shah and another versus The State (2009 SCMR 1410) and Altaf Hussain versus Fakhar Hussain and another (2008 SCMR 1103).

17. Now coming to the motive part of the occurrence, we have noticed that three fold motive has been narrated by Abid Hussain, complainant (PW-8), not in his first statement (Exh-PE), and by Multan Khan (PW-6). Despite of admission during cross examination by Abid Hussain, complainant (PW-8) that all the three motives alleged by him against the appellant and his co-accused persons (since acquitted) were in his knowledge at the time of recording of his statement (Exh-PE) but the same is bereft of this piece of evidence. Per complainant, (PW-8) and Multan Khan (PW-6), the land which was in possession of the accused persons was sold by the complainant family, father and uncle of the complainant two years prior to the fateful occurrence but neither any *Khasra Girdawari* showing the possession of accused persons at the time of alleged sale to one Ch. Azeem of Sihala nor any proof of sale of any piece of land in possession of the accused persons could be produced during the investigation or during the trial which has also been admitted by the complainant during his cross examination. Moreover, the land which was allegedly in the possession of the accused persons was admittedly neither owned by the deceased nor the same was sold by him. Had it been the motive of the occurrence, the target would have been the complainant or his father and uncle. Similarly, no independent witness supporting the engagement of deceased with the sister-in-law of Azhar Mehmood, co-accused (since acquitted) ever appeared to substantiate this motive part of occurrence. Likewise, no person, despite of close relationship with the complainant, members of Jirga including the father and one Amin, uncle and Bilal, cousin of the complainant, except the complainant joined the investigation or the trial proceedings in this regard. Discussed above renders the alleged motive seriously doubtful.

18. So far as the recovery of crime weapon at the instance of Khizer Mehmood, appellant and positive report of the Forensic

Science Laboratory is concerned, after considering above mentioned aspects of the case, we have also given our due consideration to this piece of evidence and noticed that the relevant column of inquest report where availability of empties near the dead body was to be mentioned is blank despite the fact that as per marginal notes given in scaled site plan (Exh-PF), two empties (P-14/1-2) were taken into possession from point No.1 at a distance of three feet from where dead body was found. Had the empties been recovered at the time of site inspection on 06.05.2008, the relevant column of inquest report (Exh-PB) would have been containing the same information. Similarly, the crime weapon 30 bore pistol (P-1), even according to Abid Hussain, complainant (PW-8) who is the witness of recovery of crime weapon, was recovered from the jointly possessed house of the appellant and both these aspects qua this piece of evidence cast doubt about its veracity.

Above facts lead us to hold that the evidence produced to connect the appellant and his co-accused persons (since acquitted) with the alleged offence of murder of deceased Babar Hussain is not free from doubt being improbable and untrustworthy.

19. As discussed above, there is no direct evidence in this case against the appellant and the prosecution case hinges on the circumstantial evidence. 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 neck of the accused. But if any link of the chain is missing, its benefit must go to the accused. In this regard, guidance has been sought from the judgment of the Apex Court of the country in the case of Sarfraz Khan v. The State (1996 SCMR 188) wherein, at page 192, it was held that: -

“7. ...it is well-settled that circumstantial evidence should be so inter-connected that it forms such a continuous chain that its one end touches the dead body and other neck of the

accused thereby excluding all the hypothesis of his innocence...”.

Same view was reiterated by the Hon’ble Supreme Court of Pakistan in the case of Altaf Hussain v. Fakhar Hussain and another (2008 SCMR 1103) wherein, at page 1105 it was held by the hon’ble Supreme Court as under: -

“7. ....Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the neck of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.”

So, having guidance from the supra referred esteemed judgments when we have a glance over the complete evidence of the instant case, we find so many links missing from the chain of prosecution evidence.

20. There is no cavil to the proposition that it is the prosecution, which has to prove its case against the accused by standing on its own legs and it cannot take any benefit from the weaknesses of the case of the defence. In the instant case, the prosecution remained fail to discharge its responsibility of proving the case against the appellant. It is a settled principle of law that if there is a single circumstance which creates reasonable doubt regarding the culpability of the accused, the same is sufficient to extend its benefit to him, whereas, the instant case is replete with circumstances which have created serious doubts about the prosecution case against the appellant. In the case of Tariq Pervez v. The State (1995 SCMR 1345), the Hon’ble Supreme Court of Pakistan, at page 1347, was pleased to observe as under:-

“5. ...The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”



Even as per saying of the Holy Prophet (p.b.u.h.), the mistake in releasing a criminal is better than punishing an innocent person. Same principle was also followed by the Hon'ble Supreme Court of Pakistan in the case of Ayub Masih v. The State (PLD 2002 SC 1048), wherein, at page 1056, it was observed as under:-

“.... It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.”

21. In the light of above discussion, we are of the view that the prosecution has miserably failed to prove its case against the appellant and his acquitted co-accused Arshad Mehmood and Azhar Mehmood, respondents in Criminal Appeal No.172 of 2014 beyond the shadow of doubt, therefore, we accept **Criminal Appeal No.755 of 2010** filed by Khizer Mehmood (appellant), set aside his conviction and sentence recorded by the learned trial court and acquit him of the charge by extending him the benefit of doubt. He is in custody, be released forthwith if not required in any other case.

22. As regards **Criminal Appeal No.172 of 2014** filed by the complainant against the acquittal of Azhar Mehmood and Arshad Mehmood, co-accused, in view of our above observations, the same is also dismissed *in limine*.

23. **Murder Reference No.94 of 2010** is answered in the **NEGATIVE** and the sentence of death of Khizer Mehmood (convict) is **NOT CONFIRMED**.

(Raja Shahid Mehmood Abbasi) (Syed Shahbaz Ali Rizvi)  
Judge Judge

**Approved for reporting:**

Judge

Judge