HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Before
Mr. Justice Zulfiqar Ali Sangi
Mr. Justice Nisar Ahmed Bhanbhro

Criminal Jail Appeal No. D-01 of 2024

Appellants: 1. Shahzado Khan s/o Sundar Mal Shaikh,
2. Mujahid Khan Sikandari s/o Ghousullah Khan
Through Mr. Pervez Akhter Talpur, Advocate.

Respondent: The State. Through Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General, Sindh

Complainant: Zahid Hussain s/o Muhammad Hussain
Through Mr. Ghulam Nabi Meo, Advocate.

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Criminal Appeal No. D-21 of 2024

Appellant: Miss Uzma d/o Muhammad Matloob Khan
Through Mr. Pervez Akhter Talpur, Advocate.

Respondent: The State.Through Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General, Sindh

Complainant: Zahid Hussain s/o Muhammad Hussain
Through Mr. Ghulam Nabi Meo, Advocate.

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Criminal Acquittal Appeal No. D-20 of 2024

Appellant: The State.
Through Mr. Ghulam Abbas Dalwani,
Deputy Prosecutor General, Sindh.

Respondent: Mukhtiar Ahmed s/o Muhammad Ramzan (**Nemo**).

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Criminal Acquittal Appeal No. D-29 of 2024

Appellant: Zahid Hussain s/o Muhammad Hussain
Through Mr. Ghulam Nabi Meo, Advocate.

Respondents: 1. Mukhtiar Ahmed s/o Muhammad Ramzan (**Nemo**).
2. The State.Through Mr. Ghulam Abbas Dalwani,
Deputy Prosecutor General, Sindh

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Criminal Revision Application No. D-09 of 2024

Applicant: Zahid Hussain s/o Muhammad Hussain.
Through Mr. Ghulam Nabi Meo, Advocate

Respondents:
1. Miss. Uzma Khan d/o Muhammad Matloob Khan.
2. Shehzado Khan s/o Sundar Mal.
3. Mujahid Khan Sikandari s/o Ghousullah Khan
Through Mr. Pervez Akhter Talpur, Advocate.
4. The State
Through Mr. Ghulam Abbas Dalwani,
Deputy Prosecutor General, Sindh.

Date of hearing: 12.11.2026

Date of Judgment: 19.11.2026

J U D G M E N T

Zulfiqar Ali Sangi, J.- Through this common judgment, we intend to dispose of Criminal Jail Appeal No.D-01 of 2024, Criminal Appeal No.D-21 of 2024, Criminal Acquittal Appeal No.D-20 of 2024, Criminal Acquittal Appeal No.D-29 of 2024 and Criminal Revision Application No.D-09 of 2024, as all these proceedings arise out of the same judgment dated 30.10.2021, passed by the learned Special Court Anti-Terrorism, Mirpurkhas, in Special Case No.01 of 2020, arising out of F.I.R. bearing Crime No.57 of 2019, registered at Police Station Taluka Mirpurkhas, for offences punishable under sections 365-A, 302, 201, 120-B, 109 and 34, P.P.C., read with sections 6 and 7 of the Anti-Terrorism Act, 1997.

2. Through Criminal Jail Appeal No.D-01 of 2024, appellants Shahzado Khan son of Sundar Mal Shaikh and Mujahid Khan Sikandari son of Ghousullah Khan, whereas through Criminal Appeal No.D-21 of 2024, appellant Miss Uzma daughter of Muhammad Matloob Khan, have called into question their convictions and sentences awarded by the learned trial Court vide judgment dated 30.10.2021. The appellants were convicted and sentenced as follows:

(i). Appellants Miss Uzma Khan and Mujahid Khan Sikandari were convicted for the offence punishable under section 365-A, P.P.C., read with sections 6/7 of the Anti-Terrorism Act, 1997, and sentenced to suffer rigorous imprisonment for life, with a fine of Rs.200,000/- each, and, in default of payment thereof, to further suffer rigorous imprisonment for two years each.

(ii). Appellants Miss Uzma Khan and Shahzado Khan were convicted for the offence punishable under section 302(b), P.P.C., read with sections 6/7 of the Anti-Terrorism Act, 1997, and sentenced to suffer rigorous imprisonment for life, with a fine of Rs.200,000/- each, payable to the legal heirs of deceased Mehtab Ali, and, in default of payment thereof, to further suffer rigorous imprisonment for two years each.

(iii). Appellants Miss Uzma Khan and Shahzado Khan were also convicted for the offence punishable under section 201, P.P.C., and sentenced to suffer rigorous imprisonment for seven years each, with a fine of Rs.50,000/- each, and, in default of payment thereof, to further suffer rigorous imprisonment for six months each.

All the sentences were ordered to run concurrently, while the benefit of section 382-B, Cr.P.C. was extended to the convicts. However, co-accused Mukhtiar Ahmed was acquitted of the charge, whereas the cases of absconding accused Abdul Basit and Ajmal Khan were kept on dormant file.

3. The State, through the learned Prosecutor General, Sindh, and the complainant Zahid Hussain, have preferred Criminal Acquittal Appeal Nos.D-20 and D-29 of 2024, respectively, challenging the acquittal of accused Mukhtiar Ahmed. Through Criminal Revision Application No.D-09 of 2024, the complainant has also sought enhancement of the sentences awarded to the convicted appellants.

4. The prosecution case, in brief, as disclosed in the F.I.R. and the evidence brought on record, is that complainant Zahid Hussain alleged that his younger brother Mehtab Ali, aged about 22 years, was studying at Mirpurkhas. On 25.11.2019, while they were present at their residence, Mehtab Ali received a phone call and thereafter left for Mirpurkhas on a motorcycle along with Maqsood Ali and their friend Muhammad Yaseen Baloch. According to the complainant, at about 1815 hours, Maqsood Ali contacted him

through phone and informed him that, upon reaching the Bus Terminal, Mirpurkhas, they noticed a black-coloured car parked there, in which a girl was sitting on the rear seat. Mehtab Ali allegedly left his companions and boarded the said car. Thereafter, the car proceeded towards Ratanabad, took a U-turn and moved towards Jarwari, and subsequently towards Mirwah Road, where it stopped near Sim Nala Mori. After some time, another car arrived from the direction of Mirpurkhas, and two persons alighted therefrom and immediately boarded the car in which Mehtab Ali was already sitting. Both vehicles thereafter proceeded towards Hyderabad through the bypass road. The complainant further alleged that attempts were made to contact Mehtab Ali on his mobile phone, which initially rang but subsequently became switched off. The complainant, along with Maqsood Ali and Muhammad Yaseen, started searching for him. On 01.12.2019, at about 2020 hours, the complainant received a phone call from an unknown person using mobile number 0300-3219221, who, while speaking in Urdu, demanded an amount of Rs.20,000,000/- (Rupees Two Crores) for the release of Mehtab Ali. After consultation with his relatives and friends, the complainant lodged the instant F.I.R. on the same date at about 2200 hours.

5. After registration of the F.I.R., investigation was entrusted to the police, which culminated in submission of the challan against six accused persons. Initially, accused Mukhtiar Ahmed, Shahzado Khan and Miss Uzma Khan were shown in custody, whereas Mujahid Khan Sikandari, Abdul Basit and Ajmal Khan were shown as absconders. Their cases were separated. Subsequently, accused Mujahid Khan Sikandari was arrested and produced before the learned trial Court through a supplementary challan dated 23.09.2020, whereupon an amended charge was framed against the accused persons. They pleaded not guilty and claimed trial.

6. In order to establish its case, the prosecution examined the complainant Zahid Hussain, Muhammad Yaseen, Maqsood Ali, Muhammad Azam, Gulzar Brohi, Azhar Abbas, Dr. Syed Nisar Ahmed Shah, SIP Gulzar Brohi, Maqbool Ahmed, the learned Civil Judge and Judicial Magistrate-II, Mirpurkhas, Tapedar Mashooque Ali, Inspector Ghulam Hussain Sadhayo, SIP Abdul Aziz, HC Najmuddin and the Investigating Officer Inspector Muhammad

Aslam Jagirani. They produced the relevant documentary material, including the F.I.R., mashirnamas, identification parade memoranda, statements recorded under section 164, Cr.P.C., CDRs, recovery memoranda, medical documents, DNA report, chemical examiner's report and other connected documents.

7. Upon completion of the prosecution evidence, statements of the accused were recorded under section 342, Cr.P.C. They denied the allegations levelled against them and professed their innocence. However, they neither opted to appear as witnesses on oath under section 340(2), Cr.P.C. nor produced any evidence in their defence. After hearing the learned counsel for the parties, the learned trial Court passed the impugned judgment, convicting the appellants and acquitting accused Mukhtiar Ahmed, which has given rise to the present proceedings.

8. Learned counsel for the appellants, while assailing the impugned judgment, contended that the F.I.R. was lodged after an unexplained delay of five days and against unknown persons; that the complainant had not mentioned the registration number of the alleged vehicle in the F.I.R. and subsequently introduced the registration number ASM-230 during his examination-in-chief; that the prosecution witnesses made material improvements and contradictions in their statements; and that the complainant did not disclose in the F.I.R. the mobile number from which the alleged ransom demand was received. He further argued that PW Maqsood Ali admitted during cross-examination that the registration number of the alleged black-coloured vehicle was not visible in the CCTV footage of the Toll Plaza. He also questioned the reliability of the identification parade conducted on 20.12.2019, particularly when the witnesses had allegedly seen the appellants in police custody before the proceedings. It was further contended that appellant Miss Uzma Khan had specifically raised an objection before the learned Magistrate that the witnesses had already seen her in the police lock-up, but the said objection was not properly addressed. According to learned counsel, the alleged recoveries, CDRs and other technical evidence were insufficient to establish the guilt of the appellants. He maintained that the prosecution had failed to prove the charge beyond reasonable doubt and prayed for their acquittal. In support of his contentions, learned counsel has

relied upon the cases of ***Allah Ditta v. The State (2023 YLR 2538), Abdul Qadeem Shah v. Abdul Wadood and another (2023 P Cr. L J 143), Khair Muhammad and another v. The State (2025 SCMR 1599), Kashif Nouman alias Kashi and another v. The State (2026 YLR 864), Sikander Ali Lashari and another v. The State through Prosecutor General Sindh (2026 SCMR 1261), Syed Jahanzaib and others v. The State (2025 YLR 1321), Abdul Hayee and Abdullah alias Ghazali v. The State (2025 SCMR 281), Ammar Yasir Ali v. The State (2013 P Cr. L J 783), Naqeebullah v. The State (2020 MLD 1492) and un-reported judgment of Criminal Appeal No.S-38 and S-40 of 2023.***

9. Conversely, learned counsel for the complainant supported the impugned convictions and contended that the prosecution witnesses had fully supported the prosecution case on all material particulars and their evidence remained intact despite lengthy cross-examination. He submitted that the delay in lodging the F.I.R. stood satisfactorily explained as the complainant party remained occupied in searching for the missing deceased. He further argued that the acquittal of accused Mukhtiar Ahmed was based upon misreading and non-reading of the evidence, particularly the CDRs and other technical material. He also contended that the sentences awarded to the appellants were inadequate in view of the gravity of the offences and, therefore, deserved enhancement.

10. Learned Deputy Prosecutor General, Sindh, adopted the submissions advanced by learned counsel for the complainant and maintained that the deceased was last seen in the company of the appellants; that the black-coloured Toyota Corolla bearing registration No.ASM-230, allegedly used in the commission of the offence, was recovered from the joint possession of appellants Shahzado Khan and Miss Uzma Khan; and that the CNIC of the deceased was also recovered from the vehicle. He further submitted that the appellants allegedly pointed out the place where the dead body had been thrown, which constituted admissible evidence under Article 40 of the Qanun-e-Shahadat Order, 1984. He also placed reliance upon the CDRs and the link-charge evidence to contend that the accused persons remained in contact with each

other and the absconding accused. He maintained that the identification proceedings, medical evidence and other recoveries sufficiently corroborated the prosecution version. He accordingly prayed for dismissal of the appeals against conviction, setting aside the acquittal of Mukhtiar Ahmed and enhancement of the sentences awarded to the appellants. In support of his contentions, he has relied upon the cases of ***Said Muhammad v. The State (1999 SCMR 2758), Ghulam Husain Soomro v. The State (PLD 2007 Supreme Court 71), Sh. Muhammad Amjad v. The State (PLD 2003 Supreme Court 704), The State v. Haider Zaidi and 2 others (2001 SCMR 1919), Rashid Aslam and another v. The State (2017 YLR 2052)*** and ***Allah Dino alias Baboo v. The State (2019 YLR 390).***

11. We have heard the learned counsel for the parties and have carefully examined the material available on record with their able assistance.

12. Before examining the evidence in detail, it would be appropriate to reiterate the settled principle of criminal jurisprudence that the burden of proving the guilt of an accused rests throughout upon the prosecution, which must establish its case beyond reasonable doubt. An accused is entitled to the benefit of every reasonable doubt emerging from the prosecution evidence. Such benefit is not a concession or an act of grace; rather, it is a fundamental right flowing from the presumption of innocence. In ***Tariq Pervez v. The State (1995 SCMR 1345)***, the Honourable Supreme Court has held that even a single circumstance creating reasonable doubt in the prosecution case is sufficient to entitle an accused to acquittal. The same principle was reiterated in ***Muhammad Akram v. The State (2009 SCMR 230)***. It is equally well-settled that where a case rests upon circumstantial evidence, every circumstance relied upon by the prosecution must be firmly established through independent and reliable evidence, and all such circumstances, when taken cumulatively, must form a complete and unbroken chain pointing towards the guilt of the accused and excluding every reasonable hypothesis consistent with their innocence. If any material link in the chain is missing, doubtful or incapable of being safely connected with the accused, a conviction cannot be sustained merely on the basis of suspicion,

however strong it may be. Suspicion, however grave, cannot take the place of proof.

13. It is also a well-settled principle of law that the gruesome, heinous or brutal nature of an offence, howsoever shocking or revolting it may be, cannot, by itself, constitute a valid basis for drawing an adverse inference against an accused or for diluting the settled standards governing the appreciation of evidence. The nature and gravity of the offence may certainly be relevant and may carry due weight while determining the appropriate quantum of sentence after the guilt of the accused has been established in accordance with law. However, such considerations are wholly extraneous to the judicial exercise of appraising or reappraising the evidence on record for determining the guilt or innocence of the accused. The determination of criminal liability must rest exclusively upon the quality, credibility and evidentiary worth of the material brought on record, and not upon the nature of the accusation or the emotional impact of the crime. It is equally important to bear in mind that, even in cases involving heinous and brutal crimes, the possibility of false implication or wrongful involvement of an innocent person cannot be altogether excluded. The Court, therefore, is under an obligation to examine the prosecution evidence with the same degree of caution, objectivity and judicial detachment as is required in every criminal case, without being influenced by the seriousness or abhorrent nature of the alleged offence. Reliance in this regard is placed upon the dictum laid down by the Honourable Supreme Court in ***Azeem Khan v. Mujahid Khan (2016 SCMR 274).***

14. In the present case, the prosecution has primarily placed reliance upon the alleged evidence of last seen furnished by witnesses Maqsood Ali and Muhammad Yaseen. According to their respective depositions, the deceased Mehtab Ali boarded a black-coloured car at the Bus Terminal, Mirpurkhas, whereafter two unidentified persons allegedly joined him near Sim Nala Mori. It is, however, significant to note that neither of the said witnesses claimed to have witnessed the deceased being forcibly abducted, threatened, intimidated, coerced or otherwise compelled to board the vehicle in question. Similarly, no independent evidence has been brought on record to establish the circumstances in which

the deceased boarded the said vehicle or to identify the two persons who allegedly joined him near Sim Nala Mori as the present appellants. Thus, the mere circumstance that the deceased was allegedly seen boarding a vehicle and proceeding in a particular direction, without more, cannot reasonably be construed as proof of his abduction, much less as establishing the complicity of the appellants in the commission of the alleged offence. It is a settled principle of criminal jurisprudence that the evidence of last seen together, being a species of circumstantial evidence, is essentially a weak type of evidence and cannot, as a rule, constitute the sole basis for recording a conviction unless it is adequately corroborated by other independent, cogent and confidence-inspiring circumstances. The mere fact that a deceased was last seen in the company of an accused does not, ipso facto, establish that the accused was responsible for his subsequent death. To place reliance upon such evidence, the prosecution must establish, with reasonable certainty, the identity of the accused, the proximity of time between the last-seen circumstance and the death of the deceased, and such attending circumstances as may reasonably exclude the possibility of the deceased having parted company with the accused or having come into contact with some other person during the intervening period. The evidentiary significance of such circumstance, therefore, has to be assessed in the context of the entire chain of events, which must be so complete and conclusive as to lead to no other reasonable conclusion than the guilt of the accused, while excluding every reasonable hypothesis consistent with his innocence.

15. When the evidence of the aforesaid witnesses is examined in the light of these settled principles, it becomes apparent that their testimony, even if accepted at its face value, establishes, at the highest, that the deceased was seen boarding a vehicle and proceeding towards Hyderabad. Their depositions, however, do not establish the identity of the persons who allegedly joined the deceased near Sim Nala Mori, nor do they demonstrate that the deceased remained in the exclusive company, custody or control of the appellants until the time of his death. The prosecution has also failed to bring on record, through these witnesses, any circumstance indicating that the deceased was under the restraint or domination of the appellants or that he had been taken by them

to any particular place in furtherance of the alleged criminal design. Consequently, the testimony of these witnesses, standing alone, cannot be accorded any evidentiary value beyond the limited circumstance of the deceased having boarded and travelled in the said vehicle, unless the same is connected with other reliable and independent evidence establishing the appellants' involvement in the crime. More importantly, an additional circumstance which materially detracts from the reliability of the prosecution version is that, at the time of their initial disclosure to the complainant, neither of the said witnesses disclosed the registration number of the vehicle allegedly boarded by the deceased. Such omission assumes significance, particularly when the prosecution subsequently sought to connect the appellants with the commission of the offence through the recovery of a vehicle allegedly bearing a particular registration number. Had the witnesses actually observed the vehicle in the manner subsequently asserted, the non-disclosure of its registration number at the earliest available opportunity was a material omission requiring satisfactory explanation. This subsequent development, therefore, calls for cautious scrutiny, as it raises a legitimate question regarding the source and reliability of the identification of the vehicle and the possibility of subsequent improvement in the prosecution version. In the absence of any satisfactory explanation or independent corroboration, such belated disclosure cannot safely be treated as an incriminating circumstance against the appellants. Accordingly, the alleged last-seen evidence, in the peculiar circumstances of the present case, falls short of the standard of proof required in a criminal trial and cannot independently sustain the conviction of the appellants.

16. The prosecution has, in addition, examined Muhammad Azam Nondani, apparently with a view to establishing that the appellants were previously acquainted with the deceased and were in contact with him shortly before the occurrence. According to his deposition, on 24.11.2019, i.e., one day prior to the alleged incident, he had seen the deceased in the company of the accused persons, including accused Uzma, at Hotel Al-Noor, situated at Giddu Chowk, Hyderabad, along with a car bearing registration No. ASM-230. This piece of evidence, even if accepted as correct, requires cautious appraisal. The mere presence of the deceased in

the company of the accused persons at a public place, such as a hotel, or their alleged association prior to the occurrence, does not necessarily furnish proof of their participation in the commission of the crime. Rather, such evidence may establish, at its highest, their acquaintance, association or opportunity to meet the deceased; however, it does not, without further corroboration, establish any criminal design, motive or participation in the alleged murder. Furthermore, the prosecution was required to establish a reliable nexus between the vehicle referred to by this witness and the vehicle allegedly used in the subsequent transportation of the deceased, as well as the identity of the persons occupying or using the same. In the absence of such connecting evidence, the testimony of Muhammad Azam Nondani cannot, by itself, bridge the evidentiary gaps in the prosecution case. It is, therefore, essential that the aforesaid circumstances be examined collectively rather than in isolation, while keeping in view the settled principle that suspicion, however strong, cannot take the place of proof. The prosecution must establish each incriminating circumstance through trustworthy evidence and demonstrate that all such circumstances form a complete and unbroken chain, leaving no reasonable ground for a conclusion consistent with the innocence of the accused. Any missing link in such a chain would necessarily operate to the benefit of the accused, particularly where the conviction is sought to be founded predominantly upon circumstantial evidence.

17. Another material circumstance requiring consideration is the test identification parade conducted on 20.12.2019 in respect of the appellants, Shahzado Khan and Miss Uzma Khan. The object of a test identification parade is to furnish assurance to the Court regarding the correctness of the identification of an accused by a witness and to eliminate the possibility of mistaken identity, prior acquaintance or previous exposure of the suspect to the identifying witnesses. For this purpose, such proceedings are required to be conducted fairly, promptly and in strict compliance with the recognized safeguards so as to exclude any possibility of tutoring, collusion or manipulation. It is a settled principle of law that the evidentiary worth of an identification parade substantially depends upon the circumstances in which it is conducted and the precautions adopted to ensure its fairness and transparency.

Where an accused has been shown to the identifying witnesses prior to the identification proceedings, the evidentiary value of such proceedings is seriously undermined. It is, therefore, incumbent upon the investigating agency to ensure that the identity of the accused remains concealed from the identifying witnesses until the parade is conducted, and the record must satisfactorily demonstrate that all necessary precautions in this regard were duly observed. In the present case, appellant Miss Uzma Khan specifically raised an objection before the learned Magistrate that the identifying witnesses had already seen her while she was in police custody. Such an objection was neither insignificant nor inconsequential; rather, it went to the very root of the fairness and reliability of the identification proceedings and, therefore, warranted careful examination. Furthermore, the prosecution witnesses admitted that they had been summoned for the purpose of identification on 19.12.2019, but did not appear before the learned Magistrate on that date, and subsequently appeared for identification on 20.12.2019. However, the identification memo is conspicuously silent as to the circumstances or reasons necessitating the postponement of the identification proceedings scheduled for 19.12.2019. This unexplained circumstance assumes significance, particularly when examined in conjunction with the specific objection raised by appellant Miss Uzma Khan regarding her prior exposure to the identifying witnesses while in police custody. The prosecution was, therefore, under an obligation to dispel such apprehension by producing satisfactory material demonstrating that the identity of the appellants had remained concealed and that the proceedings had been conducted in accordance with the prescribed safeguards. In the absence of such assurance, the possibility of prior exposure cannot be ruled out, thereby rendering the identification proceedings doubtful and depriving them of the requisite evidentiary confidence. We are also conscious of the settled legal position that a test identification parade is essentially corroborative in nature and does not, by itself, constitute substantive evidence. Its purpose is to lend assurance to the identification made by a witness before the Court, provided that the proceedings are conducted in a fair and unimpeachable manner. In ***Javed Khan alias Bacha and another v. The State (2017 SCMR 524)***, the Honourable Supreme Court emphasized the necessity of

maintaining fairness and reliability in identification proceedings. Likewise, in ***Subha Sadiq v. The State (2025 SCMR 50)***, the Honourable Supreme Court reiterated that the evidentiary worth of an identification parade must be assessed in the light of the facts and circumstances of each particular case and the safeguards adopted during its conduct. Thus, where the possibility of prior exposure of the accused to the identifying witnesses has not been satisfactorily excluded, the identification proceedings cannot be accorded independent or decisive evidentiary value, nor can they safely be relied upon as a circumstance conclusively establishing the identity of the accused. Consequently, the identification evidence available in the present case does not inspire the confidence required for sustaining a finding of guilt.

18. The prosecution has further placed reliance upon the alleged recovery of a black-coloured Toyota Corolla bearing registration No. ASM-230 from the purported joint possession of appellants Shahzado Khan and Miss Uzma Khan. However, a careful examination of the evidence reveals certain material deficiencies in establishing the connection of the said vehicle with the alleged commission of the offence. It is an admitted position, emerging from the testimony of PW Maqsood Ali, that the registration number of the vehicle was not discernible in the CCTV footage obtained from the Toll Plaza. Furthermore, the complainant did not disclose the registration number of the alleged vehicle in the F.I.R. The subsequent introduction of such a material particular during his examination-in-chief, therefore, assumes significance and required independent corroboration. Although an omission of a particular fact in the F.I.R. does not, by itself, render the subsequent testimony of a witness inadmissible or unreliable, nevertheless, where a material feature of the prosecution case is brought on record subsequently, particularly one relating to the identification of the vehicle allegedly used in the commission of the offence, the Court is required to scrutinize such assertion with due caution and determine whether it finds support from independent and confidence-inspiring evidence. In the present case, the prosecution has failed to establish, through the CCTV footage or any other independent and reliable material, that the vehicle subsequently recovered was the same vehicle in which the deceased had allegedly travelled. Even otherwise, the mere

recovery of a vehicle from an accused, by itself, is not sufficient to establish its use in the commission of an offence unless the prosecution succeeds in establishing an unbroken and reliable connecting link between the recovered vehicle and the crime in question. Similarly, the alleged recovery of the CNIC of the deceased from the said vehicle, even if accepted as correct, would, at the highest, establish the presence of such document in the vehicle; however, it would not, in the absence of further corroborative evidence, conclusively establish that the appellants had abducted or murdered the deceased. The prosecution was, therefore, required to establish the circumstances under which the said document came into the vehicle and, more importantly, the nexus of the appellants with its presence therein. In order to establish the alleged connection of the appellants with the vehicle, the prosecution also examined PW Azahar Abbas, its owner, who was engaged in the rent-a-car business. He deposed before the trial Court that the vehicle in question had been taken by Amjad and Basit on 24.11.2019 and had not been returned thereafter. Significantly, during his cross-examination, the said witness categorically admitted that neither of the present appellants was present at his showroom at the time when the vehicle was obtained. This admission assumes considerable importance, as it materially undermines the prosecution's attempt to connect the appellants with the vehicle allegedly used in the commission of the offence. Rather, the testimony of the vehicle's owner establishes that the same had been obtained by two persons namely, Amjad and Basit, without furnishing any evidence connecting the present appellants with such transaction or possession. Consequently, in the absence of any independent, reliable and confidence-inspiring evidence establishing the appellants' nexus with the vehicle, the alleged recovery thereof cannot safely be treated as an incriminating circumstance against them. The resulting gap in the prosecution evidence cannot be filled by conjecture or presumption, nor can the appellants be held responsible merely on the basis of their alleged association with the recovered vehicle.

19. The next circumstance relied upon by the prosecution is the alleged disclosure by appellants Shahzado Khan and Miss Uzma Khan regarding the place where the dead body of Mehtab Ali had been thrown. In this regard, Article 40 of the Qanun-e-Shahadat

Order, 1984, provides an exception to the general rule excluding confessional statements made to police officers or while in police custody, but only to the limited extent that information received from an accused in custody distinctly relates to a fact thereby discovered. It is well-settled that the entire statement or disclosure made by an accused to the police does not become admissible merely because it leads to the discovery of a fact. Only that portion of the information which distinctly relates to the fact discovered is admissible. Furthermore, the discovery must be a new fact within the contemplation of Article 40 and must be proved through reliable evidence. The mere assertion of an investigating officer that an accused pointed out a particular place cannot automatically establish the guilt of such accused. In the present case, the prosecution evidence itself indicates that the dead body of an unknown person had already been recovered during the investigation, and the subsequent proceedings were undertaken for its identification and confirmation through DNA examination. In these circumstances, the prosecution was required to establish what new fact was discovered in consequence of the alleged disclosure of the appellants and how such discovery independently connected them with the commission of the crime. The mere identification of a place, particularly where the dead body had already been recovered, cannot be treated as conclusive evidence of the involvement of the appellants in the murder.

20. We have also examined the medical evidence and the DNA report produced by the prosecution. The medical evidence, including the post-mortem examination and subsequent DNA examination, may establish the identity of the deceased and the medical circumstances relating to his death. However, medical evidence is ordinarily corroborative in nature and does not identify the perpetrator of the crime. Similarly, DNA evidence, where properly established, may confirm biological identity or association, but it cannot, without a reliable connecting circumstance, establish the participation of a particular accused in the commission of the offence. Thus, even if the identity of the recovered dead body as that of Mehtab Ali is accepted, such fact alone does not establish the guilt of the appellants.

21. The prosecution has also placed considerable reliance upon the CDRs of different mobile telephone numbers allegedly used by the appellants, the acquitted accused and the absconding accused. We are conscious that electronic and technical evidence is admissible in criminal proceedings, subject to fulfilment of the applicable legal requirements. Article 46-A of the Qanun-e-Shahadat Order, 1984, recognizes the relevance of information generated, received or recorded through modern devices and techniques, subject to the conditions prescribed therein. Likewise, section 27-B of the Anti-Terrorism Act, 1997, may be attracted in relation to evidence covered by its scope. However, admissibility and evidentiary worth are two distinct concepts. The mere production of CDRs or a link-charge report showing that certain mobile telephone numbers remained in contact with each other does not, by itself, establish the criminal purpose of such communications or the participation of the subscribers in the alleged offence. The prosecution was required to establish, through competent and reliable technical evidence, the ownership or actual use of the relevant SIMs, the authenticity and integrity of the electronic record, the circumstances of its collection and preservation, and the manner in which such data connected each accused with the occurrence. More importantly, a record of telephone calls, without proof of their contents or other corroborative circumstances, cannot establish that the persons using the relevant numbers had entered into a criminal conspiracy or participated in kidnapping or murder. Mere contact between accused persons, even if established, is not sufficient to infer a criminal agreement unless the surrounding circumstances demonstrate a common unlawful design. The prosecution has not produced any direct or otherwise reliable evidence explaining the contents of the alleged communications or establishing that the calls were made for the purpose of abducting the deceased, demanding ransom or causing his death.

22. The same principle applies to the alleged ransom demand. The complainant stated that an unknown person telephoned him on 01.12.2019 and demanded Rs.20,000,000/- for the release of his brother. However, the prosecution has not satisfactorily established the identity of the caller or connected the telephone number from which the demand was allegedly made with any of

the appellants. No evidence has been brought on record to establish that the appellants made, arranged or facilitated the alleged ransom call. The mere fact that a ransom demand was allegedly received does not establish the involvement of the appellants in the offence punishable under section 365-A, P.P.C., unless their participation in the kidnapping for ransom is independently proved.

23. We have also considered the contention of the learned Deputy Prosecutor General that in cases of kidnapping for ransom, the individual role of each accused is immaterial and all persons acting in furtherance of a common intention are equally responsible. There can be no cavil with the proposition that where common intention or a criminal conspiracy is established through reliable evidence, every participant may be held liable in accordance with law. However, the applicability of sections 34 or 120-B, P.P.C., cannot be presumed merely because the prosecution alleges that several persons were involved in the occurrence. The prosecution must first establish the participation of each accused and the existence of a common intention or agreement through legally admissible and confidence-inspiring evidence. Such foundational requirements are not dispensed with merely because the offence alleged is serious.

24. Another material aspect of the case which warrants consideration is the delay in lodging the F.I.R. The alleged occurrence took place on 25.11.2019, whereas the F.I.R. came to be registered on 01.12.2019, after an unexplained interval of approximately six days. Although the complainant attempted to justify the delay by asserting that the family members remained engaged in searching for the deceased and that the alleged ransom demand was received shortly before registration of the case, such explanation, by itself, does not absolve the prosecution from the obligation to establish the genuineness and reliability of its version. It is, therefore, not the delay in isolation, but its cumulative effect, when examined in conjunction with other circumstances and inherent infirmities in the prosecution case, which assumes significance. In the present case, the delay becomes particularly relevant when considered alongside the failure of the complainant to disclose the registration number of

the alleged vehicle in the F.I.R., the non-identification of the person who allegedly made the ransom call and the doubtful nature of the identification proceedings. These circumstances, when cumulatively assessed, give rise to legitimate doubts regarding the veracity of the prosecution version and the manner in which the investigation subsequently proceeded. It is a well-settled principle of criminal jurisprudence that an unexplained or inadequately explained delay in lodging the F.I.R. may provide an opportunity for deliberation, consultation and fabrication, thereby casting a shadow of doubt upon the prosecution story. Such delay assumes greater significance in a case resting predominantly upon circumstantial evidence, where every link in the chain must be established through confidence-inspiring and unimpeachable evidence. In ***Mst. Asia Bibi v. The State and others (PLD 2019 Supreme Court 64)***, the Honourable Supreme Court has observed that, in the absence of a plausible explanation, delay in lodging the F.I.R. casts suspicion upon the prosecution version and may prove fatal to its case. Likewise, in ***Zeeshan @ Shani v. The State (2012 SCMR 428)***, the Honourable Supreme Court held that an unexplained delay of more than one hour in reporting the occurrence gave rise to an inference that the incident might not have taken place in the manner projected by the prosecution and that the intervening time could have been consumed in deliberations to formulate a version of the occurrence. The same principle was reiterated by the Honourable Supreme Court in ***Muhammad Fiaz Khan v. Ajmer Khan (2010 SCMR 105)***. In view of the aforesaid legal position, although the delay in the present case may not, by itself, be sufficient to discard the prosecution case, its cumulative effect, when read with the other material discrepancies and weaknesses in the prosecution evidence, cannot be overlooked. Consequently, the benefit arising from such circumstances must necessarily be extended to the accused as a matter of right and not as a concession.

25. It is also a settled principle that minor discrepancies arising from lapse of time or differences in human observation do not ordinarily destroy the prosecution case. However, contradictions and omissions relating to material particulars, which affect the very foundation of the prosecution story or create doubt regarding the identity and participation of the accused, cannot be brushed

aside as insignificant. In the present case, the deficiencies noted above are not merely peripheral discrepancies; rather, they relate to the identity of the alleged abductors, the vehicle allegedly used in the occurrence, the ransom demand and the connecting circumstances relied upon by the prosecution.

26. We have further considered the submission that the appellants did not deny the recovery of the vehicle and mobile phones in their statements recorded under section 342, Cr.P.C. In this regard, it is important to observe that the failure of an accused to furnish a satisfactory explanation cannot relieve the prosecution of its primary obligation to establish the charge beyond reasonable doubt. An incriminating circumstance must first be established through reliable evidence before any adverse inference can be drawn from the failure of the accused to explain it. The prosecution cannot fill the gaps in its evidence by relying upon the silence of an accused or the absence of defence evidence.

27. The fact that the appellants did not examine themselves on oath under section 340(2), Cr.P.C., or produce defence evidence, is also of no assistance to the prosecution where its own evidence suffers from material deficiencies. The accused are entitled to maintain their innocence, and the prosecution must succeed or fail on the strength of its own evidence. It is not the responsibility of the accused to prove their innocence where the prosecution has failed to discharge its legal burden. On an overall assessment of the evidence, we find that the prosecution has failed to establish a complete and unbroken chain of circumstances connecting the appellants with the alleged kidnapping, demand of ransom and murder of deceased Mehtab Ali. The alleged last-seen evidence does not establish the identity of the persons who subsequently joined the deceased; the identification parade is not free from reasonable doubt in view of the objection regarding prior exposure; the recovered vehicle has not been satisfactorily connected with the occurrence; the alleged discovery under Article 40 does not furnish an independent and conclusive link; and the CDRs, in the absence of reliable evidence establishing the criminal purpose of the communications, are insufficient to establish participation or conspiracy. It is pertinent to observe that the prosecution may have established certain circumstances relating to the

disappearance and subsequent death of Mehtab Ali. However, proof of the occurrence of an offence and proof of the identity and guilt of its perpetrators are two distinct matters. The Court cannot convict an accused merely because a heinous offence has been committed and the family of the deceased deserves justice. The administration of criminal justice requires that the guilt of the person charged must be established through legally admissible, reliable and confidence-inspiring evidence. In this regard, reliance may also be placed upon ***Khurram v. The State (2019 SCMR 1317)***, wherein the Honourable Supreme Court examined the evidentiary worth of circumstantial evidence, including last-seen evidence, in a case involving abduction for ransom and murder. The Court emphasized that the prosecution must establish the necessary connecting circumstances through positive and reliable evidence and that suspicion cannot substitute proof. Likewise, in ***State v. Ahmed Omar Sheikh (2021 SCMR 873),*** the Honourable Supreme Court examined the evidentiary deficiencies relating to kidnapping for ransom, conspiracy and last-seen evidence and reiterated the requirement of proof beyond reasonable doubt. The principle enunciated in ***Muhammad Mansha v. The State (2018 SCMR 772)*** is also relevant, whereby it was reiterated that even a single circumstance creating reasonable doubt in the prosecution case is sufficient to extend the benefit of doubt to the accused. In the present case, the cumulative effect of the deficiencies discussed above creates substantial and reasonable doubt regarding the involvement of the appellants in the commission of the alleged offences. Consequently, they are entitled to the benefit of doubt as a matter of right.

28. Turning to Criminal Acquittal Appeal Nos.D-20 and D-29 of 2024, filed by the State and the complainant, respectively, challenging the acquittal of accused Mukhtiar Ahmed. It is a settled principle of law that an appeal against acquittal stands on a different footing from an appeal against conviction. Upon acquittal by a competent Court, the presumption of innocence receives an additional reinforcement, commonly described as the double presumption of innocence. An appellate Court would not ordinarily interfere with an acquittal unless the findings recorded by the trial Court are found to be perverse, arbitrary, capricious, fanciful or based upon gross misreading or non-reading of material evidence.

45. In ***Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 SC 11)*** and ***The State and others v. Abdul Khaliq and others (PLD 2011 SC 554),*** the Honourable Supreme Court laid down the principles governing interference in an appeal against acquittal. It has consistently been held that where the view taken by the trial Court is a possible and reasonable view of the evidence, the appellate Court should not substitute its own opinion merely because another view may also be possible. In the present case, the prosecution has primarily relied upon the CDRs and alleged communication links to connect accused Mukhtiar Ahmed with the occurrence. However, as discussed above, mere telephone contact between different numbers does not establish participation in a criminal conspiracy or prove the commission of the alleged offences. The prosecution has not brought any independent and confidence-inspiring evidence establishing the specific involvement of Mukhtiar Ahmed in the abduction, ransom demand or murder of the deceased. The learned trial Court, therefore, was justified in extending the benefit of doubt to him.

29. We find no material on record demonstrating that the acquittal of Mukhtiar Ahmed is the result of perversity, arbitrariness or gross misreading or non-reading of evidence. The submissions advanced by the learned counsel for the complainant and the learned Deputy Prosecutor General, Sindh, essentially invite this Court to reappraise the same evidence and substitute a different conclusion, which is not sufficient to interfere with an acquittal when the view adopted by the trial Court is reasonably possible. Consequently, no case for interference with the acquittal of Mukhtiar Ahmed is made out.

30. So far as Criminal Revision Application No.D-09 of 2024, seeking enhancement of the sentences awarded to the appellants, is concerned, the same has become devoid of any independent foundation in view of our findings recorded hereinabove. Once the convictions and sentences of the appellants are found unsustainable and are set aside on account of failure of the prosecution to establish their guilt beyond reasonable doubt, the question of enhancement of such sentences does not survive for consideration. Even otherwise, enhancement of sentence cannot be considered in isolation from the sustainability of the underlying

conviction. It is also an established principle that the power to enhance a sentence is to be exercised judicially and in accordance with law. Such power cannot be invoked unless the conviction itself is legally sustainable and the circumstances warranting enhancement are established. Since the appellants are entitled to acquittal, the revision application seeking enhancement of their sentences is liable to dismissal.

31. For the foregoing reasons, we are of the considered view that the prosecution has failed to establish the charges against the appellants through trustworthy, confidence-inspiring and legally sufficient evidence. The material circumstances relied upon by the prosecution, whether considered individually or collectively, do not form a complete and unbroken chain pointing exclusively towards the guilt of the appellants. The possibility of their false implication or non-involvement cannot safely be excluded. In such circumstances, maintaining their convictions would not be consistent with the settled principles governing criminal trials. It is a fundamental principle of criminal administration of justice that the gravity of an allegation, however serious, cannot justify conviction in the absence of legally acceptable proof. The Court is required to decide a criminal case on the basis of evidence and not on the basis of emotions, conjectures or presumptions. The prosecution must establish its case beyond reasonable doubt, and where the evidence admits of two reasonable interpretations, the interpretation favourable to the accused must prevail. The benefit of doubt is, therefore, not a matter of discretion but a right available to every accused person.

32. Consequently, Criminal Jail Appeal No.D-01 of 2024 and Criminal Appeal No.D-21 of 2024 filed by the appellants are **allowed**. The impugned judgment dated 30.10.2021, passed by the learned 1st Additional Sessions Judge/Special Court (Anti-Terrorism), Mirpurkhas, in Special Case No.01 of 2020, to the extent of conviction and sentences awarded to appellants Shahzado Khan, Mujahid Khan Sikandari and Miss Uzma Khan, is hereby set aside. All three appellants are acquitted of the charges levelled against them by extending them the benefit of doubt. Appellants Shahzado Khan, Mujahid Khan Sikandari and Miss Uzma Khan shall be released forthwith, if not required to be

detained in connection with any other case. Their bail bonds, if any, shall stand discharged. In case any fine amount has already been deposited by them pursuant to the impugned judgment, the same shall be refunded in accordance with law.

33. Consequently, Criminal Acquittal Appeal No.D-20 of 2024 filed by the State and Criminal Acquittal Appeal No.D-29 of 2024 filed by the complainant, challenging the acquittal of accused Mukhtiar Ahmed, are **dismissed**. The acquittal recorded by the learned trial Court in favour of accused Mukhtiar Ahmed is maintained. Resultantly, Criminal Revision Application No.D-09 of 2024, filed by the complainant seeking enhancement of the sentences awarded to the appellants, is also **dismissed**.

34. These appeals and the connected revision application stand disposed of in the above terms.

JUDGE

JUDGE