IN THE HIGH COURT OF SINDH,CIRCUIT COURT MIRPURKHAS

Criminal Jail Appeal No.S-61 of 2024.

Criminal Jail Appeal No. S-411 of 2019 (Old Number)

Date	Order with signature of Judge

Appellant:	Irshad Ali S/o Maqsood Ali Rajput (confined at Central Prison Hyderabad) **Through** Mr.Muhammad Saad Saeed, Advocate.
The State:	**Through** Mr. Nel Parkash Deputy Prosecutor General along with SIP Ghulam Shabir Dalwani, SHO Police Station Shahdadpur.
Complainant:	Muhammad Ashruf S/o Abdul Razzaque in person.
Date of Hearing.	**24.07.2025.**
Date of Decision.	**24.07.2025.**
Date of Reason.	**28.07.2025.**

J U D G M E N T.

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Ali Haider 'Ada',J;- Through the instant appeal, the appellant has impugned the judgment dated 06.12.2019, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Sanghar, in Sessions Case No. 331 of 2016, titled The State v. Irshad Ali, arising out of Crime No. 173 of 2016, registered at Police Station Shahdadpur, for offences punishable under Sections 302, 376, and 511, PPC. By the said judgment, the appellant was convicted and sentenced to suffer rigorous imprisonment for life as Tazir. He was also sentenced to pay a fine of Rs. 500,000/- (Rupees Five Hundred Thousand only), and in case of default in payment, to undergo simple imprisonment for a further period of one year. However, the benefit of Section 382-B, Cr.P.C was extended to the appellant.

2. The brief facts of the prosecution case are that the complainant lodged the F.I.R. on 03.09.2016 at about 1630 hours, while the date of the incident was stated as 01.09.2016. As per the complainant's version, Mst. Ruqia, his sister, had left the house on the day of the incident at around 07:00 p.m. The complainant, accompanied by his relatives Muhammad Afzal and Abdul Jabbar, along with other family members, was present at

home. When Mst. Ruqia did not return after some time, they all went out in search of her but could not find her. The complainant's father, Abdul Razaque, subsequently informed the police about her disappearance. On 03.09.2016, the complainant received information that a dead body of a girl had been found near Truck Adda, Hala Road. The complainant, along with the aforementioned witnesses, reached the spot and identified the dead body as that of his sister, Mst. Ruqia. It was observed that she had been strangled with a dupatta tied in two knots. The police were informed accordingly. After completing the necessary legal formalities, including a post-mortem examination, the body was handed over to the family for funeral rites. Thereafter, the F.I.R. was registered. Subsequently, on 16.09.2016, the complainant recorded a further statement wherein the name of the appellant was disclosed as an accused. The appellant was arrested on 18.09.2016, and on 26.09.2016, his confessional statement under Section 164 Cr.P.C. was recorded before the Magistrate. After completion of the investigation, the Investigating Officer submitted the challan before the Court of competent jurisdiction and sent the accused to face trial.

3. After the accused was sent up for trial, the learned trial Court framed the charge on 04.05.2017. The accused pleaded not guilty and claimed trial. Thereafter, the prosecution examined a few witnesses, including the complainant, the Women Medical Officer, a police officer (who was the duty officer at the time of registration of the F.I.R.), and the Tapedar. Subsequently, the learned State Counsel moved an application for amendment of the charge by adding Sections 376 and 511 PPC, which was allowed. Thereafter, on 26.09.2019, the learned trial Court framed an amended charge, to which the accused again pleaded not guilty and claimed trial. Following the amendment, the prosecution re-examined its witnesses and produced fresh evidence. The following prosecution witnesses were examined:

PW-1 Muhammad Ashraf (Complainant): He exhibited the receipt of receiving the dead body, copy of the F.I.R., and his further statement. PW-2 Dr. Naila Aijaz (Senior Woman Medical Officer): She produced and exhibited the Lash Chakas form, post-mortem report, letters sent to the Chemical Examiner and Pathologist, their respective reports, letter to the concerned SHO, and her final opinion. PW-3 Nawaz Ali (Tapedar): He

produced the letter issued by the SHO to the Mukhtiarkar and a copy of the site sketch. PW-4 Ahmed Ali (Duty Officer): He produced the memo of inspection of the dead body, Danistnama, memo of clothes, and relevant Roznamcha entries. PW-5 Muhammad Afzal: A witness who supported the complainant's version. PW-6 Abdul Jabbar: Another witness and relative of the complainant. PW-7 Muhammad Imran (Mashir): He exhibited the memo of the place of incident, memo of collection of CDR, memo of arrest of the accused, and memo of recovery of mobile phone. PW-8 Imtiaz Ahmed (Judicial Magistrate): He recorded the confessional statement of the accused under Section 164 Cr.P.C. and exhibited the application moved by the SHO for recording the statement, as well as the confessional statement itself. PW-9 Nisar Ahmed (Investigating Officer): He exhibited letters sent to the Chemical Examiner and their reports, relevant Roznamcha entries, and a letter addressed to the Medical Officer for examination of the accused. PW-10 Dr. Muhammad Bachal: He examined the accused and exhibited the medico-legal certificate, letter to the Chemical Examiner, chemical report, and his final opinion. PW-11 Mst. Mariyam: Sister of the deceased, who supported the complainant’s version. PW-12 Mst. Naseem: Mother of the deceased, who also corroborated the version given by the complainant and other witnesses.

4. Thereafter, the learned State Counsel closed the prosecution's evidence by filing a statement dated 26.10.2019. The learned trial Court then proceeded to record the statement of the accused under Section 342 Cr.P.C. The accused opted to be examined on oath, and the learned trial Court accordingly recorded the accused’s statement under oath. Subsequently, the accused presented his defense witness, Mst. Yasmeen, the wife of the accused. After the defense evidence was closed, the learned trial Court heard the arguments from both parties. Upon conclusion of the arguments, the learned trial Court passed the impugned judgment, which is now challenged through this appeal.

5. Learned counsel for the appellant contended that there was an unexplained delay in the registration of the FIR, and the medical evidence failed to determine the approximate time between injury and death. He further submitted that no eyewitness to the incident has been cited, and the accused was implicated solely on the basis of Call Data Record (CDR) and a confessional statement. He argued that the CDR is not corroborative

evidence as no proof of ownership of the SIM card was established, nor were any mobile phones recovered from the possession of the accused. As regards the confessional statement, the learned counsel pointed out that it was later retracted as the accused denied making such a statement during trial. Therefore, conviction based solely on a retracted confessional statement and uncorroborated CDR cannot be sustained. He prayed for the acquittal of the appellant and placed reliance upon the cases as reported as 2023 P.Cr.L.J 850, 2019 P.Cr.L.J 1073, 2022 P.Cr.L.J 186, 2020 P.Cr.L.J Note 177, 2017 P Cr.L.J Note 64, and 2020 YLR 1432.

6. On the other hand, the complainant filed a statement along with an affidavit, wherein he expressed full confidence upon the learned State Counsel to argue the case on his behalf. He further submitted that the appellant is the actual culprit and was rightly convicted by the learned trial Court. He contended that the accused does not deserve any leniency, particularly when he pleaded guilty during the course of proceedings. He prayed for dismissal of the appeal.

7. Conversely, the learned Law Officer argued that circumstantial evidence links the appellant to the commission of the offence. The investigating agency rightly declared the appellant as the accused, and the CDR supports his involvement. Furthermore, a voluntary confessional statement was recorded, free from any pressure or coercion. He supported the impugned judgment and submitted that the conviction is well-founded on the basis of evidence available on record.

8. Heard arguments and perused the material available on record. Upon meticulous examination of the entire case file and evidence brought on record, serious discrepancies, inconsistencies, and material contradictions have been observed in the prosecution's case. These flaws, which strike at the root of the prosecution's version, are discussed and analyzed in the following paragraphs.

9. From the perusal of the evidence available on record, it has emerged that the prosecution’s case is primarily based on circumstantial evidence. According to the version of the complainant, his sister, Mst. Ruqia, had left the house voluntarily on the day of the incident. However, it is an admitted position that no witness saw the accused accompany the

deceased at the time she left the house, nor is there any ocular account establishing that the deceased was last seen in the company of the accused on the relevant date. Furthermore, during the course of trial, no prosecution witness deposed that the accused came to the house to take Mst. Ruqia along with him, nor was there any direct evidence connecting the accused with the deceased at the crucial point in time. The prosecution has failed to establish any last-seen evidence, which could have formed a reliable link in the chain of circumstances required to prove the guilt of the accused beyond reasonable doubt.

10. According to the version of the complainant, his sister went missing on 01.09.2016, and it was claimed that his father, Abdul Razaque, had informed the police on the same day. Furthermore, all the relatives of the complainant who were cited and examined as witnesses corroborated this claim, asserting that the missing report was conveyed to the police promptly on the date of the incident. However, this assertion is not supported by the documentary evidence available on record. The police official who recorded the FIR stated clearly that the police were first informed on 03.09.2016, i.e., the date of registration of the FIR. No entry, roznamcha, or any other document was produced to substantiate the claim that the police were approached earlier. In view of this discrepancy, it becomes difficult to believe that a young girl had gone missing and yet the family members, including the complainant, failed to inform the police immediately, particularly when they now claim otherwise. Either the version of the complainant party is inaccurate, or the police are concealing facts, but in either case, such a glaring inconsistency casts serious doubt on the credibility of the prosecution’s narrative. Upon a comparative examination of the oral and documentary evidence, it becomes evident that the version advanced by the complainant regarding prior intimation to the police is an afterthought, apparently designed to explain away the delay in lodging the FIR. This aspect, therefore, seriously affects the trustworthiness of the prosecution’s case. In the given context, the delay in lodging the FIR is a material aspect that casts serious doubt on the veracity of the prosecution's version. It is a settled principle of law that unexplained or unjustified delay in the registration of the FIR creates room for fabrication and manipulation of facts. In this regard, reliance is placed on the case of ***Khial Muhammad v. The State*** **(2024 SCMR 1490),**

Zafar Ali Abbasi and anothers v. Zafar Ali Abbasi and others **(2024 SCMR 1773)** and case of ***Muhammad Jahangir and another v. The State and another*** **(2024 SCMR 1741).**

11. Coming to the question of the alleged involvement of the accused, it is noted from the record that the accused was arrested on 18.09.2016, whereas the memo of recovery of mobile phones was prepared on 19.09.2016. However, the prosecution case is silent on a crucial aspect that no mobile phone was recovered from the direct possession of the accused at the time of his arrest. The arrest memo did not reflect any such recovery, and no explanation has been offered by the prosecution as to under what circumstances or from whom the mobile phones were allegedly secured. According to the mashir (witness to the recovery), both mobile phones were produced by Shahid Ali, who is stated to be the brother-in-law of the accused. Notably, Shahid Ali was never cited as a witness by the prosecution, nor he was produced before the Court to support this version of events. His insertion into the case at a later stage raises doubts regarding the reliability of the recovery proceedings. The absence of his testimony creates a serious evidentiary gap, particularly concerning the chain of custody and ownership of the mobile devices.

12. Moreover, the complainant, in his own deposition, stated that the deceased did not possess a personal mobile phone; rather, she would use a shared mobile phone kept at home. It was never the prosecution's case that the deceased had taken a mobile phone with her at the time she left home on the day of the incident. If, for the sake of argument, it is presumed that the deceased had the mobile in her possession, then the prosecution ought to have shown that the family attempted to contact her after her disappearance. However, no such effort or call record has been produced or established through evidence. These inconsistencies and omissions not only weaken the prosecution's case but also create serious doubt as to the evidentiary value and linkage of the recovered mobile phones with the accused or the alleged offence. In the absence of a direct, proven connection, the alleged recovery cannot be treated as reliable incriminating evidence against the accused. Additionally, the mobile phones in question were not recovered from the possession of the accused at the time of arrest. Instead, they were produced by one Shahid Ali, who, notably, has no direct connection with the incident. This raises a

significant and unanswered question as to under what circumstances Shahid Ali came into possession of the mobile phones allegedly belonging to the deceased and the accused. Such omissions create a significant dent in the prosecution's case, particularly in a matter resting upon circumstantial evidence, which is required by law to be of an unbroken and convincing nature. In the present case, the prosecution's reliance on this weak and unsupported piece of circumstantial evidence renders the overall case doubtful and lacking in evidentiary integrity.

13. Furthermore, the complainant, in his deposition, has further attempted to attribute motive by alleging that some females from the mohallah disclosed to him that the deceased (his sister) was teased by the accused. However, it is a matter of record that none of those alleged females were cited as prosecution witnesses, nor they were produced before the Court to substantiate this claim. Such uncorroborated assertions amount at best to marginal hearsay, and in the absence of supporting testimony from the alleged sources, this version cannot be given any evidentiary weight. The failure of the prosecution to produce such material witnesses, who were admittedly available and could have supported the prosecution's narrative, leads to a presumption of adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984. It appears that these persons were deliberately withheld for reasons best known to the prosecution.

14. Furthermore, the prosecution primarily relies upon the supplementary statement of the complainant, which was recorded on 16.09.2016, nearly twelve days after the registration of the FIR, without offering any plausible justification for such delay. The law is well-settled that delayed statements, particularly those that introduce new facts or implicate new accused persons, must be viewed with caution and are often considered an afterthought, unless properly explained. In the instant case, the complainant, in his supplementary statement, failed to disclose the source through which he implicated the present accused. The statement is completely silent on how or on whose information he arrived at the conclusion of the accused's involvement. During the trial, the complainant attempted to supplement this deficiency by deposing that some females from the mohallah had informed him about the conduct of the accused. However, none of those alleged persons were cited as

witnesses or produced by the prosecution, thereby rendering such claim unsubstantiated. Moreover, prosecution witness Mst. Nasreen, the mother of both the complainant and the deceased, deposed that she had spoken with the accused over the phone prior to the disappearance of the deceased. Even if this piece of evidence is taken at face value, it does not justify the unexplained lapse of twelve days in recording the supplementary statement of the complainant under section 161 Cr.P.C. In such circumstances, the delayed supplementary statement, devoid of explanation and lacking corroborative support, loses its probative value and becomes fatal to the prosecution's case, especially when the accused is implicated for the first time therein.

15. Now coming to the aspect of medical evidence**,** it is a well-settled principle of law that medical evidence is primarily used to determine the nature of the injuries sustained, the cause of death, and the possible kind of weapon used. However, it is equally established that medical evidence, by its very nature, cannot identify or establish the identity of the assailant. Reliance is placed upon the case of ***Muhammad Ramzan vs the State*** **(2025 SCMR 762),** as held that:

> *16. No doubt, as per testimony of Dr. Shazia (PW.12), who had conducted autopsy on the dead body, the deceased met her unnatural death due to strangulation, but in absence of any direct or circumstantial evidence, only medical evidence would not be sufficient to prove that it was the petitioner who committed murder of the deceased. It is by now well settled that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the cases of "Muhammad Hassan and another v. The State and another" (2024 SCMR 1427) and "Iftikhar Hussain alias Kharoo v. The State" (2024 SCMR 1449).*

16. As per ***Modi's Medical Jurisprudence and Toxicology, 26th Edition, Chapter 20 titled "Death from Asphyxia"***, the term "strangulation" is specifically defined and medically explained. For ready reference, the relevant portion is reproduced as under:

> *Strangulation is defined as the compression of the neck by a force other than hanging, weight of the body has nothing to do with strangulation.*
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> *Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.*

> *When constriction is produced by the pressure of the fingers and palms upon the throat, it is called throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).*
>
> *Further explained:*
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> *(2) If fingers are used (throttling) marks of pressure by the thumb and the fingerprints are usually found on either side of the windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side obliquely downwards and outwards, and one below the other.*

17. As per Modi's, it is observed that in cases of strangulation, a fracture of the first and second ribs on both sides be found. Furthermore, under the topic of medico-legal questions relating to the determination of whether death was caused by strangulation, it is noted that abrasions and fingernail marks, sometimes be produced on the neck by a person gasping for air, particularly in an intoxicated state or during an epileptic or hysterical fit. Therefore, in order to conclusively arrive at a finding that death occurred due to strangulation, it is essential to examine signs of violence in the underlying tissues, along with the presence of ligature marks, bruises caused by fingers or feet or knees, and other associated features indicating death by asphyxia. At the same time, the possibility of death from other causes of asphyxia must be categorically excluded. In the present case, the medical officer categorically stated in his deposition that no fractures of the ribs were found and also opined that they appeared to be healthy. The doctor further confirmed that no external signs of violence, such as bruises, abrasions, or fingernail marks, were observed on the face, neck, or any other parts of the body, which are usually present in cases of violent strangulation. Nevertheless, the final opinion of the doctor was that death occurred due to shock and asphyxia as a result of strangulation.

18. Now, coming to the prosecution's reliance on the confessional statement of the appellant: Admittedly, the confessional statement was retracted by the accused, as he pleaded not guilty at the time of framing of charge during the trial. In such circumstances, the confessional statement loses its evidentiary value and cannot be treated as a voluntary and truthful account. A statement made under Section 164 Cr.P.C. by an accused against himself, which is subsequently resiled from, cannot be accepted as a trustworthy or reliable piece of evidence unless it is

corroborated by other strong independent evidence. In this regard, reliance is placed upon the judgment of ***Muhammad Ismail and others vs The State*** **(2017SCMR 898)**, it had been held by the Honourable Apex Court that:

> *The only other piece of evidence remaining in the field was a judicial confession allegedly made by Muhammad Iqrar, Khalid Hussain and Shakir Ali appellants before a Magistrate under section 164, Cr.P.C. but admittedly the said judicial confession had been retracted by the appellants before the trial court and in the absence of any independent corroboration such retracted judicial confession could not suffice all by itself for recording or upholding the appellants' convictions.*

Further reliance in support is placed on the following authoritative judgments:

Azeem Khan and another vs Mujahid Khan and others **(2016 SCMR 274).**

> *15. Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the*

confession, made by the accused.

16. In the instant case, the Recording Magistrate namely, Ch. Taufiq Ahmed did not observe least precautions, required under the law. He was so careless that the confessions of both the appellants were recorded on oath, grossly violating the law, the same, therefore, has rendered the confession inadmissible which cannot be safely relied upon keeping in view the principle of safe administration of justice.

17. The Recording Magistrate committed successive illegalities one after the other as after recording the confessions of the appellants on oath, both were handed over to the same police officer, who had produced them in the Court in handcuffs. This fact bespeaks volumes that the Recording Magistrate was either not knowing the law on the subject or he was acting in the police way desired by it, compromising his judicial, obligations. This careless attitude of the Magistrate provided premium to the Investigating Agency because it was thereafter, that the recoveries of the so-called incriminating articles were made at the instance of the appellants, detail of which is mentioned above.

18. In our considered view, the confessions of both the appellants for the above reasons are of no legal worth, to be relied upon and are excluded from consideration, more so, when these were retracted at the trial. Confessions of this nature, which were retracted by the appellants, cannot mutually corroborate each other on the principle that one tainted evidence cannot corroborate the other tainted piece of evidence. Similar view was taken by this Court in the case of Muhammad Bakhsh v. The State (PLD 1956 SC 420), while in the case of Khuda Bux v. The Crown (1969 SCMR 390) the confession made, was held not voluntary because the accused in that case was remanded back to the police after making confession.

Anwar alias Anoo and another vs The State **(2023 MLD 918)**, as this Court held that:

10. Admittedly, confessional statement is retracted statement as accused at the time of trial pleaded not guilty and therefore the it confessional statement against him being a witness cannot be considered as truthful statement because a person who recorded evidence against himself appeared before the Magistrate, subsequently resiled cannot be considered as a truthful witness

19. Now, coming to the testimony of prosecution witness Muhammad Afzal, who accompanied the complainant in the search of the deceased. During his deposition, he categorically stated that he did not know who committed the murder of the deceased. He did not utter a single word that could corroborate the version of the complainant, particularly with reference to the supplementary statement wherein the accused was implicated. His evidence does not support the prosecution's claim regarding the alleged knowledge or suspicion against the accused, nor it lend any strength to the complainant's version. Therefore, his testimony appears to be completely silent on the material aspects of the case and

does not provide any corroborative value to the prosecution story. In this context, support is drawn from the case of I***rfan Ali and others vs The State*** **(2022 YLR 1097)**, wherein the Federal Shariat Court held that:

> *10. PW.3 complainant Ahmed Ali in his FIR had stated that after their search and personal inquiry and the police's inquiry, they came to know that the appellants have committed this offence, but when he came into the witness box he did not say so and went on to depose that "I cannot say whether accused present in Court are the same or not", even otherwise no source of information about gaining such knowledge, has been disclosed by the prosecution either in the FIR and/or during the trial. And thus, manifestly, the appellants have been implicated in this case on the basis of suspicion, and it is well settled that the suspicion howsoever grave or strong may be, it can never be a proper substitute for the standard of proof required in a criminal case, which is to be proved by the prosecution against the accused beyond any shadow of doubt.*

20. A significant question also arises with regard to the supplementary statement of the complainant, which was recorded after an inordinate and unexplained delay of nearly twelve (12) days. According to the prosecution, the mother of the complainant received a phone call from the accused prior to the incident. Furthermore, the complainant asserted that he had learnt from certain females of the locality that the accused used to tease the deceased. This considerable delay in naming the accused, without any plausible explanation, creates serious doubt and raises questions about the veracity and reliability of the prosecution's version. Such a delay in recording the supplementary statement casts a substantial dent upon the prosecution case and is not merely a procedural irregularity but goes to the root of the matter, especially when no explanation is offered for withholding such information at the earliest stage. In this regard, reliance is placed upon the judgment titled ***Khalid Javed and another vs The State*** **(2023 SCMR1419),** as held that:

> *As far as supplementary statement of a complainant is concerned its value is not more than a statement under section 161, Cr.P.C. , in this behalf reference may be made to the case of Falak Sher alias Sheru v. The State (1995 SCMR 1350).*

21. Another subject of the prosecution case rests on the Call Data Record (CDR) and alleged recovery of mobile phones. However, the prosecution utterly failed to establish the ownership of the SIM card allegedly used by the accused. No documentary evidence was brought on record to prove that the SIM card was registered in the name of the

accused or that the recovered mobile handset belonged to him. More importantly, no phone call recordings or transcripts were produced to show the nature of the conversation between the accused and the deceased. The prosecution neither established the context nor the content of any communication between them. The prosecution's reliance on the CDR without corroborative evidence amounts to mere conjecture and suspicion. Support for this view is drawn from the case of ***Rehmatullah and 2 others vs. The State*** **(2024 SCMR 1782),** wherein the Hon'ble Supreme Court of Pakistan held that:

> *9. Insofar as the alleged recovery of mobile phone of the deceased from the possession of Muhammad Younas, appellant is concerned, we have noted that no proof of the ownership of above mentioned mobile phone in the name of Muhammad Mustafa, deceased has been brought on record. The SIM numbers i.e. 0311-1842119 and 0313-2280082 of mobile phone of the deceased were mentioned in the FIR. The said SIMs of the deceased were not recovered from the possession of the appellants. Naseebullah, ASI (PW-3) who was recovery witness of mobile phone of the deceased from the possession of Muhammad Younas, appellant has candidly conceded during cross-examination that no SIM was present in the recovered mobile phone. Although, it was the case of the prosecution witnesses namely Mansoor Ahmed, SI (PW-2) and Naseebullah, ASI (PW-3) that Muhammad Younas, appellant also got recovered motorcycle of the deceased from his house but the registration number of the said motorcycle of the deceased was not mentioned in the FIR. No documentary proof was produced in the prosecution evidence to show that the motorcycle allegedly recovered from the possession of Muhammad Younas (appellant) was owned by Muhammad Mustafa, deceased or the same was in the name of his any family member. Even, Muhammad Hassan, complainant who was brother of the deceased did not appear in the witness box to identify that the motorcycle allegedly recovered from the possession of Muhammad Younas, appellant was the same motorcycle, which belonged to Muhammad Mustafa, deceased. We are, therefore, of the view that the above mentioned alleged recoveries of motorcycle and mobile phone of the deceased from the possession of Muhammad Younas, appellant are not helpful for the prosecution case.*
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> *10. We have further noted that Call Data Record (CDR) of the SIMs of the deceased and accused persons were also produced in the prosecution evidence but as mentioned earlier no documentary evidence was produced before the learned trial court to establish that the SIMs mentioned in the call data record (Exhibit-6-D to 6-Q) were in the name of the deceased or appellants. Moreover, no phone recording or its transcript was produced in evidence to show the nature of the conversation between the appellants and the deceased. We are, therefore, of the view that the evidence of CDR produced in this case is inconsequential for the prosecution. Reference in this context may be made to the case of Azeem Khan v. Mujahid Khan (2016 SCMR 274).*

22. It is the prime duty of the Investigating agency to collect all possible evidence, including scientific and technical assistance, in order to

determine the guilt or innocence of the accused. In the present case, the Investigation suffers from glaring lapses. Despite the availability of forensic means, no effort was made to preserve or examine fingerprints from the dead body or the surrounding area, nor was any forensic opinion sought in this regard. ***Rule 25.14 of the Police Rules, 1934*** clearly mandates that the Investigating Officer are expected to take steps to secure expert technical assistance, wherever relevant. Moreover, the prosecution failed to examine marginal but material witnesses. These include the females of the locality, who, according to the complainant, had informed him about the alleged teasing behavior of the accused towards the deceased. Similarly, the owner of the land where the dead body was found was not examined, even Shahid Ali, the person who allegedly produced the mobile phones of the deceased and the accused was not cited as witness. The omission to examine such witnesses raises serious doubts about the trustworthiness of the prosecution case. In this context, reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of ***Muhammad Ramzan vs. The State*** **(2025 SCMR 762)**, wherein it was held that:

> *14. Adverting to the circumstantial evidence in the shape of recovery of the dead body of the deceased on the alleged pointation of the petitioner from his house, statement of Abdul Rehman Inspector (PW.10) in this regard is of worth consideration. He has deposed that after disclosure the petitioner led them to a house near Islamabad Home Dhoke Malayarn wherefrom he recovered dead body of Mst. Ameen Bibi alias Yasmeen deceased, lying in an iron box; that the box was locked and its key was with the petitioner, who opened it; that there was a rope around the neck of the deceased and her mouth was closed with off-white tape. In cross-examination, Abdul Rehman Inspector has stated that he had not made any effort to get fingers prints from the tape over the mouth of the deceased; that he did not notice any wrapper or box of the tablets; that he did not record statement of Matloob Hussain, the owner of the house where the petitioner was residing. Again stated that he had recorded his statement but he could not be cited as a witness in calendar. At the trial, the prosecution has not produced Matloob Hussain, the owner of the house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst Saima Noreen v. The State" (2024 SCMR 1310).*

23. In order to establish the allegation of rape, particularly in the absence of any ocular evidence, it is imperative that the circumstantial evidence must sufficiently connect the accused with the commission of the

offence. In this regard, the lady Medical officer, upon external examination of the deceased, categorically opined that no blood stains or semen stains were observed. However, vaginal swabs and slides, along with the clothes of the deceased, were sent to the Chemical Examiner. The Chemical Examiner reported the presence of human sperm on the vaginal swab but found no human sperm on the vaginal slide or on the clothes of the deceased. Moreover, no DNA report of the accused is available on record. The medical officer who examined the accused testified during trial that he did not collect any DNA sample from the accused. He further admitted that he was unable to establish any nexus between the accused and the semen detected in the vaginal swab, as there was no DNA matching or grouping carried out to connect the accused with the alleged act. In such circumstances, the evidentiary value of the medical and forensic reports stands significantly diminished, thereby failing to furnish the necessary legal link between the alleged act of rape and the accused person. Reliance is placed upon the case of ***Saleem and others vs The State and others*** **(2021 MLD 1184),** ***Gulzar Shah vs The State*** **(2021 MLD 169),**

24. It is a well-settled principle of criminal jurisprudence that if a single loophole in the prosecution's case comes on record, the benefit of such doubt must be extended to the accused. The standard of proof in criminal trials requires the prosecution to establish its case beyond reasonable doubt. Any failing in this regard entitles the accused to acquittal. In support of this proposition, reliance is placed on the authoritative judgment of the Hon'ble Supreme Court of Pakistan in the case of ***Ahmed Ali and another vs. The State*** **(2023 SCMR 781),** wherein it was held as under:

> *12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857),*

Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).

25. In view of the foregoing reasons and detailed discussion, the instant appeal was allowed vide short order dated 24.07.2025, whereby the appellant was acquitted of the charges levelled against him. Consequently, the judgment dated 06.12.2019 passed by the learned Trial Court in Sessions Case No. 331 of 2016 was set aside. The Jail Authorities were directed to release the appellant forthwith, if not required in any other criminal case. These are the detailed reasons in support of the short order announced earlier.

JUDGE