

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Ishtiaq Ibrahim  
Justice Ali Baqar Najafi

**Criminal Petition Nos. 467, 441, 442, 468, 469 and 485/2023**  
(Against the judgment/order dated 13.03.2023 passed by Islamabad High Court, Islamabad in J. A. No. 117/2022, Crl. Rev. No. 28/2022, Crl. A. Nos. 111, 123 & 136/2022 and M. R. No. 3/2022)

Zahir Zakir Jaffar	(in Crl. P. 467/2023)
Shaukat Ali Mukadam	(in Crl. Ps. 441 & 442/2023)
Muhammad Jan	(in Crl. P. 468/2023)
Muhammad Iftikhar	(in Crl. Ps. 469 & 485/2023)

Petitioner(s)

Versus

The State and another	(in Crl. Ps. 467-469/2023)
Zakir Jaffar, etc.	(in Crl. P. 441/2023)
Zahir Zakir Jaffer, etc.	(in Crl. P. 442/2023)
Shaukat Ali Mukadam and another	(in Crl. P. 485/2023)

Respondent(s)

**Attendance**

**In Crl. P. No. 467/2023:**

For the Petitioner(s):	Mr. Salman Safdar, ASC Assisted by Mirza Ali Haider (with permission of the Court)
For the Respondent(s):	Mr. Shah Khawar, ASC Mr. Nisar Asghar, ASC

**In Crl. P. Nos. 441-442/2023:**

For the Petitioner(s):	Mr. Shah Khawar, ASC Mr. Nisar Asghar, ASC
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**In Crl. P. Nos. 468-469/2023:**

For the Petitioner(s):	Mr. Humayoun Rashid, ASC
For the Respondent(s):	Mr. Shah Khawar, ASC Mr. Nisar Asghar, ASC

In Crl. P. No. 485/2023:

For the Petitioner(s): Nemo

For the State (in all): Mr. Ghulam Sarwar Nihung, P.G.  
Ms. Chand Bibi, DPG  
assisted by Barrister Abdullah Sarwar

Research Assistance: Mr. Aqib Aman, Research Officer

Date of Hearing: 19 and 20.05.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar. J.** The petitioner-convict, Zahir Zakir Jaffar, alongwith his co-accused were booked in case FIR No. 380 dated 20.07.2021 registered at police station Kohsar, Islamabad under sections 302, 511, 201, 109, 176, 118, 376, 364, 365 and 368 PPC. After a full-fledged trial the Trial Court convicted and sentenced him as under:

- (i) Death under section 302(b) PPC with an order to pay Rs.500,000/- as compensation to the legal heirs of the deceased and in default thereof to undergo six months S.I.;
- (ii) Ten years R.I. under section 364 PPC with fine of Rs.100,000/- and in default thereof to undergo two months S.I.;
- (iii) One year R.I. under section 342 PPC; and
- (iv) Twenty-five years R.I. under section 376(1) PPC with fine of Rs.200,000/- and in default thereof to undergo three months S.I.

His sentences of imprisonments were directed to run concurrently with benefit of section 382-B Cr.P.C.

2. Against his convictions and sentences, Zahir Zakir Jaffar preferred an appeal before the Islamabad High Court. The High Court dismissed his appeal and upheld the convictions and sentences, however, enhanced his sentence from life to death under section 376 PPC. Being aggrieved, the petitioner has approached this Court by filing the petition for leave to appeal.

3. The brief facts of the case, as enumerated in the impugned judgment of the High Court, are as under:

"4. The case of the prosecution, against the accused persons, is that on 20.07.2021 above mentioned FIR was registered on the complaint of Shaukat Ali Mukaddam that his daughter went missing since 19.07.2021 and did not return home, however, at about 10:00 p.m., he received a call from Police Station Kohsar, Islamabad that his daughter has been found dead at the residence of the appellant i.e. House No. 7, Street No. 60, F-7/4, Islamabad.

5. Initially, one Zahir Zakir Jaffar was the sole accused, however, subsequently, supplementary statements were made by the complainant and other persons, name hereinabove, were made accused."

4. During the course of examination under section 342 Cr.P.C. in response to Q.No.22, the petitioner replied as under:

"Q.22:- Why the police registered the case against you and why the PWs deposed against you, what would you say?

Ans:- I am innocent. I and deceased were good friends since long and were in living relationship with mutual consent, same was also in the knowledge of both the families. Deceased participated in our family functions like family members and I was also used to attend her family functions and events. Six months prior from alleged occurrence I was not in contact with deceased and suddenly on 18.07.2021 deceased herself established contact with me and asked to arrange a drug party which I refused, but she proceeded to my house in the night of 18.07.2021 with a heavy quantity of drugs and insisted for the party as she wanted to invite her friends also in the party which she did and her friends also visited my house. My ticket for America was confirmed for 19.07.2021 and I left my house on 19.07.2021 for airport, but she insisted to quit the flight and she will also go to America with me. For that purpose she called her contacts and borrowed money for ticked on telephone. She forcibly returned the taxi driver to my home and I could not resist. On 20.07.2021, in the afternoon she also called her friends for drug party, her friends came to my home as I alone was in my home, my parents and other family members were at Karachi for Eid event. When the party started I became under the intoxication of drugs like all others including the deceased. I got out of senses and after the hours when I got senses I was in a tied up condition in the lounge of my house. After sometime, some persons in police uniform and civil dresses rescued me and I came to know that the Noor has been murdered by someone amongst the participants of drug party. Me and my parents are falsely roped in this case because the unfortunate event happened in my house. It will not

the out of place to mention here that before the arrival of police and others, complainant and his relatives were also present in my house. He may also know better about the incident, but he has not been interrogated by the police in this context. Due to verbal firework of social media, before the recording the prosecution evidence I have been declared guilty and had badly been castigated because the complainant is an influential person and after this alleged occurrence complainant held a press conference alongwith state minister Mr. Shahbaz Gill and that was repulsive beyond words. State machinery alongwith media have been fully utilized against me for getting "**Omnis Indemnatus robe innoxix legi bushabetur**" every uncondemn person is regarded by law is innocent. Due to indulgence of state machinery investigating agency falsely roped my whole family including me in the present case. At the time of alleged occurrence the sitting SSP Islamabad Mustafa Tanveer visited the place of occurrence and found the belongings/luggage of deceased and found heavy quantity of drugs in the belongings/luggage of deceased. When the said SSP disclosed these facts before the media, under the pressure of state machinery he was instantly removed from his post due to above stated disclosure and same is the reason during the course of investigation and trial before this court no belonging/luggage of deceased has been made property of this case instead of the fact that she was present in my house since 18.07.2021 and was out from her house from the same date. As per prosecution own case she proceeded to Lahore for 2-3 days and her belongings/luggage was with her. I am innocent in this case and falsely roped in this case.

5. The prosecution's case is primarily based on circumstantial evidence, including the recovery of the deceased's body from the petitioner's residence, CCTV footage, Punjab Forensic Science Agency matching reports and the recovery of a crime weapon. There is no eyewitness to the occurrence. The High Court played the CCTV footages in the presence of the parties' counsel, and their observations speak as under:

"With respect to the evening in question, it is duly recorded that deceased Noor Mukadam apparently jumped out of the window or some other opening from the 1st floor and landed on the railing at the side of the house; then she limps towards main gate of the residence, whereupon, Muhammad Iftikhar, Chowkidar cross-checks that the gate is locked and proceeds to the basement not paying any heed to the state of affairs and condition of Noor Mukaddam; subsequently, at almost same time or little there-after, the appellant jumps and lands on the floor of the porch and snatches mobile phone of Noor Mukaddam and locks her in the

cabinet near the main gate of the house meant for Chowkidar; he fiddles with the mobile phone of Noor Mukaddam and then opens the cabinet by physically assaulting her, whereupon Muhammad Jan, the Cook does not make any effort to stop the appellant rather pats him on his back. The appellant then drags back Noor Mukaddam inside the house and that is the last seeing of her on CCTV footage. It is pertinent to observe that we, during course of proceedings, also watched from the USB provided by one of learned counsels for the appellant and watched relevant parts of the recording mentioned hereinabove. The referred recording was sent for forensic examination, by the police, and the report thereof is Ex.PBH dated 04.08.2021. According to the report, recording was not edited in any way and the facial comparison of the appellant/person in the recording, when compared with the appellant, was found to be positive, or in other words, it matched with the appellant."

In the presence of said forensic report and especially the fact that now-a-days CCTV footage is not being recorded by any person manually but only is on the disk or computer, no person is required to give evidence with respect to same as it is all technology. Though Mudasir Alam (PW-17) working as Computer Operator in Police Station Kohsar, Islamabad did appear as witness and confirmed that he played the relevant parts from DVR and also made copy of it on the hard disk and handed over the same to the Investigating Officer.

6. The conviction has been contested by Mr. Salman Safdar, the learned counsel for the petitioner. He argues that the prosecution's case is exclusively based on circumstantial evidence, which does not conclusively establish the petitioner's guilt in the absence of any eyewitness. It is also contended that the chain of circumstances is incomplete, and that it is impossible to exclude the possibility that any other individual may have committed the offense. In contrast, Mr. Shah Khawar, with the assistance of the learned Prosecutor General, argued that the prosecution has effectively established an unbroken chain of circumstantial evidence that unerringly points towards the petitioner's guilt.

7. We have reviewed the case record and have heard the petitioner and the complainant for an extended period of time. The following queries arise for our consideration:

- i) In the context of capital punishments, is it permissible for convictions to be predicated on circumstantial evidence?

- ii) In a court of law, what is the admissibility of CCTV footage and its evidentiary value?
- iii) Has the prosecution successfully established its case against the petitioner? If so, what should be the appropriate penalty?

8. In order to adjudicate the question No. (i) supra, it is now widely accepted that punishment can be imposed based on circumstantial evidence; however, it is subject to rigorous standards and principles. Conviction exclusively on the basis of circumstantial evidence is not prohibited by law. Nevertheless, the quality and sufficiency of the evidence are more important than its quantity. The circumstantial evidence must be of a nature that is inconsistent with the accused's innocence. The accused must be linked to the offense by a complete and unbroken chain of circumstantial evidence. The conclusion of guilt must be reached by the collective application of the various pieces of circumstantial evidence, with one end of the chain contacting the deceased individual and the other touching the accused individual's neck. If any link in this chain is absent, the entire chain is disrupted and no conviction can be recorded in such a situation.

9. Reverting to question No. (ii) it is worth mentioning that in the case of *State v Ahmed Omar Sheikh* (2021 SCMR 873), this Court has established a two-step test for the verification of digital evidence regarding CCTV footage. This examination necessitates that the evidence in question be both authentic and pertinent, and that it has been acquired from a trustworthy and dependable source. The list of conditions comprises:

- "i) providing an explanation of how the video was obtained or its source, and
- ii) presenting a forensic report to show that the video has not been altered."

10. It is a well-known fact that technology has become so ingrained in our lives that everyone is utilizing one form of technology or another. Criminals are also employing this in our society, establishing a trail for digital forensics to follow in order to uncover their crimes. It is important to note that we were unable to capitalize on digital evidence for an extended

period of time due to the following factors: Firstly, our courts were previously reliant on traditional methods of evidence collection and presentation. Secondly, digital evidence was admissible only under article 164 of the Qanun-e-Shahadat Order, 1984 ("QSO of 1984), which allows the court to admit any evidence that is obtained through the use of modern devices if it is deemed appropriate. Thirdly, the evidence was considered hearsay. Nevertheless, in light of the growing importance of tracing and identifying the perpetrators, some critical legislative changes were implemented to grant digital evidence the status of primary evidence. The Electronic Transactions Ordinance (ETO) was implemented in 2002 to capitalize on the advantages of information technology. This Ordinance has resulted in modifications to other laws, such as the QSO of 1984, that pertain to the admissibility of digital evidence. It has also designated such evidence as primary evidence. The amendments to the QSO of 1984, as introduced by the aforementioned Ordinance, are as follows:

"2(e): The expression "automated", "electronic", "information", "information system", "electronic document", "electronic signature", "advanced electronic signature" and "security procedure" shall bear the meanings given in Electronic Transactions Ordinance, 2002.

Art. 73 - (*Explanation 3*): A printout or other form of output of an automated, information system shall not be denied the status of primary evidence solely for the reason that it was generated, sent, received or stored in electronic form if the automates information system was in working order at all material times and, for the purposes hereof, in the absence of evidence to the contrary, it shall be presumed that the automated information system was in working order at all material time.

Art. 73 - (*Explanation 4*): A printout or other form of reproduction of an electronic document, other than a document mentioned in Explanation 3 above, first generated, sent, received or stored in electronic form shall be treated as primary evidence where a security procedure was applied thereto at the time it was generated, sent, received or stored.

Art. 46-A: **Relevance of information generated, received or recorded by automated information system.** Statements in the form of electronic documents generated, received or recorded by an automated information system while it is in working order, are relevant facts."

11. Similarly, a proviso was added to article 164 of QSO of 1984 through Criminal Laws (Amendment) Act, 2017 in relation to digital evidence which read as under:

"Provided that conviction on the basis of modern devices or techniques may be lawful."

However, article 164 of the QSO of 1984 stood substituted in the year 2023 through Criminal Laws (Amendment) Act, 2023 and it now reads as follows:

**"164. Production of evidence that has become available because of modern devices or information system, etc.** Depending upon the nature of case and circumstance, the Court may, if deem appropriate, allow to be produced any evidence or witnesses recorded by the Court through modern devices or techniques including video call, viber, skype, imo, whatsapp, facebook messenger, line caller and video conference, etc."

12. The CCTV footage may also be admitted under the "Silent witness" theory, which stipulates that the video itself functions as evidence without the necessity of a sponsoring witness, provided that the footage is authenticated. It provided unbiased and real-time evidence that is frequently more reliable than human testimony, serving as a potent "Silent Witness". In Black's Law Dictionary, 9<sup>th</sup> Edition, at page 1508, 'Silent Witness Theory' is mentioned as under:

"A method of authenticating and admitting evidence (such as a photograph), without the need for a witness to verify its authenticity, upon a sufficient showing of the reliability of the process of producing the evidence, including proof that the evidence has not been altered."

13. The "Silent Witness theory" is a rule of evidence that allows for the admission of photographic video, or other recorded evidence as substantive proof of what it depicts, without the need for an eyewitness to testify that they personally observed the events depicted in the recording (United States v. Harris, 55 M.J.433 (C.A.A.F 2001). Over the last 25 years, the "Silent Witness" theory of authentication has developed in almost all jurisdictions to allow photographs to substantively "speak for themselves" after being authenticated by evidence that supports the reliability of the process or system that produced the photographs. The threshold case for automated camera evidence is *United States v. Taylor* (530 F.2d 639 (5<sup>th</sup> Cir 1976)). In that case, footage recording a robbery that was taken after bank employees were locked in the bank vault was admitted, despite the fact that no one could testify as to the events shown.



14. Here are some prominent case laws from various jurisdictions that deal with the "Silent Witness" theory for CCTV:

### United Kingdom

- 1) The UK Courts have long applied the principles of the "Silent witness" rule for CCTV and other automatically generated evidence. The focus is on the reliability of the process and the integrity of the recording. The law in UK, as to admission of a video (or any other 'electronic evidence'), can be understood from the decision, *State v. Stangle*, 166 N.H. 407, 97 A. 3d 634 (*The State of New Hampshire v. Stephen Stangle*, 2014). It allows the trial court ample discretion as to admission of such evidence and to play or show such evidence before the jury. In this decision, it is pointed out that, in past, courts admitted videos, in evidence, when it was introduced to illustrate the testimony of a witness who observed the same scene viewed by the recording equipment. The "foundational requirement" should have been complied with for admitting such videos. But, where there was no first-hand witness, courts had adopted the "Silent Witness" theory (which speaks for itself) to admit video recordings. This theory allowed "the introduction of the recording as primary, substantive evidence of the events depicted".
- 2) *R v. Atkin and others*, [2009] EWCA Crim 1876: This Court of Appeal case involved the admissibility of CCTV footage from a nightclub. The court reiterated that the primary question is whether the footage is reliable and accurate. While an officer might identify individuals, the footage itself is admissible as a "Silent Witness" once its provenance and integrity are established. The court discussed the need for evidence about the system's operation and the chain of custody.
- 3) *R v. Gubinas and Radavicius*, [2017] HCJAC 59 (High Court of Justiciary, Scotland): This case strongly affirmed that once the provenance of video footage is established, it becomes "real evidence" that a jury can use directly to establish facts, even if it contradicts

witness testimony. It highlighted that the video as a "Silent Witness" can speak for itself.

### Canada

Canadian courts have also embraced the "Silent Witness" theory, acknowledging the inherent reliability of well-maintained recording systems.

*R v. Nikolosvki*, [1996] 3 S.C.R. 1197 (Supreme Court of Canada): This is a foundational Canadian Supreme Court case. The issue was whether a trier of fact could identify the accused solely based on viewing a videotape (security camera footage) without any corroborating testimony identifying the accused as the person depicted. The Supreme Court observed as follows:

"So long as the videotape is of good quality and gives a clear picture of events and the perpetrator, it may provide the best evidence of the identity of the perpetrator. It is relevant and admissible evidence that can by itself be cogent and convincing evidence on the issue of identity. Indeed, it may be the only evidence available. For example, in the course of a robbery, every eyewitness may be killed yet the video camera will steadfastly continue to impassively record the robbery and the actions of the robbers. Should a trier of fact be denied the use of the videotape because there is no intermediary in the form of a human witness to make some identification of the accused? Such a conclusion would be contrary to common sense and a totally unacceptable result. It would deny the trier of fact the use of clear, accurate and convincing evidence readily available by modern technology. The powerful and probative record provided by the videotape should not be excluded when it can provide such valuable assistance in the search for truth. In the course of their deliberations, triers of fact will make their assessment of the weight that should be accorded the evidence of the video-tape just as they assess the weight of the evidence given by viva voce testimony." (pr. 22, p. 1210)

"It is clear that a trier of fact may, despite all the potential frailties, find an accused guilty beyond a rea-sonable doubt on the basis of the testimony of a single eyewitness. It follows that the same result may be reached with even greater certainty upon the basis of good quality video evidence." (pr. 23, p. 1211)

"Once it is established that a videotape has not been altered or changed, and that it depicts the scene of a crime, then it becomes admissible and relevant evidence. Not only is the tape (or photo-graph) real evidence in the sense that that term has been used in earlier cases, but it is to a certain extent, testimonial evidence as well. It can and should be used by a trier of fact in determining whether a crime has been committed and whether the accused before the court committed the crime. It may indeed be a silent, trustworthy, unemotional, unbiased and accurate witness who has complete and instant recall of events. It may pro-vide such strong and convincing evidence that of itself it will demonstrate clearly either the innocence or guilt of the accused." (p. 1215)

### United States

In the U.S., the “Silent Witness” theory is a well-established method for authenticating photographic and video evidence.

- 1) *United States v. Rembert*, 863 F.2d 1023 (D.C. Cir. 1988): This is a frequently cited federal case. It involved ATM photographs. The court affirmed that ATM photographs were properly admitted under the “Silent Witness” theory, even without an eyewitness to the events, because sufficient evidence established the reliability of the ATM camera and its functioning. The court emphasized that the photos were admissible as “substantive evidence” because of the way they were produced by a reliable system.
- 2) *Fisher v. State*, 7 Ark. App. 1 (1982): Often cited as one of the earliest explicit recognitions of the “Silent Witness” theory. The court allowed the admission of photographs from an automatic bank camera without a witness who had actually observed the events depicted in the photos, based on testimony about the camera’s operation, security and development process.

15. After evaluating the case in question in accordance with the aforementioned principles, we have determined that the incident occurred within the petitioner’s residence and that the deceased Noor Mukadam’s body was recovered from the scene. The prosecution had also produced and recorded CCTV footage, hard disk, and DVR as Ex.P-13 and Ex.P-14. In these recordings, the petitioner is observed physically assaulting her. The record indicates that the referred recording was submitted to the police for forensic examination, and the report thereof, exhibit PBH dated 04.08.2021, was also produced. This report confirms that the recording was not edited in any way, and the facial comparison of the petitioner was positive and matched with the petitioner. The recording was automatically generated without human intervention. The DNA report is also on record to establish that the deceased was subjected to sexual assault, in addition to the recovery of the crime instrument, which was stained with the blood of the deceased. The petitioner has not only neglected to provide any

explanation regarding the deceased's presence in his residence and the ensuing recovery of the deceased's body from his premises, but he has also failed to provide any evidence to substantiate his claim. The absence of an explanation for the circumstances and the petitioner's presence at the site of the crime are critical factors that must not be disregarded. After conducting a thorough examination of the evidence on record, both courts below reached a unanimous conclusion that the petitioner's guilt had been fully established. Upon our own independent assessment of the evidence, we have been unable to adopt a stance that differs from the concurrent stance of the courts below.

16. The digital evidence has now assumed a crucial role in the courts of law while administrating justice. In the recent past such evidence was treated as hearsay and secondary evidence in our country, however, as stated above, keeping in view its importance, particularly in tracing and identifying the culprits, required changes were made in the relevant laws in order to give the status of primary evidence to the digital evidence, thus, being primary evidence, it is admissible. The CCTV footages, if pass the two-fold test, as per dictum laid down by this Court in the case of *Ahmad Omar Sheikh* (supra), then it does not require any corroboration being primary evidence.

17. So far as the quantum of sentence is concerned, we have observed that the petitioner and deceased were close friends and the petitioner has committed the murder of deceased in a gruesome manner while decapitating her besides causing injuries on the chest of the deceased with knife blows mercilessly. The petitioner has appeared to us to be desperate person evoking no sympathy with us in the matter of his sentence of death, as such, his petition for leave to appeal is converted into appeal and disposed of in the following terms:

- (i) his conviction and sentence of death under section 302(b) PPC is maintained;
- (ii) his conviction under section 376(1) PPC is maintained, however, his sentence of death is converted to that of imprisonment for life;

- (iii) his conviction and sentence under section 364 PPC is set aside and he is acquitted of the said charge; and
- (iv) his conviction and sentence under section 342 PPC is maintained; and

18. As far as the petitions filed by co-convicts, Muhammad Iftikhar and Muhammad Jan, are concerned, whilst maintaining their convictions, they are converted into appeals and partly allowed, but by taking a lenient view their sentences of imprisonment are reduced to already undergone. They be released forthwith if not required to be detained in any other case.

19. With regard to the petitions filed by the complainant for enhancement of sentence and against acquittal of the convicts, we are of the opinion that as a consequence of the detailed discussion above we do not see any reason to interfere in the impugned judgment, therefore, the said petitions are dismissed and leave to appeal is refused.

Judge

Judge

I agree with the judgment but will give my additional note.

Judge

ISLAMABAD  
20.05.2025  
(Farukh/Mahnoor Omer, LC)

Approved for Reporting