

HIGH COURT OF SINDH AT KARACHI

Special ATA No.37/2008

Special ATA No.38/2008

Special ATA No.39/2008

Conf. Case No.05/2008.

Present: Sajjad Ali Shah, J.

Naimatullah Phulpoto, J.

Appellant No.1: Muhammad Qasim alias Umair, through Asif Rauf, Advocate

Appellants No.s.2&3 Farhan Khan and Raheel through Mr. Habib Ahmed, Advocate

Respondent: The State through Mr. Khadim Hussain Khuharo, Deputy
Prosecutor General Sindh.

Complainant: Sadaqat Ali through Mr. A. Q. Halepota, Advocate

Date of hearing: 19.02.2013, 28.02.2013 and 07.03.2013

Date of announcement: April 11th 2013.

JUDGMENT

Naimatullah Phulpoto, J.-- Appellants Mohammad Qasim @ Umair, Farhan Khan and Raheel were tried by learned Anti-Terrorism Court No.III, Karachi in Special case No.48/2006 State vs. Farhan Khan and others under Sections 365-A/302/34 PPC read with section 7(a) & (e) ATA 1997, P.S. Landhi. Learned Judge, Anti-Terrorism Court No.III, by judgment dated 29.11.2008 convicted appellants under Sections 7(e) ATA 1997 read with section 365-A/34 PPC and sentenced them to death. Appellants were also convicted under section 302/34 PPC and were sentenced to death. Moveable and immovable properties of the appellants to the extent of Rs.1 lac each were ordered to be confiscated to the Government. The Reference for confirmation of death sentence was made to this Court by trial Court. Appellants have preferred appeals against the impugned judgment. By this single judgment, we intend to dispose of the aforesaid appeals filed by above-named appellants and reference made by trial Court.

2. Brief facts of the prosecution case are that on 13.09.2006, son of complainant, namely, Owais Ali aged about 12½ left the house at about 5:00 pm for playing a game, thereafter did not return home till night. Complainant started search for his son for the whole night but could not succeed. On 14.09.2006 at 2:00 pm, Qasim alias Umair, the son of female servant in the house of the complainant, informed complainant Sadaqat Ali that on 13.09.2006 at 05:30 p.m. his son met him at 17-J bus stop, Landhi and told accused Qasim to accompany him to a shop for purchase of a kite. It is alleged that accused Qasim refused to accompany the son of the complainant. On 14.09.2006 PW Khan Mohammad met the complainant and told him that on 13.09.2006 at 05:30 p.m. he had seen his son in Black Queen Bus at 17-J Bus Stop. Complainant reported the matter of missing of his son to Police Station Landhi on 14.09.2006, such report was entered in the roznamcha entry by the police. On 15.09.2006 at 01:45 p.m. Complainant received a call on mobile that his son has been kidnapped and would be released on payment of ransom of Rs.5 Crore. Complainant replied to the caller that he had no such amount to pay him but he issued threat to the complainant that in case of non-payment of the ransom, harm would be caused to his

son Owais. It is further alleged that on 22.09.2006, complainant received a call from kidnappers, they demanded Rs.4 Crore ransom, but he replied to the caller that he would arrange Rs.250,000/-, only. Complainant reported the matter to the CPLC, who along with AVCC authorities started efforts for the recovery of the son of the complainant. On 01.10.2006, demand was repeated but complainant replied that he has no sufficient means to make arrangement of such huge amount. During the aforesaid period, complainant was in contact with police. On 18.10.2006 complainant took cash of Rs.5 lacs and proceeded to Korangi-2 along with police officials for making payment of ransom and reached at pointed place at 12:30 mid night. The kidnappers asked the complainant to keep cash of Rs.5 lacs in the street and his son would be returned to him behind patrol pump at Korangi No.2. Complainant kept the money in the street but no one from the kidnappers appeared there to take the money and complainant returned back from the pointed place. On 20.10.2006, he received the calls and finally kidnappers agreed to receive Rs.2 lacs ransom. On 22.10.2006 kidnappers called complainant at 8:30 pm at Korangi No.2, kidnappers contacted him and asked him to leave the amount at the pointed place then his son would be released. Complainant kept the amount, caller threatened him to go away from the spot. He kept the amount at the corner of the street and saw that on the roof of adjoining house someone was continuously calling him and he was hiding his face. Complainant returned back but his son was not released. Finding no other way, complainant lodged F.I.R., it was recorded vide Crime No. 221 of 2006 at P.S Landhi on 04.11.2006 at 0015 hours, under sections 365-A/34 PPC. During investigation 161 Cr.PC statements of PWs were recorded. On 09.11.2006 complainant received a mobile call and he was told that his son has been murdered and his dead body has been thrown in nala. During investigation appellant Farhan and Muhammad Qasim alias Umair were arrested on 28.11.2006 and appellant Raheel was arrested on 13.04.2007. After usual investigation challan was submitted against accused Farhan Khan son of Asghar Ali Khan, Mohammad Qasim @ Umair son of Mohammad Ayoub and Raheel son of Mohammad Mushtaq under sections 365-A/302/34 PPC of Anti-Terrorism Act, 1997. Accused Akber son of Akram was shown as absconder.

3. Charge against appellants Farhan Khan, Mohammad Qasim @ Umair and Raheel was framed by learned Judge, Anti-Terrorism Court NO.III, Karachi at Ex.7 under the above referred sections. To the charge, appellants pleaded not guilty and claimed to be tried.

4. At the trial prosecution has examined the following witnesses:

- (1) P.W-1 Complainant Sadaquat Ali Shahzad at Ex.11.
- (2) P.W-02 ASI Ghulam Asghar at Ex.12.
- (3) P.W-3 Mohammad Khursheed ASI at Ex-13
- (4) P.W-4 Mohammad Shoaib Alam at Ex.14
- (5) P.W-5 Mohammad Ayoub at Ex.15
- (6) P.W-6 Nasir Ahmed Khan at Ex.16
- (7) P.W-7 Khan Mohammad at Ex.7
- (8) P.W-8 Ghuffranuddin at Ex.18
- (9) P.W-9 Muhammad Shabbir at Ex.19
- (10) P.W-10 Zuhair at Ex.21
- (11) P.W-11 Mohammad Tanveer at Ex.21
- (12) P.W-12 Shoukat Ali at Ex.22
- (13) P.W-13 Mohammad Afaq at Ex.23
- (14) P.W-14 Mr. Ahsan Ali Malik, Judicial Magistrate at Ex.24
- (15) P.W-15 Mr. Maqbool Ahmed, J.M-XI, Karachi East at Ex.25
- (16) P.W-16 Dr. Abdul Razzak Shaikh at Ex.26
- (17) P.W-17 Muslim Shah at Ex.27
- (18) P.W-18 I.O/SIP Ali Mohammad at Ex.30
- (19) P.W-19 I.O Tahir Naseer, SIP, I.O at Ex.31

5. The statements of appellants were recorded u/s 342 Cr.P.C at Ex.34, 35 and 36. Appellant Mohammad Qasim alias Umair has denied prosecution allegations and stated that he was arrested on 28.11.2006. Regarding identification parade he has stated that P.Ws had seen him before the identification parade while he was in custody. On a question as to why P.Ws have deposed against him, he replied that his mother was serving as maid servant in the house of complainant. On 13.09.2006 at evening time he told the complainant that his son had asked him to give him company as he was going to purchase kite but he had refused him and stated that he has not committed alleged offence. On 06.12.2006 Administrative Judge ATC had passed orders for his release for want of evidence, but he was not released by Ali Mohammad I.O of the case. Other allegations have also been denied by him. Appellant Raheel has also denied prosecution

allegations and stated that he had never demanded ransom from complainant, no offence had been committed by him. He had surrendered before the police as his father was detained by the police. Regarding identification parade, he has stated that PWs Muslim Shah and Ghaniul Haq had seen him in police custody before identification parade. Appellant Farhan Khan has also denied prosecution allegations and stated that P.Ws are interested and they have deposed against the appellants at the instance of investigating officer. P.W Mohammad Afaq had wrongly picked up him in the identification parade. He has pleaded innocence. All the appellants declined to give statements on oath in disproof of prosecution allegations and did not lead evidence in defence.

6. Learned Judge, Anti-Terrorism Court No.III, Karachi on the conclusion of the evidence, after assessment of evidence, awarded death sentences to the appellants by judgment dated 29.11.2008 as stated above.

7. We have carefully heard learned heard learned counsel for the parties and perused the evidence and examined the case law cited at bar.

8. Mr. Habib Ahmad, learned Advocate for the appellants made the following submissions:

- (i) Unnatural death of deceased Awais Ali has not been proved as the dead body was unidentifiable as per medical evidence.
- (ii) Incident was un-witnessed.
- (iii) Last seen evidence was unreliable and the same was not sufficient for recording conviction in the case.
- (iv) Identification parade of accused Muhammad Qasim alias Umair and Farhan was held on 05.12.2006 and incident occurred on 13.09.2006, such identification has no value.
- (v) PW Afaq Ahmed did not identify accused Muhammad Qasim alias Umair in the identification parade;
- (vi) There was no evidence of abduction of the boy for ransom;

- (vii) There is no evidentiary value of 164 Cr.PC statement of PW Ghaniul Haq as he has expired before his evidence.
- (viii) It is contended that owner of House PW Afaq has not deposed that he had seen the boy along with other persons in his house before the incident. It is also contended that dead body was recovered from Nala by Hydri police but no FIR was lodged by the concerned police. Lastly it is argued that appellant Qasim alias Umair never led the police to the place where from clothes of the deceased were produced, appellants did not point out the place from where they had thrown the dead body into Nala.

In support of his contentions he has relied upon the following reported cases:-

1. Amin Ali and another vs. the State (2011 SCMR 323)
2. Ghulam Qadir and 2 others versus the State (2008 SCMR 1221)
3. Hamid Nadeem versus the State (2011 SCMR 1233)

9. In the case of Amin Ali (2011 SCMR 323) it is held as under:

“Thus, we are left with the solitary statement of the investigation officer. It is not out of place to mention here that the recovery was made from the jurisdiction of another police station but the investigation officer did not go to the said police station or make any entry so as to show his presence at the relevant time within the jurisdiction of that police station or took some help from the said police station. This also creates doubt about the genuineness of the recovery. In these circumstances, no implicit reliance can be placed on such type of evidence.

10. In the case of Ghulam Qadir (2008 SCMR 1221) it is held as under:

“Needless to emphasize that belated examination of a witness by the police may not be fatal to the prosecution case but where the delay is unexplained, accused has not been named in the FIR and circumstances justify that the open FIR and delay have purposely been manoeuvred to name the accused later, such managed delay and gaps adversely affect the prosecution case.”

11. In the case of Hamid Nadeem (2011 SCMR 1233) it is held as under:

“Regarding recovery of clothes of appellant, allegedly stained with blood of the deceased, suffices to mention that the same were not matched with the blood of deceased. No positive report regarding that is available on record.”

12. Mr. Khadim Hussain, Deputy Prosecutor General Sindh, argued that prosecution has proved its case against the appellants beyond any shadow of doubt. It is further submitted that there was reliable circumstantial evidence on the record against the appellants. Lastly, it is submitted that the trial Court has rightly appreciated the evidence and recorded conviction in this case.

13. Mr. A. Q. Halepota, learned Advocate for the complainant argued that the complainant had no enmity or motive to falsely implicate the appellants in the commission of offence. It is further argued that complainant had not given the name of any of the appellants in F.I.R. He has also argued that all the prosecution witnesses belong to various castes and of different culture. There is no reason to disbelieve their evidence. It is submitted that appellant Qasim was known to the abductee as his mother was serving in the house of the complainant. Abductee was killed as the appellants had no choice except to destroy the ocular evidence. Mr. Halepota submitted that this is the case of circumstantial evidence but all the pieces of evidence are connecting the appellants in the commission of offence. He has argued that accused Qasim along with his companions had kidnapped the boy, detained him in the rented house. Appellant Farhan and Qasim pointed out room where boy was detained. It is argued that appellants pointed out place on 28.11.2006 from where dead body was thrown to Ganda Nala. Mr. Halepota argued that appellant Qasim alias Umair produced blood stained clothes of deceased, scarf, a pair of chappal on 30.11.2006 near advertising board of Mehrunnissa Hospital, Karachi, these are relevant factors in this case to show the conduct of the appellants and such conduct is admissible under Article 22 of the Qanun-e-Shahadat Order. He has argued that father of the deceased had identified the body of his son that is why he took the body for burial to native place. Civil Judges/Judicial Magistrates had conducted the identification parade in which the appellants were picked up by the prosecution witnesses. Mr. Halepota contended that unnatural death of deceased is proved from the medical evidence. Dead body was found naked in the ganda nala,

which indicated that the clothes produced by the appellants belonged to the deceased. Mr. Halepota further contended that delay in lodging of FIR would not be fatal for the prosecution in this case as appellants had not been named in the FIR. He has argued that abduction for ransom have been proved by cogent evidence. He has also argued that PW Zuhair Daudi Bohra, Justice of Peace, accompanied the complainant and police officials to the Noorani Basti where ransom amount was to be paid to the appellants Raheel and Qasim and they were identified. They were seen by PW Zahid Daudi Bohra and he was independent witness. Mr. Halepota argued that crime was detected on the basis of mobile number on which complainant had received calls for payment of ransom and accused Farhan was arrested on 28.11.2006. Subsequently, accused Qasim and Raheel were arrested. He has submitted that accused led the police to the Nala where they had thrown the dead body of the deceased. It is submitted that under Article 40 of Qanun-e-Shahadat such piece of evidence is admissible. He had submitted that 164 CrPC statement of PW Ghaniul Haq was recorded and it has been produced by the Judicial Magistrate in his evidence but PW Ghaniul Haq could not be examined as he was murdered before his evidence in this case. Lastly, he has submitted that case for kidnapping for ransom and murder have been proved against the appellants and prayed for dismissal of appeals. In support of his contentions, he relied upon the cases reported as:

1. Naseem Akhtar another Vs. State (1999 SCMR 1744)
2. Abdul Samad Vs. State (PLD 1964 SC 167)

14. In the case of Naseem Akhtar (1999 SCMR 1744) it is held as under:-

“It has been held that joint leading by the two appellants in the reported judgment to the place from where the clothes of the deceased were recovered is also an act and that the same can be fastened to each appellant as a piece of conduct under section 8 of the Evidence Act (now Article 22 of Qanun-e-Shahadat Order, 1984) in the absence of any bar in such section itself.

In the present case, though there might be some objection to the admissibility of joint recoveries and joint pointation by the appellant, the fact that the two appellants led the police to the place from where the dead body of the deceased and motorcycle were found and recovered are conducts of the appellants which are admissible under Article 8 of Qanun-e-Shahadat Order, 1983 and can be used as corroboration for the judicial confessions. At least as regards the dead body, it has also been noted that since the boy disappeared nobody knew his whereabouts and the boy was recovered only after the appellants had been arrested on 06.08.1994. Both the appellants led the police and others to the place where the body was found and this is a very important and admissible conduct against the two appellants and provides corroboration for their involvement in the crime and for their confessions.”

15. In the case of Abdus Samad (PLD 1964 Supreme Court 167) it is held as under:

“Murdered child last seen in company of accused. Accused having exclusive knowledge of place where remains of child were found, sufficient to establish charges of kidnapping and murder.”

16. We have given our due consideration to the arguments, advanced by the learned counsel for the parties.

17. As regards to the unnatural death of deceased Owais, prosecution has examined Dr. Abdul Razzak. He has deposed that on 15.09.2006 he received a dead body brought by ASI Ghulam Rasool for conducting postmortem examination. It was dead body of a male aged about 13 to 15 years and it could not be identified by any person. He started postmortem examination at 2:00 am and finished at 3:00 am. Dead body was decomposed. On external examination, it was found as under:-

1. *Head:* Skull bone intact. Meninges & Brain matter normal and started shakiness.
2. *Neck:* On opening the Neck region trachea contained muddy water.
3. *Thorax:* On opening the cavity heart and lungs normal in size. Lung contained muddy water. Heamorrhagic spot present on both lungs.

4. *Abdomen: On opening the cavity stomach empty, liver, spleen, and kidneys normal in size and shape.*

Time between Death & Postmortem: 1-3 days Medical Officer sent Viscerass for chemical examination.

Medical Officer received report of Chemical Examiner. According to the opinion of the Doctor, death of deceased had occurred by Cardio Respiratory failure due to asphaxia. Unnatural death of deceased has not been disputed, efficiency and integrity of the Medical officer have also not been questioned. Defence Counsel has argued that death was accidental but such contention has not been substantiated by cogent evidence, therefore, we hold that deceased died his unnatural death as described by the Medical Officer.

18. In order to substantiate the charge, prosecution examined following witnesses in trial Court:

Complainant Sadaqat Ali Shahzad, he has stated that on 13.09.2006 his son Owais Ali aged about 12 ½ years left the house at 05.00 p.m. for playing game, did not return back till night. On 14.09.2006 at 02:00 p.m. Qasim alias Umair, the son of female servant of the complainant informed him that on 13.09.2006 at 06:30 p.m. his son Owais Ali had asked to accompany him for purchase of a kite but he had refused. On 14.09.2006 PW Khan Muhammad met the complainant and informed that on 13.09.2006 at 05:30 p.m. he had seen his son in Black Queen Buss at 17-J bus stop. Complainant reported the matter to the Landhi police regarding missing of his son. On 15.09.2006 at 01:15 p.m. he received a call on mobile phone No.03002011172 from mobile phone No.03212921453 complainant was informed that his son has been kidnapped for ransom, he should make arrangement for Rs.5 Crores for his release. Complainant showed his inability to make arrangement of such huge amount. On 19.09.2006 complainant moved an application to CPLC, they handed over tape recorder along with cassette to the complainant. Complainant recorded conversation made by kidnappers at different

occasions with him. On 22.09.2006 kidnappers demanded Rs.4 crore as ransom. On 18.10.2006 complainant prepared to pay Rs.500,000/- to the kidnapers as ransom for release of his son and informed the same to the CPLC and AVCC. Ransom was to be paid according to the demand of the kidnappers at Korangi No.2. Complainant reached at pointed place and kept bag in a street but kidnappers disappeared and informed him on the phone that so many persons were present around the pointed place. Thereafter, complainant received another call from the kidnappers that they had not taken the ransom from the pointed place left by the complainant but son of the complainant was not released. Finally, complainant prepared to give Rs.200,000/- as ransom to the kidnappers at the pointed place. On 22.10.2006 complainant again reached there and left the amount in the street. Amount was taken by the kidnappers but his son was not returned back. On 04.11.2006 complainant lodged FIR at police station Landhi. Investigation officer prepared mashirnama of bus stop 17-J from where boy disappeared. Complainant had also pointed out the place where he had put ransom such mashirnama was also prepared in presence of complainant and co-mashir Babar. On 09.11.2006, complainant received a call that his son has been murdered and his dead body has been thrown in a Nala. Complainant recognized the voice, it was the voice of appellant Farhan. Such conversation was recorded by him and culprits switched off mobile, he gave such information to police. On 28.11.2006 investigation officer called him at Korangi. Complaint along with one Zulfiqar Ali reached at pointed place and proceeded to the house of the appellant Farhan. Police knocked the door of House No712, one person came out and disclosed his name as Farhan. Appellant Farhan during interrogation admitted before I.O. that he along with co-accused Qasim alias Umair, Raheel and Akbar kidnapped the complainant's son, committed his murder and had thrown his dead body in Nala. Police arrested Farhan in presence of mashirs, prepared such mashirnama. Appellant Farhan took the police to the house of appellant Qasim alias Umair, he was also arrested, who admitted his guilt. Mashirnama of arrest was prepared in presence of mashirs. Appellant Qasim and Farhan took the police to house No.146 Korangi-1, Karachi where son of complainant was confined by the appellants. Police prepared such mashirnama in presence of mashirs, he acted as mashir, co-mashir was Zulfiqar. Complainant had further deposed that appellants took the police to Nala, where they had thrown the dead body of his son, situated near Mehrunnisa Hospital. Police prepared mashirnama of the place of pointation of dead body at Ganda Nala in presence of mashirs. I.O. collected information from Ibrahim Hyderi police station about the recovery of dead body. I.O. was

informed by Ibrahim Hyderi police that dead body of unknown boy from Ganda Nala has been recovered on 14.09.2006, it was in decomposed position. After postmortem examination, through Edhi dead body was buried in the graveyard on 15.09.2006. Complainant contacted the Edhi authorities and requested them to hand over the dead body of his son. After seeking permission from the concerned Nazim, by taking from the grave, dead body was brought out and it was identified by the complainant to be of his son. Such mashirnama was prepared in presence of mashirs. Complainant took dead body to his native village by air for burial purpose and buried on 29.11.2006. He returned back to Karachi on 02.12.2006. The persons of the neighbouring area came to the house complainant for condolence and *Fatiha*. He had stated that one Ghaniul Haq told him that on 13.09.2006 he had seen his son in the bus alongwith appellant Qasim alias Umair and two other persons to whom, PW Ghani-ul-Haq could not identify. Complainant was further informed that his son, appellant Qasim and two other persons got down from the bus at Korangi-1 bus stop. Such information was also conveyed to the I.O. On 25.12.2006 complainant was passing from Quaid Abad, he saw accused Qasim, sitting at hotel. He telephoned to investigation officer. Police came and accused Qasim alias Umair was arrested in presence of mashirs. Complainant produced cassette recorded by him during unfortunate episode so also photographs of deceased. In the cross-examination, complainant has denied the suggestion that he has involved the appellants falsely in this case. Complainant has denied suggestion that all mashirsnamas were prepared at police station.

PW-2 Muhammad Ismail, ASI P.S. Risala has stated that on 14.09.2006 he received telephonic message from '15' that one dead body was lying in Ganda Nala near Mehrunnisa Hospital. He reached at the pointed place alongwith H.C. Mahi Khan and P.C. Muhammad Yaqoob. Dead body was found in the Ganda Nala, ASI made efforts but could not bring out the dead body from Nala. He arranged private crane and dead body in the naked condition was taken out from the Nala. It was dead body of a boy aged about 13 to 15 years. ASI prepared inquest report in presence of mashirs H.C. Mahi Khan and P.C. Muhammad Yaqoob. Dead body was brought to the Jinnah Hospital for postmortem examination where postmortem examination was conducted by Dr. Abdul Razzak. ASI could not trace out the relatives of the deceased. Photographs were taken and dead body was handed over to Edhi authorities for burial purpose.

In the cross-examination, he has admitted that the identification marks of the deceased were not noticed by him.

PW-4 ASI Muhammad Shoaib Alam has deposed that on 04.11.2006 he was duty officer at police station Landhi at 12:15 night. One Sadaqat Ali Shahzad appeared at police station for lodging his report. He recorded statement of complainant in his verbatim vide FIR vide No.221/2006 under section 365-A/34 PPC.

PW-5 PC Muhammad Ayoub has deposed that on 14.09.2006 he left police station Ibrahim Hyderi along with ASI Ghulam Rasool and others in police mobile, when they reached at Sultan Baghicha near board of Mehrunnisa Hospital where saw a dead body lying in Ganda Nala. It was swollen and in the naked condition at about 11:45 p.m. Crane was arranged and dead body was taken out from Nala ASI prepared mashirnama at 11:45 p.m. He acted as mashir, co-mashir was HC Mahi Khan.

PW-6 Nasir Ahmad Khan has deposed that on 01.10.2006 he had purchased SIM No.03456068315 from Baghali market, situated at Korangi No.1, Karachi through PCO. He used it for conversation with his fiancée. On 04.11.2006 sold it to one Liaquat, owner of PCO Bilal Communication. On 20.11.2006 his statement was recorded by police.

PW-7 Khan Muhammad has stated that complainant Sadaqat resides in his mohallah. Deceased Owais was son of the complainant and had seen deceased on 13.09.2006 at 05:15 p.m. in the bus and on 15.10.2006 he had informed complainant he had seen his son in the Black Queen bus.

PW-8 Ghufuranuddin has stated that he has a tyre puncturing shop. He has a motorcycle No.KBS-8429 which he used to give on rent basis. On 13.09.2008 at 09:00 p.m. he was present at his shop, Akbar and Raheel came to him and wanted to take his motorcycle on rent. He refused as he did not know them and demanded surety. On the same date again appellants Raheel and Farhan came back to his shop at 10:30 p.m. On the surety of Farhan, he gave motorcycle at the rate of Rs.40/- per hour. On 15.09.2006 at 10:30 a.m. motorcycle was returned to him and Rs.400/- as rent was paid to him. On 29.11.2006 at 06:30 p.m. police came to his shop along with appellants Farhan and on his pointation motorcycle used by the appellants was secured by the police. Such mashirnama was prepared in presence of mashirs. Police recorded his statement, he implicated the accused Farhan and Raheel art trial.

PW-9 Muhammad Shabbir has acted as mashir in this case. On 30.11.2006 he along with his friend Gulfam was coming from city on motorcycle and were going to home, when they reached near Nasir Jump road, police gave them signal to stop. Police told them that accused wanted to point out place where they had kept the clothes of the deceased of this case. Appellant Qasim was accompanied with the police. He led the police and mashirs Ghulam and Shabbir to the Board of Mehrunnisa Hospital and voluntarily by digging the earth produced shalwar and gameez of deceased. Shirt was torn from the neck and it was stained with blood. He had also produced two *dupata*, one was of black colour and other was cream coloured and a pair of *chappal* so also *Taweez* of back colour. Police secured these articles in presence of mashirs, prepared mashirnama, he acted as mashir, co-mashir was Gulfam. Such mashirnama has been produced at Ex-9/A. In his cross-examination he has denied the suggestion that the appellant Qasim did not point out the place from where articles produced by him.

P.W.10 Zuhair Daudi Bohra stated that he was member of CPLC as well as Justice of Peace, South Karachi. It was his duty to assist the police and private persons in heinous offences. On 20.10.2006 complainant informed CPLC that there was settlement of payment of ransom of Rs.500,000/- with the accused for return of his son. Thereafter, PW Zuhair in the company of AVCC and CPLC along with complainant went to the pointed place, time was given by accused

12:30 a.m. at Noorani Basti. Complainant was further directed by appellants to leave ransom in the street. He did so and left the bag in the street. He along with ASI Muhammad Tanveer kept watching that place with intention to capture the culprits but it is stated that culprits did not take the bag, however, he has clearly deposed that they had seen two persons in suspicious condition, who made 3 to 4 rounds in the street as according to him culprits apprehended the presence of the police. Thereafter, bag was handed over to the complainant Sadaqat but he has stated that he had clearly seen the persons who made rounds of the street where bag was kept. PW identified accused Raheel and Farhan that they were the persons seen by him in the suspicious manner in the street. In the cross-examination he has denied the suggestion for deposing falsely against the appellants at the instance of police.

PW.11 Muhammad Tanveer has stated that on 20.10.2006 he was posted as ASI in AVCC on the same date. He was directed by DSP to accompany the complainant to the place where complainant was asked to make payment. He along with PW Zuhair left on motorcycle whereas complainant was in the private car along with some other persons and proceeded to Korangi-2, Noorani Basti. Complainant left the bag containing ransom of Rs.500,000/- in the street. He along with P.W. Zuhair were watching the situation. Two young persons passed by the side of the bag several times and they were looking at the bag in the doubtful manner. After about one hour complainant informed PW Zuhair that he has received a call on his mobile that appellant felt the presence of the agencies around the place of wardat and refused to take the bag. He has clearly stated that appellant Farhan and Raheel present in the Court are the same persons. P.W. Tanveer has further stated that he had obtained three audio cassettes containing conversation of the complainant with the appellants and record of the mobile phone No.0345-6068315 from 01.11.2006 to 12.11.2006. On 29.11.2006 accused Farhan was arrested and led police to shop from where motorcycle was take on rent. He has stated that on the basis of cell phones record, addresses were traced.

P.W-12 Bashir Ahmed has acted as mashir in this case and stated that on 16.04.2007 at 4:15 pm, he was standing on the road, 17-J bus stop Landhi, where police mobile came. He saw one person handcuffed police took that person who led the police party and mashir Shoukat Ali.

Appellant Raheel pointed out that it was the bus stop from where he had kidnapped Owais. Such mashirnama was prepared. He acted as mashir and co-mashir was one police constable. He has further stated that appellant Raheel led the police party to a house situated at Noorani Basti, where it was stated by appellant Raheel that abductee was confined by them after his abduction, such mashirnama was prepared. He acted as mashir. On the same day appellant Raheel led police party to Nala and pointed out to the police and mashir that it was the place from where he along with companions had thrown the abductee in Nala. Such mashirnama was prepared. He acted as mashir of the place of throwing dead body. In the cross-examination he has denied the suggestion that he was deposing falsely at the instance of the complainant who is his relative.

P.W-13 Afaq is businessman. He has stated that on 11.09.2006, he had rented out house to appellant Farhan through appellant Raheel. It was stated to owner that Farhan had contracted marriage without consent of his parents and he would keep his wife in said house. On 13.09.2006 at 6:30 p.m. he had heard some commotions in his house, he went there and found five persons namely Farhan, Raheel and three others to whom he did not know. He asked appellant Raheel that he should vacate the house immediately because he had not brought his wife in the house. Advance was returned by P.W-Mohammad Afaq and house was vacated. On 02.12.2006 police came to him and recorded his statement. On 04.12.2006 he was required to appear before Judicial Magistrate Karachi for identification parade. He has stated that during identification parade he identified appellant Farhan. Such identification parade memo was prepared. In cross-examination, he has denied the suggestion that he was deposing falsely. He has also denied the suggestion that he had not rented out his house to accused Farhan.

P.W-14 Mr. Ahsan Ali Civil Judge and Judicial Magistrate East Karachi has stated that on 05.12.2006 SIP Mohammad Ali produced before him Mohammad Qasim alias Umair, Farhan son of Asghar Ali suspected accused in FIR No.221/2006 under Sections 365-A/302 PPC for holding identification parade through P.W Afaq. He has stated that dummies were arranged by him and handcuffs of accused Mohammad Qasim were removed, other accused Farhan was asked to sit in court office. P.W Afaq was called and was asked to identify but he could not identify the accused. Thereafter P.W was asked to sit outside of the court and another accused

Farhan was called to stand in the row at the place of his choice. P.W Afaq identified accused Farhan in the identification test. Such memo was prepared in presence of mashirs. On 09.12.2006 SIP Tahir Nasir submitted an application in Crime No.221/2005 of P.S. Landhi for recording 164 Cr.P.C statement of P.W Ghaniul Haq. He recorded such statement. Learned Civil Judge and Judicial Magistrate has stated that appellant Farhan and Qasim were produced before him and they are same persons present in the court.

P.W-15 Mr. Maqbool Ahmed Civil Judge and Judicial Magistrate has stated that on 27.12.2006, he was posted Civil Judge and Judicial Magistrate Karachi East. SIP Tahir I.O of crime No.221/2006 u/s 365-A PPC produced accused Qasim alias Umair for his identification parade through P.W. Muslim Shah. After completing formalities identification test was held by him through P.W Muslim Shah on 29.12.2006, he rightly picked up accused Muhammad Qasim alias Umair. Civil Judge and Judicial Magistrate also held identification parade of accused Raheel through P.W Ghaniul Haq on 17.04.2007 and he rightly picked up accused Raheel and described his role in the commission of the offence. In the cross-examination Civil Judge and Judicial Magistrate has admitted that complete description of the dummies have not been mentioned by him in the memo of identification test.

P.W-17 Muslim Shah, Water Tanker driver has stated that on 13.09.2006, he was returning from Nasko company, when he reached at Mehrun Nisa Hospital, he stopped vehicle as road was blocked, two motorcycles stopped there, there were two persons on each motorcycle, within his sight they threw a dead body in Ganda Nala and drove away. It was 11:00 or 11:15 pm. On 30.11.2006 at Asar Prayer time, he was returning by the same route he saw that a large number of people had gathered along with police. He was informed that 2-2½ months back dead body was thrown in Ganda Nala by some persons, PW Muslim Shah stated that he narrated facts to police, his statement was recorded. After arrest of the accused on 29.12.2006 he was produced before Civil Judge & Judicial Magistrate for the purpose of identification. He has stated that he identified appellant Mohammad Qasim, he was holding arm of the deceased at the time of throwing dead body into Nala. He also picked up accused Raheel in the identification parade.

Witness could not identify rest accused. In the cross-examination, he has admitted that he did not inform anybody about the fact that he had seen four persons throwing dead body in Nala. He has admitted that he raised no cries when he had seen four persons while throwing dead body into the Nala. However, he denied the suggestion that he was deposing falsely.

PW-18 Ali Mohammad has stated that he was posted as SIP on 04.11.2006, on that day he received order of SSP AVCC, Karachi along with FIR No.221/2006 under section 365-A/PPC of Landhi P.S. Karachi for investigation. On the same day, he contacted complainant. On 05.11.2006 he along with Inspector Babar went to complainant who pointed out the place from where his son was kidnapped, which was situated on bus stop of Route No.17-J in landhi-89. He prepared mashirnama of wardat in presence of mashirs. Where after complainant led them to place where he had kept the amount of ransom, situated at Noorani Basti Korangi-1. The amount was kept in a shopper in a street. Such mashirnama was prepared. On 12.11.2006 he made a request to Chief, CPLC Governor House for obtaining record/data of mobile phone 0345-6068315. He collected data of said mobile phone on 13.11.2006 from CPLC and prepared such mashirnama in presence of ASI Muhammad Tanveer and PC Fareed Ahmed. He has stated that after inspecting the data he found that mobile No.0345-6185014 was contacted by PTCL No.5030870 several times. He thereafter contacted and went to address of PTCL number 5030870 where Mst. Hira was present, who told him that both the numbers PTCL and mobile phone vis 0345-6185014 and 5030870 belonged to her and the mobile No.0345-6068315 belonged to her fiancée Nasir, who lives in Noorani Basti, House No.C-316, Street No.8, Korangi 1 ½, the he proceeded to Noorani Basti and contacted Nasir and enquired from him about mobile No.0345-6068315 who told him that said mobile number has remained in his use till 04.11.2006 and thereafter he sold the sim to Liaquat owner of PCO. He recorded 161 CrPC statement of Nasir on 20.11.2006 who showed him the shop of PCO run by Liaquat. He further stated that he inquired from Liaquat about SIM of mobile No.0345-6068315, who informed that on 06.11.2006 he has sold the same to one Farhan of same mohallah, but he did not know the house of Farhan. He asked Liaquat to trace out the hose of Farhan and inform him. On 27.11.2006 Liaquat informed him on phone and informed about address of Farhan. On 28.11.2006 he asked the complainant to reach Nasir Jmp stop in Korangi 1 ½. When he reached there complainant was already present with Zulfiqar. He proceeded to house of Farhan, situated

in Badar Town, Sector 48-H, Korangi No. 1 ½. House No.712. Farhan came out of his house and disclosed his name as Farhan. He further stated that he inquired from Farhan about SIM of Mobile number 0345-6068315 and kidnaped Awaiz, who told him that one Muhammad Qasim alias Umair, Raheel and Akbar are involved with him in the present incident. He arrested Farhan in present case and prepared such memo of arrest in presence of complainant Sadaqat Ali and Zulfiqar Ali. He further stated that during interrogation Farhan informed him that he knew the houses of Raheel and Muhammad Qasim alias Umair but did not know the house of Akbar and led the police party to the house of Muhammad Qasim alias Umair situated in Muhammad Nagar Landhi-89, he knocked the door of Muhammad Qasim, who came out and it was pointed out by accused Farhan that he is Muhammad Qasim alias Umair. He arrested Muhammad Qasim and prepared such mashirnama in presence of mashirs complainant Sadaqat Ali and Zulfiqar Ali. He interrogated Muhammad Qasim alias Umair, who informed him that they had taken house on rent in Korangi 1 ½ and they led us to the house No.Y-146, Korangi 1 ½ where kidnaped was detained. He prepared mashirnama of house No.Y-146 on the pointation of arrested accused Farhan and Muhammad Qasim alias Umair where the boy was put in wrongful confinement. On same day i.e. 28.11.2006 accused Farhan and Muhammad Qasim alias Umair led us to the place of Ganda Nala from where it was said that dead body was thrown in it. He along with police party reached at pointed place at Ganda Nala and prepared such mashirnama in presence of complainant and Zulfiqar Ali and obtained their signatures. He further stated that Ganda Nala was situated in jurisdiction of PS Ibrahim Hydri. He contacted Ibrahim Hydri police from where it came to know that in between 14th and 15th September 2006 a dead body was recovered from Ganda Nala by ASI Ghulam Rasool of PS Ibrahim Hydri. He handed over the custody of accused Farhan and Muhammad Qasim alias Umair to Inspector Tasawur Ameen for taking them to AVCC and he along with ASI Muhammad Tanveer, complainant and Zulfiqar proceeded to PS Ibrahim Hydri, where they were informed that after postmortem examination dead body was handed over to Edhi authorities for keeping the same in cold storage. On 28.11.2006 he proceeded to Edhi cold storage Sohrab Goth where he was informed that dead body has been buried in Mawach Goth Edhi graveyard and the grave number was 63390. He stated that he informed the Incharge cold storage that father of the deceased wanted to take the dead body to his native place Sahiwal, the Incharge advised him to obtain NOC from the Nazim of the area where father of deceased resides and then dead body could be handed over. NOC was obtained

and handed over to Edhi authorities, after completing the required formalities the dead body was exhumed from the grave and was handed over to the complainant, such mashirnama was prepared by him in presence of mashirs. He further stated on 29.11.2006 accused Farhan during interrogation informed that a motorcycle was taken by him from one Ghufran on rent which was used in commission of offence and led the police party to Korangi 1 ½ at the shop of Ghufran, who informed that on 14.09.2006 at about 10:30 a.m. he handed over the motorcycle to accused Farhan, which was secured from Ghufran on 29.11.2006 at 18:20 hours and prepared such mashirnama of recovery of motorcycle in presence of Ghufranuddin and ASI Muhammad Tanveer. He stated that on 30.11.2006 during interrogation Muhammad Qasim alias Umair informed that accused had concealed clothes of deceased near the Board of Mehrunnisa Hospital installed by the side of the wall and that accused had killed the boy way of strangulation. Thereafter accused Muhammad Qasim alias Umair led the police party to the place where clothes were concealed. He prepared mashirnama of recovery of clothes etc. in presence of Muhyammad Shabir and Ghulfam. He further stated that on 02.12.2006 he secured three audio cassettes recorded by complainant, which were handed over to him by CPLC. He prepared such mashirnama in presence of ASI Muhammad Tanveer and PC Fareed Ahmed. On 03.12.2006 complainant produced photograph of his son Awais Ali, such mashirnama was prepared by him. He stated that on 03.12.2006 complainant informed him that PW Ghaniul Haq had informed the complainant that on 13.09.2006 he had seen boy Awais Ali along with accused Muhammad Qasim alias Umair and two other persons travelling in bus and they step down at Korangi 1 ½ bus stop. He recorded such further statement of complainant on 03.12.2006. On 05.12.2006 he got identification parade held of accused Muhammad Qasim alias Umair and Farhan and in that identification parade accused Farhan was identified whereas accused Muhammad Qasim alias Umair was not identified by PW Afaq Ahmed. On 06.12.2006 he produced accused Farhan, Muhammad Qasim alias Umair before the Administrative Judge ATCs Karachi, who directed him to release accused Muhammad Qasim alias Umair under section 497(2) Cr.PC as he was not identified by PW Afaq in the identification parade, and thereafter accused Muhammad Qasim alias Umair was released by him. Thereafter, he handed over police papers to SIP Tahir Naseer as he was entrusted further investigation. He further stated that he recorded 161 CrPC statements of prosecution witnesses. In cross-examination, denied suggestion that accused have been falsely involved in this case.

19. From perusal of the above evidence we have come to the conclusion that prosecution had succeeded to prove its case against the appellants for the reasons that appellant Farhan was arrested from his house. He admitted that he along with co-accused Qasim, Raheel and Akbar had kidnapped the son of the complainant and committed his murder and had thrown his dead body in Nala. Prosecution has also brought on record that son of complainant was last seen by PW Ghani ul Haq on 13.09.2006 in the bus in the company of Muhammad Qasim alias Umair and two others. PW Muslim Shah, tanker driver had also seen appellant Qasim and Raheel while throwing dead body into the nala. Investigation officer traced address of Farhan as PW Liaquat told him that Farhan had purchased SIM from him, after arrest of Farhan remaining accused were arrested. Appellant Muhammad Qasim led the police party to the rented house of appellant Farhan and stated that boy was detained in that house by Farhan, Raheel and other accused. PW Zuhair had also identified appellants Farhan and Raheel at the time when complainant kept bag of ransom in street. On 28.11.2006 appellant Farhan and Muhammad Qasim alias Umair led the police party to the ganda nala where they had thrown the dead body. It has come on record that appellants Farhan and Raheel had taken motorcycle on rent for using the same in the crime. Most important circumstance that appellant Muhammad Qasim alias Umair had exclusive knowledge of clothes etc. of the deceased concealed near hospital. Report of Chemical Examiner regarding blood stained clothes of deceased was positive. Dead body was identified by his father when it was taken out of the grave. On the information furnished by the appellants Qasim and Farhan place from where dead body was thrown in the nala was pointed out and such discovery connects the appellants in this case. The information furnished by the appellants to the investigation officer can be used against them under Article 40 of the Qanun-e-Shahadat Order, 1984.

20. Since the discovery of clothes of the deceased boy was based on information furnished by the appellant Muhammad Qasim and he led the police party, complainant and witnesses to the place where the same were concealed and Qasim and Raheel led police to the place from where dead body of the deceased boy was thrown in the Ganda Nala and pointed out room of house where boy was detained, the information furnished by the appellants to the investigation officer for which no one knew except accused can be used against them under Article 40 of the Qanun-

e-Shahadat Order 1984 as observed by the Honourable Supreme Court of Pakistan in the case of Nazir Shehzad and another versus the State (2009 SCMR 1440), relevant portion is reproduced as under:

“7. We have considered and scrutinized the remaining prosecution evidence, in depth. PW.13 stated in clear terms that, after arrest of the accused he firstly interrogated Samar Jan and later on he interrogated Nazir Shehzad. Both the appellants, who were separately interrogated, informed the Investigating Officer about the place i.e. Rohi Nala in the area of Police Station Kahna, where they had thrown the dead body. This discovery based on the information furnished by the appellants led to the recovery of dead body from the Nullah. There is no doubt about it that prior to information furnished by the appellants the whereabouts of dead body were not known to anyone. The information furnished by the appellants to the Investigating Officer can be used against them under Article 40 of Qanun-e-Shahadat Order, 1984. As in a case of confession made under Article 40 of the Qanun-e-Shahadat Order, 1984, it is expected to find the discovery of something which can be associated with the deceased.

21. Appellant Qasim alias Umair led police party to the place from where clothes of deceased, a pair of chappal, taweez and two dupatas were produced, such conduct of appellant, is admissible piece of evidence under Article 22 of the Qanun-e-Shahadat Order 1984, can be used in this case for corroboration as held in the case of Naseem Akhtar (1999 SCMR 1744) in which it is held as under:

“It has been held that joint leading by the two appellants in the reported judgment to the place from where the clothes of the deceased were recovered is also an act and that the same can be fastened to each appellant as a piece of conduct under section 8 of the Evidence Act (now Article 22 of Qanun-e-Shahadat Order, 1984) in the absence of any bar in such section itself.

In the present case, though there might be some objection to the admissibility of joint recoveries and joint pointation by the appellant, the fact that the two appellants led the police to the place from where the dead body of the deceased and motorcycle were found and recovered are conducts of the appellants which are admissible under Article 8 of Qanun-e-Shahadat Order, 1983 and can be used as corroboration for the judicial confessions. At least as regards the dead body, it has also been noted that since the boy disappeared nobody knew his whereabouts and the boy was recovered only after the appellants had been arrested on 06.08.1994. Both the appellants led the police and others to the place where the body was found and this is a very important and admissible conduct against the two appellants and provides corroboration for their involvement in the crime and for their confessions.”

22. According to prosecution case, appellant Qasim alias Umair was identified by PW Muslim Shah on 29.12.2006. PW Ghaniul Haq identified appellant Raheel on 17.04.2007 and stated that accused Raheel alongwith others was travelling in bus “J-12”. PW Muslim Shah identified accused Raheel before the Civil Judge and Judicial Magistrate and stated that accused Raheel was holding feet of deceased while throwing him in the Ganda Nala. Mr. Ahsan Ali, Civil Judge and Judicial Magistrate has stated that he supervised identification parade of accused Muhammad Qasim alias Umair and Farhan through PW Muhammad Afaq on 05.12.2006. PW Afaq Ahmed identified accused Farhan. On 09.12.2006 Civil Judge and Judicial Magistrate recorded 164 Cr.PC statement of PW Ghaniul Haq in this case. At that time accused Farhan was produced before the Magistrate and 164 Cr.PC statement of PW Ghaniul Haq was recorded. Contention of learned counsel for the Appellants that PW Muslim Shah had only momentary glimpses and it was difficult for him to identify the culprits after such a long period has no merit for the reason that throwing a dead body in Nala attracted attention of PW Muslim Shah it is but natural. It may be mentioned that power to identify a person varies according to the power of observation. Other PWs and learned Civil Judges and Judicial Magistrates had also clearly identified the appellants in the trial Court. Delay in holding the identification parade was not significant in this case for the reasons that incident occurred on 13.09.2006, identification parade of accused Farhan was held on 05.12.2006 and identification parade of Qasim and Raheel was held on 29.12.2006 and 17.04.2007. PWs or learned Civil Judges and Judicial Magistrates had no motive to implicate the appellants falsely in this heinous

crime. Rightly reliance has been placed on the case of SOLAT ALI KHAN VS. THE STATE (2002 SCMR 820) wherein it is held as under:-

“The identification of the appellant conducted under the supervision of Muhammad Rafiq, Judicial Magistrate (P.W.14) has been brought on record by Mrs. Shahnaz Hamid (P.W.4), Mirza Tariq Jawed (P.W.9) and Umer Shahid (P.W.12). The argument of the learned counsel for the appellant that the same was held after more than 530 days of the present occurrence and 9 days after arrest of the appellant would not advance the case of the defence. It has come on record that the appellant left the country and came back on 10-12-1998 when, as earlier stated, he was apprehended at the Jinnah International Terminal, Karachi. Mrs. Shahnaz Hamid (P.W.4) and Umer Shahid (P.W.12) in their evidence have categorically stated that it was the appellant who committed this gruesome offence. Mrs. Shahnaz Hamid (P.W.4) in her deposition stated that during identification parade she had a constant look on the appellant and identified him to be same person who had been seen by her in a white car at the site of occurrence. She further stated that she had only pointed out the appellant on the day of holding of identification parade and had told the Magistrate that “This is the man”. In an answer to a Court question she further elaborated that the person sitting in the Court was the same who had been seen by her in the car at the site of occurrence on the material date and time. In the concluding portion of her testimony to a Court question she answered as follows:-

“From the word ‘unidentified’ appearing in Exh.D.I meant was that I did not know the accused by name then seen by me who was driving the alleged car, now sitting here before the Court about whom I have not even the slightest doubt if he is not the same individual.” (Underlining is ours).

Similarly, Umer Shahid (P.W.12) had stated that he identified the appellant during the identification parade conducted by Muhammad Rafiq, Judicial Magistrate on 19-12-1998. He also stated in his cross-examination that prior to the identification parade he had not seen the appellant. He further reiterated his stance by saying that he had seen the appellant for a moment on the date and place of occurrence and then saw him in the identification parade held on 19-12-1998. The figure and features of the appellant must have been imprinted on the minds of Mrs. Shahnaz Hamid (P.W.4) and Umer Shahid (P.W.12), widow and son respectively of deceased Shahid Hamid. How they can forget the person who had committed this gruesome act of killing Shahid Hamid alongwith his driver and gunman? It is expecting too much from the complainant to point out the detailed description and features of the accused in the F.I.R as at that moment she must be undergoing a very traumatic condition. In this regard, the learned Division Bench of the High Court of Sindh has observed as under:-

“The arguments that P.Ws had only momentary glimpses and it was difficult for them to identify the culprits after such a long period has no merit. Suffice it to say that each criminal case has its own facts and circumstances and the value of evidence of identification is to be evaluated by the Court. It may be mentioned that the power to identify

varies according to the power of observation and the observation is based upon minor details which a witness cannot describe and explain himself. In the instant case the incident has taken place in the day time just near the house of complainant party, who were receiving constant threats and they were conscious of the consequences. As soon as the lady and her son heard the fire shots, they came out of their bungalow and saw the incident and culprits. P.W. Mrs. Shahid Hamid and the other P.Ws, who were at the relevant time at the spot and seen the appellant/culprit and incident which was of immense importance, extending serious and saddest in one’s life, therefore, the culprits to whom they saw could remain in memory as photo for sufficient long period hence there could be no mistaken identity.”

23. Circumstantial evidence has been established by reliable and cogent evidence, we have no reason to disbelieve it. A boy of 12/13 years’ age was kidnapped by the appellants for ransom and he was done to death. The above stated circumstances were, in our opinion, sufficient to establish the charges of kidnapping for ransom and murder against the appellants. Learned trial Court rightly came to the conclusion that the prosecution has proved its case against the appellants beyond any reasonable doubt and death penalty has been awarded to the appellant. There was nothing substantial in the statements of the appellants recorded under section 342 Cr.PC to discredit such confidence inspiring evidence, the plea has been rightly discarded by the trial Court. We have no hesitation to hold that prosecution has proved its case against the appellants beyond any shadow of doubt. Trial Court had properly appreciated the evidence. As regards to the sentence of death awarded by the trial Court is concerned, although the exact ages of appellants have not come on record but from the statements of accused recorded by the trial

Court on 15.11.2008 it appears that accused Muhammad Qasim alias Umair, Raheel and Farhan have mentioned their ages as 21, 18 and 25 years, respectively and incident occurred on 13.09.2006, it means that the appellants were aged about 18 to 20 years at the time of incident and it is a ground for conversion of their sentence from death to imprisonment for life. Moreover, this is not a case of sectarian killing and having peculiar circumstances. Honourable Supreme Court in the case of *Kamran Ahmad Farooqui and another versus the State (SBLR 2013 SC 18)*, in the similar circumstances converted death sentence imposed upon the appellants under section 302 PPC to that of imprisonment for life as follows:

“7. In this regard it would be noted that although the exact age of the appellants has not come on the record but per the Prosecution itself they were young boys at the time of incident viz. on 27.09.1997, which means their ages were not more than 18 to 20 years. It would also be seen that neither in the FIR nor in the deposition of the Prosecution witnesses have they alleged that the Appellants belonged to a sectarian organization or that it was a result of their sectarian views that they had murdered the Deceased. In this view of the matter we are of the opinion that indeed the motive has not been established by the Prosecution at all. Finally it would be seen that the Appellants have remained behind the bars since 12.03.1998 when they were arrested in this case. In these circumstances we are of the opinion that it would be in the interest of justice to convert the death sentence imposed upon the Appellants under Section 302 PPC to that of life imprisonment. Order accordingly. The other sentences imposed by the learned High Court are upheld. The benefit of remissions, if any, would be available to both the Appellants and their sentences would run concurrently. So also the benefit of Section 382-B Cr.PC shall be extended to them.

8. This appeal is disposed of in the above terms.”

24. For the above stated reasons as the Appellants/accused were young boys at the time of incident, murder was not committed due to sectarian rivalry. In these circumstances, in the interest of justice death sentence imposed upon the Appellants under Section 302 PPC is converted to imprisonment for life. Benefit of section 382-B Cr.PC shall also extended to them.

25. Appeals are accordingly disposed of. Reference for confirmation of death made by the trial Court is declined and answered in negative.

JUDGE

JUDGE

Gulsher/PA