IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah
Mr. Justice Salahuddin Panhwar

CRIMINAL PETITION NOS.532, 444-L & 445-L OF 2018
(On appeal against the judgments dated 09.04.2018 passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur in Crl.A.Nos.304, 305, 313 & M.R.No.39 of 2014/Bwp.)

Zunair Younas *(Crl.P.532/18)* ..... Petitioner(s)
Nasim Akhtar *(Crl.Ps.444-L & 445-L/18)*

VERSUS

The State thr. P.G, Pb. & another *(in all cases)* ..... Respondent(s)

For the Petitioner(s) *(Crl.P.532/18)*	:	Ms. Bushra Qamar, ASC
For the Petitioner(s) *(Crl.Ps.444-L & 445-L/18)*	:	Mr. Naveed Ahmad Khawaja, ASC
For the State	:	Mr. Irfan Zia, Addl. P.G., Pb.
Assistance	:	Muhammad Subhan Malik (Judicial Law Clerk)
Date of Hearing	:	22-04-2025

JUDGMENT

Salahuddin Panhwar, J.

Crl.P.No.532 of 2018: The brief facts culminating in the present criminal petition are that the Petitioner, Zunair Younas, along with his co-accused, Ali Hassan, was tried by the learned Sessions Judge, Bahawalpur, in consequence of registration of First Information Report No.243 of 2013 dated 12.08.2013, under Sections 302, 367-A, and 34 of the Pakistan Penal Code, 1860 (hereinafter "PPC"), at Police Station City Yazman, District Bahawalpur. The accusation against the petitioner and his co-accused was of committing unnatural offence (*sodomy*) and thereafter murdering the son of the complainant, namely Nauman Hanif.

2. Upon conclusion of the trial, the learned Sessions Court, vide judgment dated 13.06.2014, convicted the petitioner under Section 302(b) read with Section 34 PPC and sentenced him to death. Co-accused Ali Hassan was similarly convicted under

Section 302(b) read with Section 34 PPC, albeit sentenced to imprisonment for life. In addition, both convicts were directed to pay compensation of Rs.200,000 each to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure, 1898 (hereinafter "CrPC"), and in default thereof, to undergo six months' simple imprisonment. The benefit of Section 382-B CrPC was extended to co-accused Ali Hassan.

3. The matter was thereafter taken up in appeal. The learned High Court, while maintaining the conviction of the petitioner Zunair Younas, was however persuaded to alter the sentence of death into imprisonment for life. The sentence of compensation and the sentence in default thereof were maintained. The benefit of Section 382-B CrPC was also extended to the petitioner. However, co-accused Ali Hassan was acquitted by the learned High Court by extending to him the benefit of doubt.

4. The prosecution's version, as recorded in the judgment rendered by the learned High Court, may be profitably reproduced for clarity:

> ***"4. Brief facts of the case as given by the complainant Muhammad Hanif (PW-3) in his "complaint" (Ex.PG), on the basis of which the formal FIR (Ex.PG/A) was chalked out, are that he (complainant) was resident of Ward No.4 of Yazman City and was a Sub-Inspector in Traffic Police, Bahawalpur. On Sunday (11.08.2013), at about 8.20 p.m, the complainant along with Abdul Razzaq (PW-4), Javed Akhtar, Muhammad Anwar (PWs since given up) and Nauman Hanif (deceased) aged about 15/16 was sitting in front of the Bhatick of his house on cots, as it was Eid day and they were gossiping. The electric bulb, installed outside the Bhatick was illuminated. In the meanwhile, Saqib Khursheed (accused since tried & convicted separately as juvenile), along with Zunair Younas and Ali Hassan (petitioners), while boarding a motorcycle bearing registration No.BRL/4561, came there, who often used to visit the son of the complainant. Saqib Khursheed (co-accused) asked Nauman Hanif (deceased) to accompany them to Gulshan Park. At the time of departure, Nauman Hanif (deceased) was wearing a gold locket weighing one tola, one gold ring having name "Nauman", engraved on it, Omax wrist watch, purse containing photo of the complainant, photo copies of the identity cards of the complainant and Abdul Razzaq (PW-4), visiting cards and cash amount of Rs.1500/-. The deceased was also in possession of a cell phone Nokia having***

Sim No.0321-6849292. Nauman Hanif (deceased) accompanied the accused on his own motorcycle which was having red colour and the same was without registration number. It was further alleged by the complainant in the complaint that Nauman Hanif (deceased) did not return back for a considerable period, whereupon he (complainant) made a telephone call on the mobile phone of Nauman Hanif (deceased) but the same was switched off. The complainant along with the PWs became worried and he reached in Gulshan Park for the search of his son but could not find him. The complainant also alleged in the complaint that he contacted with the relatives of the accused, who told that the accused were also missing from their houses. During the search of Nauman Hanif (deceased), it came to the knowledge of the complainant that the accused were of bad character, whereupon, the complainant came to this conclusion that his son has been abducted and murdered by the accused after committing sodomy with him."

5. Learned counsel for the petitioner has raised several grounds before this Court. At the outset, it was submitted that the entire occurrence was unwitnessed, and that the prosecution's case is founded solely upon circumstantial evidence. Such evidence, by its nature, is considered inherently fragile and must be scrutinized with greater caution. Learned counsel contended that the statements of the prosecution witnesses are replete with material contradictions and embellishments which appear to have been overlooked by the learned Courts below. It was further urged that the medical evidence stands in conflict with the ocular and circumstantial narrative, thereby rendering the prosecution's case doubtful.

6. It was next contended that both the alleged motive and the recoveries have been disbelieved by the learned Courts below. This, according to learned counsel, causes an irreparable dent in the prosecution's case. Particular emphasis was placed on the fact that co-accused, who were attributed with identical roles and implicated through the same set of evidence, have been acquitted whereas the petitioner alone has been convicted. It was lastly urged that the reasoning adopted by the learned High Court to sustain the conviction is conjectural and strained, thereby warranting interference by this Court.

7. Conversely, learned Law Officer, ably assisted by learned counsel for the complainant, opposed the petition with

vehemence. It was submitted that the prosecution witnesses bore no animosity against the petitioner which might have led to his false implication. The evidence produced by the prosecution was described as cogent, credible, and sufficient to sustain the conviction. On this premise, it was urged that the impugned judgment does not merit any interference by this Court.

8. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

9. There is no denial to this fact that the instant occurrence wherein allegedly sodomy was committed with one Nauman Hanif, son of the complainant, and he was subsequently done to death, was based upon circumstantial evidence. To bring home the guilt of the petitioner, the prosecution relied upon circumstantial evidence in the shape of (i) motive (ii) last seen evidence produced by Muhammad Hanif, complainant (PW-3), Abdul Razzaq (PW-4), (iii) recovery of dead body and other articles belonging to the deceased on the pointation of the petitioner. As per the prosecution story, on **11.08.2013** at about **08:30 pm**, Nauman Hanif deceased along with complainant Muhammad Hanif (PW-13), his brother-in-law namely Abdul Razzaq (PW-4) were present in his house. In the meanwhile, the petitioner along with co-accused came to the house of the complainant and took the deceased with them on the pretext of going to a park. When the deceased did not return home after a considerable period of time, the complainant started his search. During the search, the petitioner and the co-accused were also found missing from their houses and as such it also transpired to the complainant that the accused are of bad character. Whereupon, the complainant reached to the conclusion that his son has been abducted and murdered by the accused after committing sodomy with him. The prosecution has specifically alleged a motive of committing sodomy with the deceased. To prove the said motive, Dr. Ajmal Javed (PW-1) was produced. According to the said Doctor, six anal swabs were taken, sealed and sent to the Chemical Examiner and Director of Bimolecular Department, University of Punjab, Lahore, for DNA Test and detection of semen. However, neither any report of the DNA Test or the report of the Chemical

Examiner has been placed on record, which means that the prosecution has withheld the best evidence, which could prove the motive part of the prosecution story.

10. Before proceeding further, it is necessary to delineate the doctrinal basis and evidentiary scope of Article 40 of the Qanun-e-Shahadat Order, 1984 (hereinafter "QSO"), particularly in the context of custodial disclosures made during investigation. The said provision runs asunder: -

> ***"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved".***

Article 40 QSO, though succinct in its text, embodies a distinct and carefully delineated exception to the general exclusionary provisions found in Articles 38 and 39 of QSO. Whereas the latter provisions proscribe reliance on confessional statements made either to a police officer or while in police custody unless made in the presence of a Magistrate, Article 40 QSO permits a qualified and narrow admission into evidence of only that portion of a statement which directly relates to a fact discovered in consequence thereof. This limited admissibility is not predicated on the veracity of the statement per se, but on the objective and verifiable consequence that ensues from it.

11. This principle finds conceptual support in common law jurisprudence, particularly in what has been described as the doctrine of confirmation by subsequent facts. **Dean Wigmore**[1] formulated this doctrine to explain the probative value of a confession which, although otherwise inadmissible, leads to the discovery of real and material evidence. According to Wigmore, "*the doctrine was that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material points, the possible influence which through caution had been attributed to the improper inducement is seen to have been nil, and the confession should be accepted*".

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[1] (Wigmore, Evidence in Trials at Common Law, Chadbourn Revision, 1970, Vol. III, section 856)

Commentators Cowen and Carter[2] also recognized this principle and referred to it as the doctrine of confirmation by consequently discovered facts. This approach reflects the underlying rationale of Article 40 of QSO, where the discovery of a fact in consequence of a statement serves to validate that limited portion of the statement which led to the discovery. The confirmatory nature of the discovered fact enhances the reliability of that specific part of the information, rendering it admissible within the limits prescribed by law.

12. This carefully crafted exception must also be read harmoniously with the procedural safeguards under Sections 161 and 162 Cr.P.C. Section 161 Cr.P.C. authorizes the police to record statements of persons acquainted with the facts of the case, whereas Section 162 imposes an evidentiary bar against their substantive use during trial. Statements under Section 161 Cr.P.C. are, therefore, not admissible except for the limited purpose of contradiction under Article 140 of QSO. In contrast, Article 40 QSO carves out a limited evidentiary window, not to admit the statement in its entirety, but only to the extent that it leads to the discovery of a relevant fact, such as the recovery of a weapon or article, and only that fragment of the disclosure which is causally connected to the said recovery becomes admissible.

13. Firstly, the term "***fact***" as used in the law of evidence includes both physical and psychological states or mental conditions. *Secondly*, a critical distinction must be drawn between the term's "**discovery**" and "**recovery**", which are often mistakenly used interchangeably. According to Black's Law Dictionary, "**discovery**" refers to the act or process of finding or learning something that was previously unknown, whereas "***recovery***" means the regaining or restoration of something lost or taken away. For instance, where an accused discloses, "*I have kept the firearm concealed behind the old house in a heap of wood*," the fact discovered is not merely the firearm, but the accused's knowledge of its location and act of concealment. The discovery thus lies in the disclosure of the place and manner in which the article is hidden. Although an object may constitute a

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[2] (**Z. Cowen and P.B. Carter, *Essays on the Law of Evidence*, 1956, Chapter II, page 62**)

"***fact***" in itself, discovery under Article 40 entails a broader cognitive element than simple recovery.

14. We have also observed with concern that law enforcement agencies frequently frame charges against accused persons based on recoveries that are *inconsequential* or *unsupported* by proper procedural documentation. In many such cases, there is a glaring absence of signed written statements by the Investigating Officer, attested by independent witnesses (*mashirs*), and no corresponding departure entry from the relevant police station. These lapses severely compromise the credibility of the recoveries and open the door to fabrication and abuse. While an eventual acquittal may follow, there exists no mechanism to compensate the accused for the trauma and deprivation endured throughout the investigation and trial. This systemic malaise demands rectification to protect individual rights and ensure that investigative procedures meet the standards of due process.

15. It needs to be emphasized that the jurisprudence under Article 40 QSO does not lend itself to an expansive reading. The evidentiary admissibility permitted under this Article must not be employed as a device to sidestep the overarching protections enshrined in Articles 38, 39 QSO and Section 162 Cr.P.C. Even where a discovery is made on the basis of such a disclosure, the resultant recovery must be independently evaluated on the touchstone of *credibility*, *reliability*, and *corroboration* through forensic or circumstantial material. The limited *admissibility* under Article 40 QSO does not, by itself, prove guilt, but only allows a fact to be brought on record which might, when considered in conjunction with other evidence, contribute to the chain of circumstances (**Zafar Ali Abbasi v. Zafar Ali Abbasi, 2024 SCMR 1773; Akhtar v. Khwas Khan, 2024 SCMR 476; The State v. Ahmed Omar Sheikh, 2021 SCMR 873; Mufti Kafayat Ullah v. The State, 2020 SCMR 1248; Fazal Subhan v. The State, 2019 SCMR 1027; Hayatullah v. The State, 2018 SCMR 2092; Gul Muhammad v. The State, 2011 SCMR 670; Mst. Askar Jan v. Muhammad Daud, 2010 SCMR 160**).

16. In order for this provision to be validly invoked, the following essential elements must be satisfied:

(i) *The accused must be in lawful police custody in that particular case at the time of making the disclosure. A voluntary disclosure made outside the custodial context does not attract the operation of Article 40.*

(ii) The information must be specific and must distinctly relate to the fact discovered. Generalised or vague statements are not covered; the discovery must be directly traceable to the information furnished.

(iii) There must be a tangible discovery of a material fact, such as the recovery of an object, article, weapon, or place, which was previously unknown to the investigating agency.

(iv) There must be a clear causal link between the disclosure and the discovery. The fact must be discovered as a direct and immediate consequence of the information provided by the accused.

(v) Only that portion of the statement which relates distinctly to the fact discovered is admissible. The remainder of the statement, including any confessional or incriminating parts not tied to the discovery, remains inadmissible.

(vi) The recovery must be genuine, verifiable, and documented through credible and preferably independent witnesses. The authenticity of the discovery is not presumed and must be established through cogent evidence.

(vii) The evidentiary value of the discovery must be assessed in conjunction with other corroborative evidence. A discovery alone, even if admissible, is insufficient to sustain conviction unless it fits into an unbroken chain of circumstances.

17. These principles form the doctrinal boundary of Article 40 QSO and serve to preserve the delicate balance between the probative force of custodial discoveries and the fundamental safeguards against compelled self-incrimination and misuse of police authority. Any departure from these safeguards would render the resultant discovery legally infirm and inadmissible for the purposes of conviction.

18. In view of above touchstone, we have analyzed the evidence with regard to recoveries under Article 40 of QSO 1984. It is pertinent to mention that, prosecution has attempted to rely on the alleged disclosure made by the petitioner which led to the recovery of the dead body and the pistol, the evidentiary value of such recoveries is substantially diminished. As discussed earlier, the recoveries lack corroboration from independent witnesses and the location of recovery being the petitioner's own residence shared with other individuals casts a shadow of doubt over the

exclusivity and authenticity of the disclosure. The absence of transparency in the recovery proceedings and the lack of timely documentation further weakens the probative worth of such evidence. Therefore, even under the restricted admissibility permitted by Article 40 of the Qanun-e-Shahadat Order (QSO), the recoveries in this case, along with the ballistics experts' positive report, do not reach the threshold of credibility necessary to uphold a conviction. As a result, the firearms expert's report cannot be relied upon, in view of the principles laid down by this Court in ***Yaqub Shah v. The State (1995 SCMR 1293)***.

19. As to the ballistic evidence, the chronology of the recoveries is riddled with serious inconsistencies. According to the Investigating Officer, the petitioner was arrested on **13.08.2013**, yet the recovery of the alleged murder weapon, a pistol, took place only on **22.08.2013**, after an unexplained delay of **nine days**. Even more troubling is the fact that the pistol and accompanying bullets were dispatched to the forensic laboratory only on **09.09.2013**, a further delay of **18 days**. The crime empties were sent on **19.08.2013**, six days after their supposed recovery. The prosecution has failed to provide a plausible explanation for these delays, which justifiably raise concerns about potential manipulation and the planting of evidence, particularly in light of the principles established in ***Iftikhar Hussain and Others v. The State (2004 SCMR 1185)***.

20. In addition, the recovery of a gold locket and an Omax wristwatch, said to belong to the deceased, is not substantiated through any reliable identification marks, nor was the place of recovery, an iron box in the petitioner's home, under his exclusive control. It is further admitted that other family members were residing in the same premises. During cross-examination, the complainant conceded that the deceased had handed over his purse to his maternal uncle before departure, yet the record reflects that the same purse was recovered from a co-accused, indicating a serious contradiction in the prosecution's version.

21. We now turn to the second limb of the prosecution's case, namely the last seen evidence. It is the consistent stance of the prosecution that the deceased was last seen in the company of the petitioner and his co-accused on the evening of 11.08.2013

at around 8:30 p.m., when he was allegedly taken from outside his residence on the pretext of visiting a public park. This assertion is primarily supported by **Muhammad Hanif (PW-3)**, the complainant and father of the deceased, and **Abdul Razzaq (PW-4)**, his maternal uncle.

22. While the principle of ***"last seen together"*** is recognised in the jurisprudence of this Court as a relevant circumstance, it is equally well-settled that such evidence must satisfy strict legal scrutiny before it can be relied upon as a basis for conviction. In order for this doctrine to have probative value, it must be established that (i) the accused and the deceased were last seen together in such proximity of time and place to the occurrence that no possibility of the deceased having met any other person in the interval can reasonably be entertained (***Muhammad Abid v. The State*, PLD 2018 SC 813; *Fayyaz Ahmad v. The State*, 2017 SCMR 2026; *Akbar Ali v. The State*, 2007 SCMR 486**), and (ii) the time of death must be established with sufficient medical or circumstantial clarity so as to correlate with the alleged last seen incident (***Muhammad Abid v. The State*, PLD 2018 SC 813; *The State v. Ahmed Omar Sheikh*, 2021 SCMR 873**). Although this category of circumstantial evidence may, under appropriate conditions, contribute to the chain of guilt, it remains a weak type of evidence and cannot form the sole basis for a conviction unless it is corroborated by other independent and credible material (***Qaisar Mehmood v. The State*, 2021 SCMR 662; *Fayyaz Ahmad v. The State*, 2017 SCMR 2026; *Akbar Ali v. The State*, 2007 SCMR 486**). Courts have repeatedly emphasised that the evidentiary value of last seen evidence depends on the presence of cogent reasons for the deceased to be in the company of the accused, the proximity of time and location of the alleged sighting to the occurrence, the absence of delay in reporting, and the exclusion of the possibility of third-party involvement (***Fayyaz Ahmad v. The State*, 2017 SCMR 2026**). It has also been affirmed that where the last seen witness is a close relative of the deceased, additional corroboration may be required (***Akbar Ali v. The State*, 2007 SCMR 486**). In the absence of such corroboration, and particularly where the prosecution evidence suffers from contradictions or delay in disclosure, the benefit of doubt must

accrue to the accused (***Muhammad Abid v. The State*, PLD 2018 SC 813; *Akbar Ali v. The State*, 2007 SCMR 486**).

23. In the present case, the alleged time of departure of the deceased from his residence is around **8:30** p.m. on **11.08.2013**. However, the prosecution has failed to determine with clarity the exact time or proximate window of death through medical or forensic evidence. No post-mortem interval has been credibly established by the medical officer. In the absence of such determination, the doctrine of last seen cannot be applied with precision. Mere assertion that the deceased left with the petitioner at a certain time, without medically determining the time of death, creates a temporal gap which renders the inference speculative.

24. Moreover, it is evident from the record that the alleged eye-witnesses to the last seen incident were close relatives of the deceased, and their testimony, though not disqualified merely on that ground, ought to have been corroborated by independent or circumstantial material, especially when the prosecution case rests entirely on circumstantial evidence. No such corroboration is available on the record. Additionally, the conduct of the complainant and other prosecution witnesses, following the disappearance of the deceased, raises pertinent questions. Despite claiming to have witnessed the petitioner taking the deceased away, no immediate steps were taken to inform the police or initiate search efforts based on the alleged knowledge. This delay in reporting and initiating a formal complaint further weakens the credibility of the last seen evidence.

25. The prosecution's medical and forensic evidence, including the post-mortem report and ballistic expert testimony, fails to withstand judicial scrutiny. The medical officer was unable to determine the time of death with scientific precision, undermining the reliability of the evidence. The allegation of sodomy lacks corroboration due to the absence of a DNA report or chemical examiner's findings, despite the prosecution's claim that anal swabs were submitted for testing. The critical DNA profiling and chemical report that could have supported the charge of unnatural lust are missing. Under Article 129(g) of the Qanun-e-Shahadat Order, 1984, the Court can infer that the

unproduced evidence would be unfavorable to the party withholding it. Therefore, it is reasonable to conclude that the missing documents would not have supported the prosecution's case. This interpretation is consistent with the precedent set by this Court in the case of ***Abdul Qadeer v. The State (2024 SCMR 1146)***.

26. It is also apposite to observe that the co-accused, implicated inter alia by the alleged recoveries of personal effects of the deceased, including a purse, photograph, engraved gold ring, identity card photocopies, visiting cards, cash, and a motorcycle, have been acquitted by the learned High Court on account of insufficient evidence. Significantly, when specifically queried, neither the learned Law Officer nor the counsel for the complainant could differentiate the petitioner's case from that of the acquitted co-accused, notwithstanding the identical evidentiary substratum. This Court has consistently espoused the principle that where the prosecution evidence has been found unreliable or insufficient by the High Court qua certain accused sharing an identical role, the conviction of a co-accused resting upon the same evidence cannot be sustained. In support thereof, reliance is placed on the judgment in ***Muhammad Shafi alias Kuddoo v. The State and others (2019 SCMR 1045)***.

27. There is also no evidence on record to suggest that any identification test of the recovered articles was conducted by the Investigating Officer. No judicial identification was arranged for the locket, wristwatch, or the motorcycle, and no distinctive features were noted in the recovery memos. In cases where recovery is based on discovery under Article 40 of QSO, it is imperative that such objects be proved to be linked to the crime through reliable identification or expert corroboration. The failure to do so renders the said recoveries devoid of probative force. Furthermore, the Investigating Officer failed to associate any respectable witness of the locality under Section 103 of the Code of Criminal Procedure, 1898, a statutory requirement meant to ensure transparency in police recovery proceedings. The cumulative effect of these omissions erodes the reliability of the prosecution's case.

28. In such circumstances, where the motive has not been established, the last seen evidence is unreliable, the recoveries are doubtful, and the medical and forensic links are either suppressed or infirm, the chain of circumstantial evidence stands fractured. It is a trite principle of criminal law that where the prosecution's case rests entirely on circumstantial evidence, each link in the chain must be proven to the exclusion of every reasonable doubt. The failure to establish any one link is sufficient to vitiate the entire case.

29. In view of the foregoing discussion, particularly the legal limitations of Article 40 QSO as sketched earlier, and the prosecution's failure to satisfy the strict conditions for admissibility and reliability of custodial recoveries, we are of the considered opinion that the chain of circumstances necessary for a conviction has not been satisfactorily established. The benefit of doubt, which is a fundamental right of the accused, must accordingly be extended to the petitioner. (**Mst. Asia Bibi Vs. The State, PLD 2019 SC 64; Tariq Pervaiz v. The State, 1995 SCMR 1345; Ayub Masih v. The State, PLD 2002 SC 1048; Abdul Jabbar vs. State, 2019 SCMR 129**)

30. For what has been discussed above, this petition is converted into appeal, allowed and the impugned judgment is set aside. The petitioner is acquitted of the charge. He shall be released from jail unless detained or required in any other case.

31. Before parting with this judgment, we deem it imperative to address a matter of serious institutional concern that this case has brought to light. The case at hand exemplifies a broader systemic malaise in the investigative processes employed by law enforcement agencies, particularly where custodial disclosures and resultant recoveries are cited as primary evidence. We have noted with grave disquiet that, in numerous criminal prosecutions, the Investigating Officers routinely rely on recoveries and discovery statements which lack basic procedural integrity, are unsupported by verifiable documentation, and are often uncorroborated by independent evidence. These shortcomings not only compromise the fairness of trial proceedings but also expose innocent individuals to grave miscarriages of justice.

32. The practice of producing recovery memos without signed statements from the Investigation Officer or without attestation by witnesses, and without corresponding departure entries from the police station, undermines the credibility of police evidence. In many cases, the prosecution has failed to produce even a written disclosure by the accused or a contemporaneous record of the circumstances surrounding the alleged discovery. The result is a troubling pattern where recoveries are manipulated or exaggerated to secure convictions, leading not only to wrongful incarceration but also to erosion of public confidence in the criminal justice system.

33. Pakistan's judicial system, though empowered to rectify individual injustices through acquittals, remains institutionally ill-equipped to address the profound harms, irreversible trauma, reputational erosion, financial ruin, and unjust deprivation of liberty, inflicted on accused individuals during protracted trials, often precipitated by flawed investigations. These systemic failures stem from entrenched deficiencies, including the absence of statutory mechanisms to ensure investigational transparency and a lack of professional accountability within law enforcement, which collectively corrode public trust and undermine the integrity of the justice framework. Addressing these gaps transcends procedural reform; it constitutes a constitutional obligation under Articles 4, 9, 10-A, and 14, which enshrine due process, fair trial, and the preservation of human dignity. A justice system's legitimacy hinges not on punitive severity but on equitable, rigorous processes that safeguard accused individuals' rights against institutional expediency, thereby reinforcing the critical balance between state authority and individual liberty.

34. In consideration of the documented systemic disparities, this Court is duty-bound to act in order to prevent the continued occurrence of institutional practices that fail to meet established legal and ethical standards. To remain inactive or neutral in the face of recurrent investigative and procedural deficiencies would contravene our constitutional obligations to ensure justice and equality under the law. Therefore, this Court in view of criterion as outlined in Para 16, judicial propriety demands that: the following measures to ensure adherence to due process,

safeguard the principles of justice, and uphold the equitable application of the rule of law:

(i) Inspectors General of Police of all Provinces and the Islamabad Capital Territory shall ensure that all disclosure statements leading to the discovery of facts under custody are:

- reduced to writing;
- signed by the Investigating Officer;
- attested by at least two independent witnesses; and
- recorded with a corresponding departure entry from the relevant police station.
- These documents must be placed on record and produced during trial proceedings.

(ii) The Police Rules of each province and territory shall be amended, in consultation with the appropriate executive and legislative stakeholders, to institutionalize the above-mentioned procedural safeguards.

(iii) The Prosecutor Generals of all Provinces and the Islamabad Capital Territory shall ensure dissemination of this judgment to all public prosecutors under their jurisdiction. Prosecutors must scrutinize the case files received under Section 173 Cr.P.C. for compliance with these requirements and advise the Investigating Officers accordingly.

(iv) The Registrars of all High Courts are directed to circulate this judgment to all Criminal Courts and Special Courts functioning under their administrative control for guidance and judicial implementation.

(v) The Legislature is earnestly urged to consider appropriate statutory amendments to codify the procedural safeguards for custodial disclosures and recoveries, ensuring mandatory documentation, transparency, and accountability.

(vi) The Office of this Court is directed to circulate this judgment without delay to the relevant ministries, departments, and authorities.

CRIMINAL PETITION NO.444-L OF 2018:

35. In view of the judgment passed in the connected Criminal Petition No.532/2018, this petition seeking enhancement of the sentence awarded to the petitioner/convict Zunair Younas has become infructuous and is dismissed accordingly.

CRIMINAL PETITION NO.445-L OF 2018:

36. This petition challenges the High Court's judgment acquitting co-accused Saqib Khursheed. We have reviewed the case and find that the High Court provided sound reasons for the acquittal. The acquittal was warranted due to significant weaknesses in the prosecution's evidence, specifically its failure to prove the charge beyond a reasonable doubt. The appellant has not demonstrated any legal error, perversity, or misinterpretation of evidence in the challenged judgment that would justify intervention by this Court. This is consistent with the principle established in ***Muhammad Riaz v. Khurram Shehzad and another (2024 SCMR 51)***, which holds that in an appeal against an acquittal, the Court should generally not interfere and should give substantial weight to the findings of the acquitting Court, recognizing the reinforced presumption of innocence. The High Court's judgment is well-reasoned, based on the evidence presented, and is therefore unassailable. Consequently, this petition lacks merit and is dismissed, and leave to appeal is refused.

Judge

Judge

Judge

B-III
Islamabad,
22.04.2025
"Approved for reporting"
Muhammad Subhan Malik, Abdul Wasay/-