Honor Killing Acquitted
Circumstantial evidence + charge

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No.D- 32 of 2016.

Criminal Jail Appeal No.D- 33 of 2016.

Criminal Jail Appeal No.D- 37 of 2016.

Conf. Case No.D- 07 of 2016.

Present:
Mr.Justice Mohammad Karim Khan Agha -J
Mr. Justice Zulfiqar Ali Sangi -J

Appellants:	Sanaullah and Niaz Ali through Mr.Athar Abbas Solangi, Advocate in Cr. Jail Appeals No.D-32 2016.
Appellant:	Abdullah through Mr. Asif Ali Abdul Razak Soomro, Advocate in Cr. Jail Appeal No.D-33 of 2016.
Appellant:	Muhammad Siddique through Mr.Inayatullah G. Morio, Advocate in Cr. Jail Appeal No.D-37 of 2016.
Respondent:	The State through Mr. Ali Anwar Kandhro, Addl. P.G.
Date of hearing:	21.01.2021.
Date of judgment:	02.02.2021

JUDGMENT

Muhammad Karim Khan Agha -J:- By this common judgment, we intend to dispose of these three Criminal Jail Appeals filed by appellants Sanaullah, Niaz Ali, Abdullah and Muhammad Siddique respectively who have assailed impugned judgment dated 30.5.2016 passed by learned Judge, Anti terrorism court, Shikarpur in Special Case No.19 of 2014 re: State v. Sanaullah and others arising out of Crime No.21 of 2014 of Police Station Chak District Shikarpur registered for offence under Sections 302, 311, 201, 149 PPC, whereby the appellant Abdullah has been convicted for offence under Section 302 (b) PPC r/w Section 7 (i)(a) ATA 1997 and sentenced to death subject to confirmation by this court and to pay fine of Rs.2 Lacs, in case of default in payment thereof, he shall suffer further R.I

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for six months, appellants Abdullah, Sanaullah, Niaz Ali and Mohammad Siddique are also convicted for offence under Section 201 PPC and sentenced to suffer R.I for seven years and pay fine of Rs. One Lac each, in case of default in payment of fine they shall further suffer R.I for six months.

2. Initially the prosecution case as per original FIR No 14/2014 as lodged by Abdullah (now appellant) was as under;

> " Complaint is that I am residing at above addressed place, I have two daughters namely Mst; Shah Nawaz aged about 13 years and Mst: Reema aged about 12 years. Yesterday in the morning time these had gone to visit to the house of my relative Sannaullah s/o Saifal by caste Mahar, but did not return until evening, then I, my brother Mohammad Malook and cousin Khalil Ahmed s/o Mohammad Saifal went together to the house of our cousin Sanaullah Mahar and enquired from him about my daughters namely Mst. Shahnawaz and Mst: Reema who had come to visit you have not returned back to home as yet. Accused Sannaullah Mahar stated that due to domestic affair I have killed your both daughters at noon by making firing with gun and have concealed the dead bodies, do whatever you want, thereafter we left his house and went to our Nekmard Rehmatullah Mahar in his village Kamil for narrating the facts but he was not available at his home, now he met us, we narrated him the facts, he advised us together to lodge the FIR. Now I am here at P.S, alleging that that accused Sannaullah s/o Saifal Mahar due to domestic affairs has committed murder of my two daughters namely Mst.Shahnawaz and Mst.Reema by making shooting gun and concealed their dead bodies. I am complainant may justice be done."

3. During investigation of above cases it transpired that complainant Abdullah now accused in present case had lodged the above false FIR which was deposed of in "c" class.

4. Later after further investigation it transpired that Mst Shahnawaz was daughter of complainant Abdullah Mahar and deceased Mst Reema @ Hayatan was daughter of accused Sanaullah and both the deceased were murdered by Abdullah (complainant of crime No 14/2014) Sanaullah, Khalil Ahmed and Niaz on the allegation of karap with Abdul Shakoor Jagirani and Ali Muhammad Jagirani with their common object and concealed the dead bodies by illegal burial at the abandoned land of one Rehmtullah and Amanullah and in collusion with accused ASI Muhammad

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Siddique lodged false FIR bearing crime No. 14/2014 who being I.O of that case showed fake recovery of empties and blood stained earth from the spot in order to disappear the evidence to screen the accused from punishment. Later on, on the pointation of accused Abdullah the dead bodies of both deceased were discovered and exhumed with the permission of learned Sessions Judge Shikarpur in supervision of concerned Magistrate and postmortem was conducted by Medical Board to ascertain the cause of death. After completing investigation the inquiry officer Inspector Abdul Qudoos Kalwar vide letter No.Inquiry Cell/42/ 2014 dated 07.4.2014 submitted his report to SSP Shikarpur with request that FIR of murder of both ladies be registered against above named accused through SHO P.S Chak. On the directions of SSP Shikarpur the complainant SIP Rafique Ahmed Qureshi, SHO P.S Chak lodged the present FIR 21/14 against the accused on the basis of such report which is set out below and became FIR 21/14.;

""No: Enquiry Cell/42/2014

Dated 07/04/2014

To,

The Superintendent of Police

Shikarpur.

Subject: Investigation of Case FIR No.14/2014, u/s 302, 201, PPC of PS Chak & Case FIR 24/2014 , u/s 419, 384, 117, 143, 34, PC of PS Lakhi Ghulam Shah.

It is submitted that in pursuance of the order of Honourable Supreme Court of Pakistan in SMC No.7/2014, investigation of above cases was transferred to the undersigned in the supervision of Mr. Kamran Nawaz Panjutha, ASP/SDPO City Shikarpur vide order No.7597-603/AIG/OPS-111/2014, dated 21.3.2014 of IGP Sindh Karachi. The undersigned received case papers on 22.3.2014 and perused. From the perusal of case papers it was revealed that on 3.3.2014, complainant Abdullah son of Ghulam Hussain @ Gul Mohammad Mahar got registered a case FIR No.14/2014 u/s 302, 201, PPC against accused Sanaullah son of Mohammad Saifal Mahar for committing murder of his daughter Mst. Shahnawaz and Mst. Reema.

During investigation the undersigned verified from the supervisor of Education Department beat Jahan Khan and found that the deceased Mst. Shahnawaz was daughter of Sanaullah son of Mohammad Saifal and Mst. Reema @ Hayatan was daughter of complainant Abdullah Mahar. On 22.3.2014 the undersigned arrested a nominated accused Sanaullah son of Mohammad Saifal Mahar and got police custody remand from the Court of law. The arrested accused Sanaullah son of Mohammad Saifal Mahar

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during interrogation disclosed that after committing murder of both ladies Mst. Shahnawaz and Mst. Reema alias Hayatan, had thrown them in the Khirthar Canal.

Thereafter the undersigned enquired from complainant Abdullah Mahar, who disclosed that he along with Sanaullah son of Mohammad Saifal, Khalil Ahmed son of Mohammad Saifal and Niaz Ali son of Rehmatullah, all by caste Mahar, had committed murder of deceased Mst. Shahnawaz and Mst. Reema @ Hayatan by strangulation and then concealed the corpses of both ladies in the land of Rehmatullah Mahar near Lakho Pir, Deh Fatehpur, on their confession of commission of offence, such report was submitted to the District & Sessions Judge, Shikarpur in order to get permission for excavation of graves.

Thereafter, as per directions of District & Sessions Judge, Shikarpur the concerned Civil Judge/JM Lakhi Ghulam Shah sent report to the Director General, Health Services, Govt. of Sindh, Hyderabad for constitution of Medical Board including a W.M.O., for excavation of the graves of both deceased ladies in order to ascertain the cause of death. Such interim report was also submitted to the concerned Civil Judge & JM, Lakhi Ghulam Shah, in which the names of accused complainant Abdullah 2) Niaz Ali (Mashir), and 3) Khalil Ahmed son of Saifal (PW) were also included.

The above accused persons had committed murder of two ladies Mst.Shahnawaz and Mst. Reema @ Hayatan on the allegation of honour killing with Abdul Shakoor Jagirani & Ali Mohammad Jagirani and they had made terror in the locality. Therefore, it is recommended that SHO PS Chak may kindly be directed to register a separate case on behalf of State against above accused u/s 302, 201, 311, 34, PPC & 6/7 ATA.

Furthermore, on 18.3.2014 complainant SIP Ahmed Ali Khuhawar SHO PS Lakhi Ghulam Shah registered a case FIR No.24/2014 u/s 384, 419, 117, 143, 34, PPC at PS Lakhi Ghulam Shah against accused Ghous Bux Mahar and others. On 22.3.2014 the undersigned arrested two nominated accused Sanaullah son of Mohammad Saifal Mahar and Abdullah son of Ghulam Hussain @ Gul Mohammad Mahar and got remand from the Court of law. Whereas other all accused are on Court bail. Such interim report has been submitted in the Court of law on 5.4.2014."

5. On conclusion of the investigation, accused/appellants were sent up to stand trial. Subsequently absconding co-accused Muhammad Fazil was arrested and sent up under supplementary challan while co-accused Muhammad Malook joined the trial after getting bail. Charge was framed against accused to which they all pleaded not guilty and claimed trial.

6. To prove its case the prosecution examined 11 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused were recorded u/s 342 Cr.PC wherein they denied all the allegations against them and

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claimed false implication. None of the accused examined themselves under Oath or called any DW in support of their defence case.

7. Learned trial court after hearing learned counsel for the parties and appraisal of evidence brought on record, convicted and sentenced the appellants/accused as mentioned above while acquitting co-accused Khalil Ahmed, Muhammad Fazil and Mohammad Malook based on benefit of doubt vide impugned judgment dated 30.05.2016. Hence the appellants have filed these appeals against their convictions.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 30.05.2016 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants have contended that they are completely innocent and have been falsely implicated in this case; that there was no eye witness to the murders; that there was no last seen evidence; that none of the accused made any confession before a magistrate and that any admission before the police was inadmissible in evidence and in any event had been retracted at trial; that other co-accused had been acquitted and as such they were entitled to equal treatment; that no motive had been proved; that the only evidence against appellants Abdullah and Niaz is that they allegedly took the police to the place where the murdered ladies were buried and identified the murdered ladies after their exhumation and that Niaz allegedly produced the spade which was used to bury the ladies who the accused had allegedly murdered by strangulation; that Niaz made no recorded confession and no such confession was exhibited at trial; that with regard to appellant Muhammed Siddique the charge against him under S.201 PPC was defective as he had not been put on notice through any particulars why he had been charged with this offence and in fact the charge revealed that all the appellants including him had been charged under S.302 PPC for which specifics had been given but there was no evidence against him to this effect; that this was purely a case of circumstantial evidence which the prosecution had failed to prove and thus for any of the above reasons all the appellants should be acquitted of the charges by extending to them the benefit of the doubt.

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10. On the other hand learned Addl. Prosecutor General has fully supported the impugned judgment based on circumstantial evidence against each of the appellants and contended that since the prosecution had proved its case beyond a reasonable doubt against each and every appellant all the appeals should be dismissed and the sentences and convictions maintained. He did however submit that based on the particular facts and circumstances of the case the death sentence awarded to appellant Abdullah merited reduction to that of life imprisonment.

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law.

12. At the outset we would like to note that the murder of the two women by strangulation **allegedly** on account of Karo Kari and then secretly burying them so that the deed may not be uncovered is no doubt a barbarous crime which needs to be dealt with by an iron hand and with the full force of the law in order to deter such heinous practices however, as Judges we have to put such aspects aside and decide the guilt or innocence of the **appellants by dispassionately assessing the evidence before us and coming to a decision which is supported by the evidence on record and the governing law and not by our emotions or own personal feelings. We can only be guided by the evidence and the law and nothing else.** In this respect we refer to the case of **Azeem Khan** V **Mujahid Khan** (2016 SCMR 274) which held at P.290 Para 32 as under;

> *"Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused.* ***In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty".*** *(bold added)*

13. Based on our reassessment of the evidence and in particular the PW MLO, post mortem report/report of medical Board, PW Judicial magistrate

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and the police PW's we find that the prosecution has proved beyond a reasonable doubt that Mst Shahnawaz daughter of Abdullah Mahar and Mst Reema @ Hayatan (the deceased) were murdered by strangulation and buried in a grave in isolated uncultivated land near village Kamil.

14. Before proceeding further it would be of assistance to set out the charge dated 18.04.2015 which some of the appellants claim is defective in respect to the offence under S.201 PPC which reads as under;

IN THE CURT OF JUDGE ANTI-TERRORIM SHIKARPUR

Special Case No.19 of 2014

State.....Vs Sanaullah & others

Off U/Ss 302, 114, 34 PPC, 6/7 ATA
Crime No.21/2014, PS Chakk
District Shikarpur

CHARGE

I, Fida Hussain, Jude Anti-Terrorism Court Shikarpur, do hereby charge you:

1. Sanaullah son of Muhammad Saifal.
2. Abdullah son of Ghulam Hussain.
3. Niaz Ali son of Rehmatulah.
4. Muhammad Fazil son of Ghulam Hussain.
5. Khalil Ahmed son of Saifal.
6. Muhammad Malook son of Ghulam Hussain, all by caste Mahar.
7. Muhammad Siddique son of Mithoo Shar.

As follows :

That on 02.03.2014 at about 0100 pm (noon) in the house of accused Sanaullah situated at village Qasim Mahar Deh Qasim you all accused in furtherance of your common object committed murder of Mst. Shahnawaz daughter of Sanaullah and Mst. Reema daughter of Abdullah by strangulating them on the allegation of honour killing and thrown their bodies in the Khirthar canal and by your such act the sense of insecurity has been created in the public at large, thus thereby you have committed an offence punishable under section 302, 201, 34 PPC r/w Section 6/7 of Anti-Terrorism Act 1997, within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the above said charge.

Dated. 18th day of April, 2015.

(FIDA HUSSAIN)
Judge
Anti-Terrorism Court Shikarpur

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15. The accused have been charged with murder under S.302 PPC, common intention under S.34 PPC and under S.201 PPC which is set out below for ease of reference;

> "201. *Causing disappearance of evidence of offence, or giving false information to screen offender;* Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

16. With regard to the Charge the following sections of the Cr.PC are relevant which we set out as under for ease of reference;

> "221. **Charge to state offence.** (1) Every charge under this Code shall state the offence with which the accused is charged.
> (2) **Specific name of offence; sufficient description.** If the law which creates the offence gives it any specific name, the offence may be **described** in the charge by that name only.
> (3) **How stated where offence has no specific name.** If the law which creates the offence does not give it any specific name, **so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.**
> (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
> (5) **What implied in charge.** The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
>
> **222. Particulars as to time, place and person.** (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom; or the thing (if any) in respect of which, it was committed, **as are reasonably sufficient to give the accused notice of the matter with which he is charged.**
> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items of exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234;
> Provided that the time included between the first and last of such dates shall not exceed one year.
>
> **223. When manner of committing offence must be stated.** When the nature of the case is such that the particulars mentioned in section 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, **the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.**

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224. Words in charge taken in sense of law under which offence is punishable. In every charge words used in describing an offence **shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable**.

225. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless **the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.**

232. Effect of material error. (1) If any Appellate Court or the High Court, or the [Court of Session] in the exercise of its powers of revision or under Chapter XVII, **is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, it shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.**

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

233. Separate charges for distinct offences. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except, except in the cases mentioned in sections 234, 235, 236 and 239.

17. It is well settled by now that the object and purpose of the Charge is to inform the accused of the case against him in the manner provided in the aforesaid sections related to Charge so that the accused know precisely what they are being accused of and what time and place the offence occurred so before the trial they are able to properly and adequately prepare a defence against the charge. In this respect reliance is placed **on S.A.K Rehmani V State** (2005SCMR 364) where it was held as under at P.381;

> *"It is to be noted that "the whole object of framing a charge is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offences with which the accused is convicted is not brought out in the charge, then the charge is defective. Makhan v. Emperor AIR 1945 All. 81. In other words it can be said that "the main object of framing of charge is to ensure that the accused had sufficient notice of the nature of accusation with which he was charged and secondly to make the Court concerned conscious regarding the real points in issue so that evidence could be confined to such points."* (bold added)

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18. Likewise in the case of **Mubeen V State** (2006 YLR) it was held by a Division Bench of this court at P.360 at Para's 5 and 6 as under;

> *"5. In fact a charge is precise formulation of the specific accusation made against a person who is entitled to know its nature at the early stage. The whole object of framing a charge is to enable the defence to concentrate its attention on the case that he has to meet. Therefore, the charge must contain all material particulars as to time, place as well as specific name of the alleged offence, the matter in which the offence was committed and the particulars of the accusation so as to afford the accused an opportunity to explain the matter with which he is charged.* ***Purpose behind giving such particulars is that the accused should prepare his case accordingly and may not be misled in preparing his defence. It needs no emphasis to state that a defective and misleading charge causes serious prejudice to the accused and vitiates the whole trial.*** *(bold added)*
>
> *6.* ***After examining the charge framed by the trial Court we are persuaded to agree with the submissions made before us. The charge has not been correctly framed. It is misleading besides lacking in material particulars. It has certainly vitiated the trial and has resulted in miscarriage of justice.*** *Additionally the impugned judgment is manifestly untenable, for having been recorded in violation of the provisions of section 367, Cr.P.C." (bold added)*

19. In the case of **Dur Muhammed V State** (1994 MLD 1493) a Division Bench of the Lahore high court also held as under in respect of a defective charge at P.1494 Para 4

> *"4. We have heard the learned counsel for the parties and have perused the record. The charge framed against the appellants by the trial Court does not contain the necessary ingredients as laid down under the law.* ***When the charge does not give full notice to the accused of the allegations/charges, then it vitiates the whole trial."***

20. There are a plethora of judgments on the fact that the charge must be framed with precession and certainty so that the accused know before the trial what they have to actually defend themselves against failing which the charge will be defective including **Jaseem and 2 others v. The State** (2008 Y L R 717), **Dilsher v. The State** (PLD 2012 Sindh 307) and **Muhammad Hayat v. Sabir Sultan, Additional Sessions Judge and others** (2004 P Cr. L J 397).

21. We find that after a careful reading of the charge that none of the accused have been put on notice that they have to defend themselves

against the offence found in S.201 PPC of *Causing disappearance of evidence of offence, or giving false information to screen offender in terms of* **w**hoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false. This is because no where at all in the charge has such language been used as to give any clue to any of the accused that they have to defend themselves in respect of this offence and as disclosed in the evidence they have not done so since clearly being lay men they had no idea what S.201 PPC meant especially as it is not in any language alluded to in the Charge and as such we find that the charge is clearly defective in respect of an offence under S.201 PPC as none of the accused had notice to defend themselves against such charge and did not do so **and were clearly prejudiced by this defective charge which lead to a miscarriage of justice for them being convicted in respect of this offence.** The charge even suggests that the body was thrown in a canal and not buried under ground and when the charge is read as a whole the impression is given that the accused are only be tried for murder and **not** under S.201 PPC. In our view the charge in order to give sufficient notice to the appellants as to what they had to defend themselves against ought to have been divided into two separate paragraphs. The first dealing with the murder under S.302/34 PPC and the second dealing with the offence under S.201 PPC. Namely how the appellants had caused disappearance of evidence of offence, or giving false information to screen offender. It may have even been preferable to charge the appellants by two separate and distinct charges pursuant to section 233 Cr.PC under S.302/34 PPC and S.201 PPC respectively to ensure that the appellants understood what they had to defend themselves against especially as S.201 seems more applicable to only appellant Mohammed Siddique and not the other appellants.

22. We do not consider at this stage that it would meet the ends of justice to remand the case back to the trial court for a de novo retrial under S.232 Cr.PC under a properly framed charge for an offense under S.201 PPC against the appellants especially as the case is over 7 years old and the appellants were only sentenced to serve 7 years in jail in respect of this offence and although all of the appellants are out on bail except Abdullah

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who was the only accused convicted of murder as well as under S.201 the rest of the appellants have already spent a number of years in jail in respect of that offence and suffered the anxiety and misery of awaiting their appeal to be heard and as such we acquit all the appellants of the offense under S.201 PPC on the basis of a defective charge which occasioned a failure of justice/miscarriage of justice and evn quash the charge is so far as it relates to the offence under S.201 PPC.

23. Even otherwise not with standing the defective charge in respect of S.201 PPC we find that after our reassessment of the evidence on record the offence under S.201 PPC has **not** been proved beyond a reasonable doubt by the prosecution against any of the appellants convicted of this offence and thus all appellants convicted of this offence also stand acquitted on this account based on being extended that benefit of the doubt.

24. With regard to the other aspects of the charge we are satisfied that all the appellants have been legally charged with the offence of murder of the two deceased women and that they had full notice of the offences under S.302 and 34 PPC as mandated by the law as to which they had to defend themselves.

25. All of the appellants except Abdullah were acquitted of the offence of murder at trial and the State filed no appeal against their acquittal and as such we only need to consider whether the prosecution has proved its case beyond a reasonable doubt against appellant Abdullah for the murder of both the deceased.

26. After our reassessment of the evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charges against appellant Abdullah under S.302 PPC for the murder of the deceased for the following reasons;

(a) Admittedly there was no eye witness to the murders.

(b) Admittedly there is no last seen evidence.

(c) No recovery was made from appellant Abdullah in terms of any rope used to strangle the deceased.

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(d) The motive that the murder was based on Karo kari was not proved by any evidence at trial. The trial court judge relied upon evidence of a jirga which settled this issue and was published in the newspapers and the fact that the Supreme Court took Suo Moto notice of the matter. No evidence was produced at trial that any such jirga took place. For example, no member of the jirga or anyone present at the jirga was produced as a PW, no newspaper clipping in this respect was exhibited and no TV footage to this effect was ever exhibited. Instead the learned judge instead of relying on any evidence adduced at trial blindly believed the hearsay evidence of the IO PW 8 Abdul Quddoos without any corroboration who simply stated in his evidence, "**that he came to know** that the deceased were murdered on the allegation of karp" and thus the prosecution was not able through evidence to prove the very foundation of its case. Namely the motive for killing the deceased was on account of Karo Kari. Thus, the appellant had no motive to commit the murders.

(e) That any admission made by the appellant before the police is inadmissible in evidence and the appellant did not make any confession before a judicial magistrate. That the trial judge considered a magistrates remarks on a S.173 report that the appellant Abdullah had admitted lodging a false FIR despite this document not being exhibited at trial and a S.173 report being of no evidentiary value being in admissible in evidence. In this respect reliance is placed on **Province of Punjab V Muhammed Rafique** (PLD 2018 SC 178). Even otherwise the complainant does not admit before the magistrate that he killed the deceased. This piece of evidence was clearly inadmissible and even otherwise does not implicate the appellant in the murder of the deceased.

(f) That there was no evidence as to where the deceased were murdered as alleged in the Charge. There was no evidence as to the date and time when the deceased were murdered as per charge.

(g) Based on the same evidence apart from pointation of the grave the other appellants were acquitted of the charge of murder and as such the appellant Abdullah is entitled to the same treatment especially as in the charge all the appellants were charged with murder yet all the other appellants were acquitted despite their being no direct or circumstantial evidence that appellant Abdullah committed the murder of the deceased. In this respect reliance is placed on **Notice to Police Constable Khizer** (PLD 2019 SC 517) and **Altaf Hussain V State** (2019 SCMR 274). Notably no appeal against acquittal was filed by the State against the co-accused who were acquitted of all charges and no appeal against acquittal was filed by the State against the appellants who were acquitted of murder under S.302 PPC and only convicted under S.201 PPC despite the evidence of murder under S.302

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PPC being the same against them as for appellant Abdullah who was the only appellant convicted of murder.

(h) As found in the impugned judgment the case against appellant Abdullah is based purely on circumstantial evidence which is an assessment which we agree with. With regard to circumstantial evidence leading to a conviction in a capital case it was held as under in **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 para's 5 and 6 which are reproduced as under;

> *"**To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused**. The present case is of such a nature where many links are missing in the chain.*
>
> *To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence **because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice** and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. **If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing link, otherwise at random reliance on such evidence would result in failure of justice.***
>
> *It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, **if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same."** (bold added)*

In the case of **Azeem Khan** V **Mujahid Khan** (2016 SCMR 274) the following was reiterated with respect to circumstantial evidence at P.290 as under;

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"In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."

The only piece of admissible evidence against appellant Abdullah in the instant case is that he lead the police to the grave from where the bodies of the deceased were exhumed which he denied at trial and was supported by the evidence of PW 9 HC Mohammed Yaqoob who was one of the mashirs on pointation of the grave by appellant Abdullah who was declared hostile by the prosecution and states in his evidence as under;

"Examination in chief to Mr.Mohammad Anwar Mahar, DDP, for the state.

I do not know anything about this incident but my signature was obtained by munshi at PS on mashir nama Ex.5/A. I see Ex.5/A, it bears my signature.

At this stage learned DDP declares the witness hostile and seeks permission to cross examine the witness. Permission is granted.

I know Inspector Abdul Quddoos Kalwar. It is correct that Inspector Abdul Quddoos was investigating officer of crime No.14/2014 of PS Chakk. I do not know accused Abdullah and Sanaullah. I do not know whether above both accused were arrested in crime No.14/2014. **It is incorrect that Inspector Abdul Quddoos interrogated above both accused in my presence as well as presence of SIP Abdul Jabbar Shar on 29.3.2014. I never went with I.O and SIP Abdul Jabbar to Kamil village on pointation of accused. It is incorrect that accused pointed out the place where they buried dead bodies in my presence. It is incorrect that contents of mashir nama Ex.5/A**

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> **were read over to me by I.O and obtained my signature on it at the spot, voluntary says that my signature was obtained at PS.** It is incorrect that due to influence and pressure of accused I am deposing falsely. Voluntary says that I have given true statement on oath."(bold added)

Such evidence of PW 9 HC Mohammed Yaqoob in our view creates doubt as to whether appellant Abdullah did in fact lead them to the graves of the deceased.

Even otherwise, in our view there is insufficient evidence to prove beyond a reasonable doubt based on the law of circumstantial evidence as cited above that appellant Abdullah murdered the deceased. For example, he may have heard about the burial site from another source even if he was there which is doubtful.

(i) Based on the particular fact and circumstances of this case where according to the prosecution case the deceased were killed and buried secretly away from public view and without any public knowledge we do not see how the ATA is applicable as there was no design, object or intent to terrorize or make the public insecure and as such the appellant Abdullah is acquitted of any offence under the ATA which he has been convicted of.

(j) It is a golden principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

> *"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single 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."*

27. Thus, based on our above discussion and our reappraisal of the evidence and keeping in view the above guidelines on circumstantial evidence we **find** that the prosecution has failed to prove beyond a reasonable doubt that appellant Abdullah committed the murder of the deceased and as such he is acquitted from the charge by being extended the benefit of the doubt and shall be released from jail unless wanted in any other custody case.

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28. As such all appeals are allowed and all the accused stand acquitted of all the charges against them for the reasons mentioned above in this judgment and the impugned judgment is set aside. The appellants on bail bail bonds stand discharged and the confirmation case is answered in the negative. Accordingly the confirmation reference is answered in **Negative**.

29. The appeals stand disposed of in the above terms.