

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

**PRESENT:**

Mr. Justice Manzoor Ahmad Malik  
Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No.107-L of 2017**

*(On appeal from the judgment dated 28.4.2014 passed by the Lahore High Court, Lahore in Criminal Appeal No.1668 of 2010 and M.R. No.333 of 2010).*

***Sadi Ahmad and another***

...Appellant(s)

**VERSUS**

***The State***

...Respondent(s)

For the Appellant(s)	: Rana Liaqat Ali Khan, ASC along with Ms. Nighat Saeed Mughal, ASC
Complainant(s)	: In person (Taj Muhammad)
For the State	: Ch. Mustafa, Deputy Prosecutor General, Punjab
Date of Hearing	: 23.05.2019

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Sadi Ahmad and Mukhtar Ahmad *alias* Bari, appellants herein, were indicted by a learned Additional Sessions Judge at Okara for committing murder of Javed Iqbal in the course of robbery on 2.4.2007 within the remit of Police Station Satgarha. It is alleged that Sadi Ahmad, appellant and Ijaz *alias* Jajji and two unknown assailants hired deceased's cab within witnesses' view, subsequently vanished. A corpse was spotted subsequently identified as that of Javed Iqbal and in this backdrop, the appellants and co-accused were suspected for the crime. Vehicle was taken into possession on 3.4.2007; it was traced in consequence of an accident in the province of Khyber Pakhtoonkhwa; it is prosecution case that the passengers impersonated themselves to hush up their identity; Sadi Ahmad, appellant was formally arrested on 13.4.2007; upon

disclosure, he led to the recovery of various incriminatory items, followed by Mukhtar Ahmad on 27.2.2008. Indicted on 29.5.2008, they claimed trial.

2. Prosecution case in nutshell is that the appellants hired the cab, done away with the deceased and while they were on their way to dispose of the vehicle, in the province of Khyber Pakhtoonkhwa they met an accident wherein Shamim Bibi died and Sadi Ahmad, appellant become unconscious, while Mukhtar Ahmad fled from the scene; in this backdrop, it relied upon evidence of last seen and a confessional statement by Sadi Ahmad, beside certain recoveries, to drive home the charge.

According to the crime report, Taj Muhammad, PW along with Tariq Mahmood and Tanvir Amjad, saw the deceased departing with Sadi Ahmad and Ijaz *alias* Jajji, P.O. with two unknown persons. In the totality of circumstances, statements of the complainant, Tariq Mahmood and Saeed Anwar, notwithstanding, there is little evidence to safely frame Mukhtar Ahmad *alias* Bari with the crime as he was never exposed to the witnesses in the identification test. It is prosecution case that Sadi Ahmad impersonated himself when he met an accident in Khyber Pakhtoonkhwa and his real identity was established subsequent thereto. None has been produced to establish identity of Sadi Ahmad in injured condition, when apprehended after the accident. There is nothing on the record to infer that some woman by the name of Shamim Bibi died in the accident so what is left in the field is deficient last scene evidence and confessional statement of Mukhtar Ahmad *alias* Bari, recorded by the learned trial Judge in the midst. We are not much impressed by the evidence of last seen for being outside the bounds of proximity in terms of time and space, besides otherwise being far from confidence inspiring. According to the autopsy report, asphyxia is the cause of death, therefore recoveries of weapons do not advance prosecution case. Pointing out of place of occurrence by the accused and memo thereof being inadmissible is entirely beside the mark. It does not constitute *information* within the contemplation of Article 40 of the Qaoun-e-Shahadat Order, 1984. Adverting to confessional

statement of Mukhtar Ahmad *alias* Bari recorded on 14.1.2019, we do not feel persuaded to rely upon the disclosure; it is not in line with prosecution case set up in the crime report; so diametrically different that one cannot be accepted without exclusion of other and *vice versa*; it is exculpatory in nature as Mukhtar Ahmad is reticent about his individual role and liability in the crime. According to him, the deceased was blind folded, thrown in a sugarcane field with his hands tied with a rope, whereas as per autopsy report cause of death is asphyxia. Motive behind sudden move by the appellant, Mukhtar Ahmad *alias* Bari during the trial is far from clear; disclosure is certainly not a truthful account of event leading to deceased's death. When confronted during his examination under Section 342 of the Code of Criminal Procedure, 1898, he denied to have confessed his guilt; he repudiated pangs of conscience, mistakenly observed by the learned trial Judge. Prosecution has not been able to drive home the charge beyond reasonable doubt, therefore, in the absence of reliable evidence appellants' conviction on moral satisfaction alone cannot sustain; they are extended the benefit of the doubt. Criminal Appeal 107-L/2017 is allowed, impugned judgment is set aside; they shall be released forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

Lahore, the  
23<sup>rd</sup> of May, 2019  
Ghulam Raza/\*