

Murder Acquitted on Benefit of doubt

154

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. A.T.A 37 & 38 of 2013 & the

Conf. Case 03/13

Naseer A. Butt

& another

vs. The State

HIGH COURT OF SINDH

Composition of Bench: S.B./D. B.

Mr. Justice Mohammad Karim Khan Agha,

Mr. Justice Khedim Hussain Tunio

Date(s) of Hearing: 4th, 11th & 12th of Sep, 19

Decide on: 19-09-2019

(a) Judgment approved for reporting:

Yes

Yes

K.A.G.

CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

NOTE:

- (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
- (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

A-1

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IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Appeal No. 37/2013

Naseer Ahmed Butt s/o
 Abdul Razaq Butt
 R/O House No.H800 Gali No.3,
 Generalabad Sheereen Jinnah Colony
 Clifton Karachi.
 Presently confined in
 Central Jail,
 Karachi.....Appellant

PRESENTED
 06-9-2013
 9/9/2-13
 Dy. Registrar

Versus

The State.....Respondents

FIR No.226/2011
 U/S.365-A/302/34 PPC
P.S. GIZRI (AVCC)

**APPEAL UNDER SECTION 25 OF THE
 ANTI-TERRORISM COURT ACT 1997.**

Being aggrieved and dis-satisfied with the Judgment dated 31-08-2013 passed by the Learned Judge of Anti-Terrorism Court No.II Karachi whereby appellant Naseer Ahmed Butt was convicted Under Section 7(a) & (e) of ATA 1997 R/W Section 365-A/302/34 PPC and awarded death sentence/penalty and also awarded with fine of Rs.1,00,000/- to be paid to the father of the deceased as compensation hence this appeal is preferred on the following facts and grounds:-

FACTS:

The complainant Syed Jamalullah had lodged the FIR No.226/2011 on 27th of July 2011 at 2145 hours that he is a employee of DHA as Director Finance, his son Syed Ahmed Bilal on 22.07.2011 at about 3.30 pm had left the house saying that he is going to meet his friend but he did not return. He kept looking for him among his friends and relatives but there was no clue of him. On 23.07.2011 he received a call at his PTCL No.5390196 and the caller said that if life of his son is dear to him he should give Rs.20 lacs. He stated that at that time he did not have C.L.I (Calling Line identification) at his PTCL therefore he cannot note the number from where call had come. Again the call had come on 25.07.2011 at his PTCL from 8254018 and the caller said that he (caller) asked

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IN CUSTODY
IN THE HIGH COURT OF SINDH AT KARACHI

(Criminal Appellate Jurisdiction)

Special Cr. ATA Appeal No. 38 of 2013

PRESENTED
11-9-2013

Dy. Registrar (Jud)

3471

Mohammad Abu Bakar Sad'q
son of Mohammad Sadiq
Muslim, adult, resident of
Shireen Jinnah Colony, Karachi.
Presently confined at
Central Prison Karachi

Appellant

VERSUS

The State

Respondent

F.I.R No. 226/2011

U/s. 365-A/302/34 P.P.C

R/w Section 7 Anti-Terrorism Act, 1997

P.S Gizri (AVCC), Karachi.

**APPEAL UNDER SECTION 25 OF THE
ANTI-TERRORISM ACT 1997 READ WITH
SECTION 561-A CRIMINAL PROCEDURE CODE**

Being aggrieved and dissatisfied with the judgment, sentence and fine passed by the learned Anti-Terrorism Court No. II, Karachi vide Judgment dated 31-8-2013 in Special Case No. 71/2011, sentencing the present Appellant and the co-accused Naseer Ahmed Butt as under: -

"I award death penalty to both of them u/s 7 (a) & (e) of ATA, 1997 r/w 365-A/302/34 of P.P.C. of P.S Gizri (AVCC), Karachi, on the two counts murder and kidnapping for ransom. They are to be hanged by neck till death subject to confirmation by the Hon'ble High Court of Sindh, Karachi. Both are also to pay fine of Rs. One Lac each to

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Conf Case No. 03/13-2

OFFICE OF THE JUDGE, ANTI-TERRORISM COURT NO.II, KARACHI.

No.Reader/ATC-II/K.Div/ *60* /2013, Karachi, dated 3rd Sept. 2013

To,

✓
The Registrar,
Honourable High Court of Sindh,
Karachi.

575
682
8/9/13

SUBJECT: SUBMISSION OF R&Ps UNDER SECTION 25 OF ATA 1997 --
SPECIAL CASE No.71/2011 STATE VS. ABU BAKAR & OTHERS

Enclosed please find herewith following Record & Proceedings of Special Case, decided by this Court on 31.08.2013, details of case is as under:-

S.No.	Case No.	State Vs.	FIR No.	P. S. & U/S.
01.	71/2011	Abu Bakar Sadiq & Other	226/2011	Gizri (AVCC) 365-A/302/34/PPC r/w 7 ATA 1997

Encl:01 R&Ps.

This is for your kind information and necessary action.



Ms. Khalida Yaseen
3.9.2013
(Ms. KHALIDA YASEEN)
JUDGE
ANTI TERRORISM COURT NO: II
KARACHI

IN THE HIGH COURT OF SINDH AT KARACHI

Special Cr. Anti-Terrorism Appeal No.37 of 2013
Special Cr. Anti-Terrorism Appeal No.38 of 2013
Confirmation Case No.03 of 2013

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio.

Appellants: Naseer Ahmed Butt through Mr. Mahmood A. Qureshi Advocate and Muhammad Abu Bakar Sadiq through Mr. Mumtaz Akhtar, Advocate.

Respondent: The State through Mr. Muhammed Iqbal Awan, Deputy Prosecutor General Sindh

Complainant; Through Mr. Zakir Laghari, Advocate.

Date of hearings: 04.09.2019, 11.09.2019 and 12.09.2019

Date of announcement: 19.09.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Naseer Ahmed Butt son of Abdul Razzaq Butt and Muhammad Abu Bakar Sadiq son of Muhammad Sadiq have preferred these appeals against the judgment dated 31.08.2013 passed by the learned Judge Anti-Terrorism Court No.II, Karachi in Special Case No.71/2011, F.I.R. No.226/2011 u/s. 365-A/302/34 PPC r/w section 7 of ATA, 1997, registered at police station Gizri (AVCC), Karachi whereby both the appellants have been convicted of the charge and awarded death penalty under Section 7(a) and (e) of Anti-Terrorism Act, 1997 r/w. 365-A/302/34 PPC on two counts of murder and kidnapping for ransom subject to confirmation by this court. Both are also to pay fine of Rs. One Lac each to be paid to the father of the deceased the complainant as compensation (the impugned judgment).

2. The brief facts of the prosecution case as per FIR are that the complainant Syed Jamalullah had filed FIR No.226/2011 on 27th July, 2011 at 2145 hours that he is an employee of DHA as Director Finance. His son Syed Ahmed Bilal on 22.07.2011 at about 3.30 pm had left the house saying that he is going to meet his friend but he did not return. He kept

looking for him among his friends and relatives but there was no clue about his whereabouts. On 23.07.2011 he had informed PS Gizri about the missing of his son. On 25.07.2011 he received a call at his PTCL No.5390196 and the caller said that if the life of his son is dear to him he should give Rs.20 Lacs. He stated that at that time he did not have C.L.I. (Calling Line Identification) at his PTCL therefore, he could not note the number from where call had come. Again a call had come on 26.07.2011 on his PTCL line from 8254018 and the caller said that he (caller) asked him (complainant) that he has not given the money because his son is not dear to him. The complainant told the caller that they had not given the location of where to drop the money and to say so. The caller said to bring the money at Liaqatabad Sector and closed the phone. He had informed about this call to CPLC and his case is against unknown accused persons for kidnapping his son aged about 16 to 17 years for ransom as such he requested to take action against the culprits.

3. The I.O. Inspector Tahir Naseer was given the investigation of this case. He had met the complainant and found out from him that his son Syed Ahmed Bilal had phone No.0336-2306590. The three persons namely Abu Bakar Sadiq, Naseer Ahmed Butt and Tahir Ahmed Butt were arrested by Sub-Inspector Abdul Saeed, mobile officer u/s 54 Cr.P.C. Tahir Naseer had interrogated these three persons but he could not find out anything material therefore, they were released on surety. The two persons Abu Bakar Sadiq and Naseer Ahmed Butt were bound down to appear on 28.07.2011 for investigation at AVCC. On 28.07.2011 Abu Bakar Sadiq and Naseer Ahmed Butt were summoned and were interrogated but the two of them did not say anything about the abductee and claimed themselves to be innocent but from their countenance it seemed that both of them were involved in the crime. They were let go but Abu Bakar Sadiq was asked to come on 30.7.2011. Abu Bakar Sadiq had come and he was interrogated whereupon he confessed that he along with his friend Naseer Ahmed Butt had called Syed Ahmed Bilal from his house on 22.7.2011 and took him to a desolate place and killed him upon which Tahir Naseer had formally arrested accused Abu Bakar Sadiq and at his instance accused Naseer Ahmed Butt.

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4. The charge was framed against the two accused on 11.10.2011 but at the time of final arguments on 23.05.2012 it was noticed by the Court that the charge was defective as the words "strangled to death" was not in the first charge and was added in the amended charge which was framed on 24.05.2012. The learned Advocate Mr. M.R. Syed for the accused had addressed the trial court on 23.05.2012 and had stated that he adopts all the evidence and need not record fresh evidence after the amendment of the charge. When the amended charge was framed against the accused persons on 24.04.2012 both pleaded not guilty and claimed trial of the case.

5. In order to prove its case the prosecution examined 08 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. 6 CW's were also called to give evidence by the court mainly in respect of the age of the accused and one CD recording whereby the mother of one accused had in effect stated that IO Tahir Nazir would falsely implicate her son in the case if she did not pay him a bribe was exhibited. The accused persons recorded their statements under S.342 Cr.PC whereby they claimed their false implication in the case. The accused did not examine themselves on oath nor produce any defense witnesses in support of their defense.

6. Learned Judge, Anti-Terrorism Court-II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 31.08.2013, convicted and sentenced the appellants as stated above, hence these appeals have been separately filed by the appellants against conviction. By this common judgment we intend to decide the same.

7. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellants at the outset made it clear that if there were any potential legal defects in the impugned judgment such as the appellants potentially being under 18 years of age and being denied the opportunity to examine the medical board which opined that both appellants were over 18 years of age, not putting questions to the

appellants during their S.342 statements, the non rerecording of PW's after the charge was amended they waived these defects as they did not want the case remanded back to the trial court but wanted the appeals to be decided on merits by this court.

9. Learned counsel for appellant Abu Bakar contended that the place of the murder of the deceased had not been proved especially as it was an open DHA plot and it was not believable that the DHA guards would not have seen the body after a delay of 8 days and in fact the police knew where the dead body was before the police were taken to it on the alleged pointation of the appellant; that although the body had been cut up no weapon was recovered which was capable of cutting up the body; that the dead body due to its decomposition was not identifiable; that it did not appeal to reason that the deceased was abducted on 22-07-2011 and yet the ransom call was made 3 days later; that there was no evidence that a ransom demand had been made; that the last seen evidence was completely unreliable as it was reported after 8 days and in any event this was the weakest form of evidence; that no identification parade was held; that PW 1 had not even give evidence on oath; that the motorbike had not been recovered and for one or any of the above reasons the appellant was entitled to be acquitted based on the benefit of the doubt. In support of his contentions he placed reliance on the case of **Khyber Tobacco Co. Ltd. v. Khyber Tobacco Co. Labour Union** (P.L.J 1974 Tr. C. (Labour) 375), **Khyber Tobacco Co. Ltd., Mardan v. Labour Union** (1975 PLC 282), **Abdul Ghaffar alias Kaka v. The State and another** (2018 PCr.L.J Note 15 Lahore), **Zafar Hayat v. The State** (1995 SCMR 896), **Zainab Bibi v. Muhammad Ashraf and others** (2018 PCr.L.J Note 13 Lahore), **Najaf Khan and others v. The State and others** (2016 PCr.L.J 380 Lahore), **Nooro alias Noor Muhammad Shar and another v. The State** (2018 PCr.L.J Note 52 Sindh Larkana Bench), **Taiz Ali and another v. The State** (2018 PCr.L.J Note 30 Sindh Hyderabad Bench), **Syed Saeed Ahmed alias Asad Jaffary v. The State** (2018 PCr.L.J Note 36 Sindh), **unreported judgment in the case of Rashid Aslam and Arshad Nabi v. The State** dated 01-10-2018 (in Cr. Appeals No. 99 & 100 of 2017 passed by the Supreme Court of Pakistan) and an Act No. X of 1873 to consolidate the law relating to Judicial Oaths, and for other purposes.



10. Learned counsel for Naseer Butt contended that it is an admitted position that the appellant did not murder the deceased; that this was an unwitnessed crime; that there was no evidence of abduction; that the alleged last seen witness PW 3 Muhammed Azhar was a planted witness whose evidence no reliance could be placed on especially as he came forward 8 days after the incident and that there was no evidence to suggest that he was either a friend of the father of the deceased or knew the deceased; that there was no proof of any ransom demand or that any ransom was paid; that the complainant had made dishonest improvements in his statements and for one or any of the above reasons the appellant was entitled to be acquitted based on the benefit of the doubt. In support of his contentions he placed reliance on the case of **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **Muhammad Abid v. The State** (PLD 2018 SC 813), **Fayyaz Ahmed v. The State** (2017 SCMR 2026), **Altaf Hussain v. Fakhar Hussain and another** (2008 SCMR 1103), **Attaullah v. The State and another** (2017 P.Cr.L.J 992), **Mst. Askarjan and others v. Muhammad Daud and others** (2010 SCMR 1604), **Akhtar Ali and others v. The State** (2008 SCMR 6), **Muhammad Asghar v. The State** (PLD 2008 SC 513) and **Syed Saeed Muhammad Shah and other v. The State** (1993 SCMR 550).

11. Mr. Muhammed Iqbal Awan Deputy Prosecutor General and learned counsel for the complainant contended that the appellants had rightly been convicted by the impugned Judgment which did not require any interference by this Court. In particular he stressed that although the case was based on circumstantial evidence the prosecution had proved this through the last seen evidence, CDR and the dead body being shown to the police on the pointation of appellant Abu Bakr and the wallet of the deceased being uncovered on the pointation of appellant Naseer Butt. He did however concede that since it was unclear which of the two appellants actually murdered the deceased the appropriate sentence was one of life imprisonment as opposed to the death penalty. In support of their contentions they placed reliance on the cases of **Ghulam Hussain Soomro v. The State** (PLD 2007 SC 71), **Sh. Muhammad Amjad v. The State** (PLD 2003 SC 704) and **Nazir Shehzad and another v. The State** (2009 SCMR 1440).

12. We have heard the arguments of the learned counsel for the appellants, DPG and complainant and have 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 including the cases cited at the bar.

13. Before moving further we would like to address the irregularity where by the charge was re framed after recording the evidence of the PW's and the PW's were not recalled to re record their evidence after the amendment in the charge. Ordinarily after reframing the charge all the evidence should have been re recorded. However we have noted that the accused counsel at trial did not want the evidence to be re recorded and on inquiry whilst hearing these appeals learned counsel for the appellants did not want the case to be remanded back on this irregularity and wanted the appeals decided on merits by this court. We have noted that only the word, "strangulation" has been added to the amended charge and after going through the evidence it appears that this addition to the amended charge has not prejudiced the accused whilst recording the evidence of the PW's. Under these circumstances we see no useful purpose in remanding the appeals back for re recording all the evidence of the PW's as this will give the prosecution a chance to improve its case and will also be very time consuming and the trial will keep the appellants in jail for an even longer period which again may result in their conviction and they would again be forced to move an appeal which may take years to be determined which will again prejudice them especially as they have already been behind the bars for over 8 years. As such in our view remanding the case back for re recording all the evidence of the PW's will not meet the ends of justice especially as the addition of the single word, "strangulation" to the amended charge has not caused prejudice to the accused and learned counsel for the accused both at trial and before us on instructions did not want the evidence of the PW's to be re recorded after the reframing of the charge and wanted this court to decide the appeals on merits. Likewise is the position as mentioned earlier in respect of the age of the appellants in terms of them not being able to cross examine the Dr's who formed a part of the special medical board which determined that both the appellants were over 18 years of age notwithstanding the evidence of 4 CW's as to age of the appellants and the fact that some

questions were not put to the accused during the recording of their S.342 Cr.PC statements. Instead the learned counsel for the appellants wanted the appeals to be decided on merits by this court.

14. CW's 5 and 6 relate to a CD which contains an interview given to a TV channel in which the mother of one of the accused apparently claimed that her son had been falsely implicated in this case because she refused to pay a bribe on the instructions of IO Tahir Naseer. Since she made no complaint of this prior to her T.V interview to the police or any one else whatsoever we consider that her interview was made as a last ditch effort in order to save her son and thus have given it no weight. This is more so since the mother was alive but failed to give evidence which would have been the best evidence and her evidence in the CD is apparently hearsay. Even otherwise the CD is inadmissible in evidence because it does not meet with the requirements for evidence that has become available because of modern devices under Article 164 Qanun-e-Shahadat Order 1984 (Q&S) as set out in the supreme court case of **Ishtiaq Ahmed Mirza and others V Federation of Pakistan** (unreported) dated 23-08-2019 in C.P's No.10,11,12 of 2019 Regarding allegations leveled in a media briefing against Muhammed Arshad Malik Judge Accountability Court II Islamabad.

15. After our reassessment of the evidence we have come to the conclusion that the prosecution has not been able to prove its case against the accused beyond a reasonable doubt and that the accused are entitled to the benefit of the doubt for the following reasons;

(a) We accept that the initial complaint regarding the missing son was made timely and the FIR followed and as such the 5 day delay in lodging the FIR in a case of kidnapping for ransom has been adequately explained. In this respect reliance is placed on **Ghulam Hussain Soomro** (Supra). There are, however, other factors which we set out below which lead us to the conclusion that the prosecution has not proved its case against the accused beyond a reasonable doubt.

(b) There is no evidence that the deceased was abducted by the accused. The evidence is that he left home on 22-07-2011 at about 3

to 3.30pm and did not return home. No one from his locality actually saw him being abducted by the accused or any one else despite this being a day time incident a part from some last seen evidence which we shall discuss later in this judgment and even then despite being a boy of 16/17 years of age he did not appear to be traveling with the accused under protest or signaling passers by for any assistance and that there was no evidence that the accused were even armed so as to force the deceased to accompany him who may have been traveling with the accused at his own free will even if we are to give any weight to the last seen evidence. As such in our view the essential ingredients of S.362 PPC have not been made out which also form a part of S.365 (A) PPC

(c) That there is no evidence that any ransom demand was actually made since there is no voice recording available despite the involvement of the CPLC and that no ransom has ever been recovered. The location where the ransom was to be dropped also raises doubts as it is said to be, "Liaqatabad Sector". Surely the complainant would have insisted on a precise location as Liaqatabad sector is large in area and a precise time for the ransom drop which lack of information does not particularly appeal to reason and ordinary human conduct and likewise why should the kidnappers have waited 3 days before making the ransom demand after the alleged abduction and murder of the deceased. The SIM recovered from Abu Bakar was not in his name and the SIM recovered from Naseer Butt was recovered on his pointation and was not in his name and as such it could well have been planted. In addition there is no evidence of the safe custody of the SIM's or the mobile phones after their recovery and no effort was made to trace out the owner of the landline from whom the ransom call was originally made. Namely 8254018. Furthermore, there is no evidence of the safe custody of the CDR which does not bear the stamp of the CPLC or the signature of the police officer who collected it and as such its admissibility in evidence is doubtful. In respect of the need for a voice recording in such type of cases reliance is placed on **Azeem Khan V Mujahid Khan** (2016 SCMR 274).

(d) PW 3 Muhammad Azhar is a last seen witness who along with

his friend Sohail Malik (who did not give evidence despite being on the witness list and thus an adverse inference may be drawn against him under Article 129 (g) Q&S that he may not have supported the prosecution case) claims to have seen the deceased on 22.07.2011 (the day the deceased went missing) with three boys riding a motorbike being the accused and the deceased at about 4pm in the vicinity of the marina club and heading towards Phase VIII DHA. Muhammed Azhar in our view is a chance witness as his factory is in Korangi and his house is in Gulshan-e-Iqbal which is about 20 KM's away from where he allegedly saw the accused and he had no reason to be near the marina club on the day in question and he has given no cogent explanation why he was there. In addition he would only have had a fleeting glance of the accused and the deceased as he passed them in his car as they passed him on a motor bike. There is no evidence to corroborate that he knew the accused or the deceased really well and would be able to recognize them by a fleeting glance. He was unable to name the colour and make of the motorbike and not even any of the clothes which the accused and the deceased were wearing which raises further doubt as to him seeing let alone identifying the accused and the deceased. No identification parade was carried out and the other corroborative witness Sohail did not give evidence. He is in our view not a close friend of the father as according to him he did not learn about the missing of his son until 8 days after the incident which would also imply that he hardly knew the son. He then gave his last seen statement to the police 8 days after the incident which would give him sufficient time to concoct a story regarding seeing the accused and the deceased. Under these circumstances we give very little weight, if any, to his evidence which will need the strongest of corroboration to be relied on at all especially as it is settled law by now that last seen evidence is one of the weakest forms of evidence.

(e) The medical evidence is also important in this case. On 30.07.2011 PW 7 Dr. Abdul Razak carried out the post mortem of the deceased 8 days after he went missing. No injury is seen on the neck and the cause of death is in effect head injury resulting from

hard and blunt substance which indicates that the deceased was **not** strangled as alleged by the prosecution. Most significantly, the time between death and post mortem is 7 to 10 days which means that the deceased could not have died on the day he was abducted as per confession before the police of appellant Abu Bakar and may have died at least a day or two after the last seen evidence which means that it cannot be conclusively proved that the deceased was killed shortly after the alleged last seen evidence of PW 3 Muhammed Azhar who allegedly saw him on 22-07-2011. On the contrary it suggests that the deceased was killed 2 or 3 days after he was allegedly last seen which means that even if PW 3 Muhammed Azhar did see the accused and the deceased together on the day he went missing he was most likely not killed until 2 to 3 days thereafter and as such there was plenty of time for the accused to have dropped the deceased off and for some other person to have killed him. Such medical evidence further fortifies our view that we cannot safely rely on the alleged last seen evidence notwithstanding its earlier mentioned defects and doubts to lead to the conviction of the accused. In this respect reliance is placed on **Muhammad Abid V State** (PLD 2018 SC 813)

(f) We are satisfied that the deceased has been correctly identified through DNA. It may be that the deceased died on account of head injuries from the stones which had human blood on them and which were recovered from the murder scene but the question still remains as to the identity of the person who killed him. The fact that the deceased remained for 8 days in a DHA open plot which did not belong to the appellants which people passed every day including DHA guards and it was not concealed and yet it remained unfound, the fact that no weapon which was used to cut up the deceased's body was recovered, that the deceased was not strangled as alleged also casts doubt on the prosecution case.

(g) The manner of arrest of the accused also raises eye brows in that they were seen by a police patrol in Gizri who arrested them simply because they were roaming in the area at 5.30am especially as the accused claim that they were arrested from their houses. The date in the memo of arrest also creates doubts as it is wrongly

stated and co-incidentally for reasons unexplained the very next day the accused are handed over to IO PW 8 Tahir Naseer of the AVCC for investigation in this case notwithstanding that at this time the accused had no known link to the case. Initially the accused are released twice on bond after interrogation and the third time Abu Bakar is interrogated he confesses to the crime. The chain of events starting from the arrest of the accused to the confession of Abu Bakar to the police on his third interrogation does not particularly appeal to reason or natural human conduct. Having been released twice on bond why would Abu Bakar confess when he was called to the police station for interrogation for the third time especially as it would have been apparent by the third interrogation that the police had little, if any, evidence against him. The motor bike allegedly used to abduct the deceased was not even recovered and nor were any blood stained clothes from the accused who allegedly hit the deceased over the head with stones which were left blood stained. In this respect reliance is placed on **Muhammed Asif V State** (2017 SCMR 486). In any event the confession which accused Abu Bakar made before the police that he murdered the deceased is inadmissible in evidence.

(h) So what we are left with is the evidence that accused Abu Bakar took the police to the deceased's body which was found on his pointation in a vacant plot in Phase VIII DHA which did not belong to him. Since the plot was open and the public was passing by the same every day for 8 days and the body was not concealed we cannot rule out the possibility that the police already knew where the body was and simply took the appellant Abu Bakar to that place. Even if we accept that the appellant did take the police to the vacant plot where the body was recovered along with the stones we are of the view that without any other cogent, reliable corroborative evidence which is lacking in this case it would be unsafe to convict the accused on this evidence of pointaion of the dead body alone. Further doubts are also raised when it is considered that no sketch of the body and wardat was made and no photo's were taken of the dead body in situ at the spot which may even lead to the possibility that the body was moved to that location. It is also surprising that

no efforts were made to get rid of the blood stained stones which were allegedly used to murder the deceased. The fact that the police also noted the cause of death as strangulation also raises further doubt. It is also not without significance that the FIR did not describe the clothes the deceased was wearing when he went missing yet he was identified by his clothes by his father.

(i) With regard to accused Naseer once we rule out any confession made before the police we are only left with him leading the police to the place where he allegedly threw the deceased's wallet. In our view once the body of the deceased had been found it cannot be ruled out that the wallet was in his clothes and that it was foisted on accused Naseer. This is especially as the police in cross examination admit that they had already searched the plot before the wallet was found on the alleged pointation of Naseer. How was it possible that the police failed to find the red wallet on their initial search? If Naseer was also trying to hide the identity of the deceased it also does not appeal to reason or natural human conduct that he would dump it a few 100 feet from the dead body and leave it containing the deceased student card and other form of identification. In this respect reliance is placed on **Muhammed Asif V The State** (2017 SCMR 486) Likewise it does not appeal to reason that Naseer would have hidden his SIM in an easily recoverable place if he had used it to make the ransom calls and it cannot be ruled out keeping in view the particular facts and circumstances surrounding this case that the SIM was foisted upon him by the police.

(j) There is no eye witness to the murder of the deceased and the case as admitted by the prosecution is based on circumstantial evidence which in our view does not fully meet the requirements of a case based on circumstantial evidence to enable a conviction as there appear to be many breaks in the chain of evidence linking the accused from the foot of the deceased to his neck. For example, there is no evidence of abduction or of a ransom being demanded or even a motive. Reliance in this respect is placed on the case of **Fayyaz Ahmed V State** (2017 SCMR 2026)

(k) Although we accept that no two cases are identical this case in respect of both the facts and the law in terms of abduction, ransom demands, last seen evidence, decomposition of body has striking similarities with the case of **Rashid Aslam** (Supra) where under similar circumstances the accused were acquitted by extending to them the benefit of the doubt.

16. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt and it is not for the accused to disprove the case against him who may take any and as many defenses as he likes to the allegations against him as the onus rests on the prosecution to prove its case beyond a reasonable doubt as was held in the case of **Muhammed Shah V State** (2010 SCMR 1009) and if there is any doubt in the prosecutions case the benefit must go to the accused. As was held in the case of **Tariq Pervez V The State** (1995 SCMR 1345) that 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. Such principle was recently reiterated by the Supreme court in the case of **Abdul Jabbar V State** (2019 SCMR 129).

17. In our view for the reasons mentioned above the prosecution has failed to prove its case against the appellants beyond a reasonable doubt and the appellant's are both entitled to the benefit of the doubt and as such their appeals are allowed and the appellants are acquitted of the charge with the confirmation reference being answered in the negative. The appellants shall be released unless wanted in any other custody case.

18. The appeals are disposed of in the above terms.

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