

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

**PRESENT:**

Mr. Justice Mr. Manzoor Ahmad Malik  
Mr. Justice Mr. Sardar Tariq Masood  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No.67-L of 2020 and**  
**Criminal Petition No.1133-L of 2014**

*(Against the judgment dated 17.10.2014 passed by the Lahore High Court Lahore in CrI Appeal No.280 of 2011 along with CST No.10-T of 2011)*

***Shaban Akhtar***

*(in Cr. A. No.67-L/2020)*

***Umar Daraz***

*(in Cr.P. No.1133-L/2020)*

...Appellant(s)

**Versus**

***The State through Prosecutor General Punjab***

*(in both cases)*

...Respondent(s)

For the Appellant(s): Mr. Mobin Ahmed Siddiui, ASC

For the Complainant: Mr. Akhtar Hussain Bhatti, ASC

For the State: Mr. Khurram Khan,  
Addl. Prosecutor General Punjab

Date of hearing: 20.10.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Shaban Akhtar, appellant, along with his brother Ahsan Akhtar, co-accused since acquitted, was tried by the learned Special Judge Anti Terrorism Court Sargodha on multiple counts that included abduction for ransom as well as homicide; upon conviction, both the accused were condemned to death on three heads with direction to pay compensation as well as fine; for screening of evidence, they were additionally sentenced to 7-years RI besides forfeiture of property vide judgment dated 15.2.2011. A learned Division Bench of the Lahore High Court Lahore acquitted Ahsan Akhtar, co-accused, from the charge while maintaining appellant's conviction albeit alteration of death penalty into imprisonment for life vide impugned judgment dated 17.10.2014, *vires* whereof are being assailed both by the convict as well as the complainant; bound by a common thread, these are being decided through this single judgment.

2. Mubarak Ali, a lad aged 9/8, went missing after school hours from his home at 2/2:30 p.m. on 22.11.2010, located within the

precincts of Police Station Piplan, District Mianwali; he was initially searched by the family, however, upon failure, his father Umar Daraz (PW-2) laid information with the police on 24.11.2010; no one was nominated as suspect nor he apprehended any motive behind disappearance. On 25.11.2010, the complainant upon receipt of information through Sajjad Ahmed (PW-4) and Muhammad Mursaleen (given up), having last seen the deceased with the accused at about 3:00 p.m. nominated them as suspects; he also shared receipt of a missed call from two cell phone numbers i.e. 0301-5663916 & 0306-317244. On 28.11.2010, a caller identified by the complainant through voice as Ahsan Akhtar, demanded ransom of rupees one million for release of his son; he joined police investigation on 04.12.2010 when the appellant pursuant to a disclosure led a police contingent to an uninhabited *Baithak* to point out the dead body, identified by the witnesses as that of the deceased; wrist joints and neck were tied, respectively with a rope and piece of cloth; the skin was peeled off in a putrefied condition. Hyoid bone was found fractured with a ligature mark measuring 23 x 1.8 cm, constricting the neck all around; compression of airways resulting into asphyxia was opined as cause of death, occurred within preceding five to ten days without any sign of carnal assault. As the investigation progressed, the Investigating Officer, upon disclosures, secured cell phone handsets from both the accused; two SIMS (*subscriber identity modules*) were produced by the complainant. Prosecution evidence primarily comprises statements of Umar Daraz complainant (PW-2), Sajjad Ahmad (PW-4) and the Investigating Officer Noor Muhammad (PW-9), unanimously denied by both the accused without being their own witness in disproof of the charge or defence evidence.

3. Learned counsel for the appellant contends that horrors of the incident notwithstanding, nonetheless, there is no credible evidence to even obliquely frame the appellant with the charge, particularly after prosecution's failure qua Ahsan Akhtar accused, indicted inseparably within the integrity of the charge; that prosecution has not brought on record any forensic evidence to establish digital nexus of cell phone handset, allegedly recovered from the appellant to constitute conversational link with the SIMs (*subscriber identity modules*) produced by the complainant; that going by prosecution's own case the ransom was demanded by a caller, whose voice was identified as that of Ahsan Akhtar co-accused, a story disbelieved by the High Court,

resulting into his acquittal that raised the very structure of the case to the ground. Evidence of last seen belatedly furnished by a partisan witness, namely, Sajjad Ahmad being far from plausible is hardly sufficient to sustain the charge. Appellant's arrest, disclosure leading to the recovery of dead body and remission into judicial custody on 4.12.2010, events mind-bogglingly in quick succession are too intriguing to be believed by a prudent mind, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment whereas learned counsel for the complainant has vehemently defended the judgment of the trial Court; according to him, the prosecution in a manner truthful and straightforward produced confidence inspiring evidence available in the circumstances and, thus, High Court had no occasion either to acquit Ahsan Akhtar or alter penalty of death awarded to the appellant having regard to the brutality inflicted upon the innocent soul, leaving behind an abiding pain for the family. There was no axe for the witnesses to grind and as such they were rightly believed by the learned trial Judge for valid reasons, emphatically stressed the learned counsel.

4. Heard. Record perused.

5. Violence inflicted upon the child is abhorrently shocking leaving the family in a perennial trauma; the appellant and his co-accused have been blamed for the beastly act that certainly deserves no leniency, nonetheless, their guilt has to be dispassionately determined on the touchstone of '*proof beyond doubt*'; a proof structured on evidential foundations admitting no hypothesis other than their guilt. The child left home after attending the school, apparently for a routine play on 22.11.2010; his search by the family was an obvious exercise; with no clue, the incident was reported after more than 48 hours without nomination and this happened within a small rural locality i.e. Chak No.15/ML wherein according to the prosecution the child was last seen by Sajjad Ahmad (PW-4) in the company of both the accused while they were standing on the metalled road to await a Lahore bound bus to undertake a detour apparently without any stated purpose. Muhammad Mursaleen has opted to stay away from the witness box whereas Sajjad Ahmad is reticent on the relevant details in terms of point of time and place they noticed the deceased with the accused; they learnt about the calamity only on their return from Lahore on 25.11.2010. Sajjad Ahmad (PW-4) subsequently after disclosure of last seen faithfully remained with the prosecution to

attest various recoveries. It is rather intriguing that the witnesses were the only individuals in the village who had seen the child obligingly accompanying his assassins without being alarmed or surprised by their unusual movement. The witness admits to have a cell phone with him during his "*stay*" at Lahore; it is rather strange that he did not communicate with his family throughout his absence from the village and if at all he had any conversation was not informed about the incident that must have alarmed the small neighbourhood. Argument that the solitary witness was inducted on the basis of a mistaken/misplaced suspicion cannot be viewed as entirely unrealistic.

The Investigating Officer has not been able to collect any digital/forensic data to establish communication between the appellant and the complainant despite seizure of cell phone handsets and SIMs (*subscriber identity module*). Automated system, beyond human interference could have conclusively established the telephonic conversation and prosecution's failure to procure and bring on record easily available data has consequences as contemplated under Article 29 (g) of the Qanun-e-Shahadat Order, 1984. Complainant's claim that he had identified Ahsan Akhtar by his voice on 28.11.2010 when he demanded ransom does not synchronize with his claim to have heard only "*hello*" on 23.11.2010, when he had already named both the accused on the basis of information shared with him by Sajjad Ahmad and Muhammad Mursaleen PWs on 25.11.2010. Apparently there was no earthly reason for the caller to expose his number to the family already suspecting him as a culprit in the crime. Chronology of events relied upon by the prosecution does not tally with the findings regarding the duration wherein the child was done to death; it also militates against the timeframe of the demand of ransom. The child went missing in the afternoon of 22.11.2010; the incident is reported on 24.11.2010 whereas the accused were nominated on the following day i.e. 25.11.2010 and it is subsequent thereto that on 04.12.2010 soon after his arrest, the appellant led to the recovery of the dead body, examined same day; the Medical Officer estimated time between death and postmortem within 5 to 10 days. The above events cannot be adjusted within the proximity of timeframe, suggested by no other than the prosecution's own witness, without potential risk of error. The devastated family is certainly not responsible for the error nor can be possibly attributed any motive, nonetheless, the mosaic of appellant's purported criminality is shattered beyond recognition on simple

calculation; his conviction requires "*proof beyond doubt*" which cannot be equated with moral satisfaction or strongest suspicion though structured upon beliefs most *bonafide*. Yet another predicament bracing the prosecution is acquittal of appellant's brother on the same set of evidence, reflecting a possible view, standing insurmountably in impediment to adverse consideration qua the appellant, unless reversed, an option hardly available in circumstances. It would be unsafe to maintain the conviction. Criminal Appeal No.67-L of 2020 is allowed; the appellant is acquitted of the charge and shall be released forthwith if not required to be detained in any other case.

As a natural corollary, Criminal Petition No.1133-L of 2014 stands dismissed.

**Judge**

**Judge**

**Judge**

Islamabad, the  
20<sup>th</sup> October, 2020  
Not approved for reporting  
Azmat/-