

**IN THE FEDERAL SHARIAT COURT**

(Appellate Jurisdiction)

**PRESENT**

**MR. JUSTICE SHAHZADO SHAIKH  
MR. JUSTICE RIZWAN ALI DODANI**

**CRIMINAL APPEAL NO.315/I OF 2005**

1. Jameel son of Muhammad Afsar ... Appellants  
caste Pathan,  
resident of Takia Dehrian Usman Abad,  
District Abbottabad.
  
2. Muhamamd Shafiq son of Muhamamd Ashraf,  
caste Awan,  
resident of Narrian,  
District Abbottabad.

Versus

The State ... Respondent

Cr.Murder Reference No.01/I of 2006 ( The State Vs. Jameel and another.)

✓ Counsel for the appellant	...	Mr. Abdul Ghani Channa, Advocate
NAME OF the complainant	...	Fazal Dad SHO/Complainant
Counsel for the State	...	Mr. Muhammad Sharif Janjua, Advocate on behalf of A. G. Khyber Pukhtoonkhwa for State
FIR No. Date and Police Station	...	No.487 dated 06.11.2002 P.S. Mirpur. District Abbottabad.
Date of judgment of trial Court	...	21.12.2005
Date of Institution of appeal	...	29.12.2005
Date of hearing	...	15.08.2011
Date of decision	...	15.08.2011

**JUDGMENT**

**SHAHZADO SHAIKH, J :-** This Criminal Appeal filed by appellants

Jameel son of Muhammad Afsar, caste Pathan, resident of Takia Dehrian Usman Abad, Abbottabad and Muhammad Shafiq son of Muhammad Ashraf caste Awan, resident of Narrian, Abbottabad is directed against the judgment dated 21.12.2005 passed by learned Additional Sessions Judge-I, Abbottabad whereby they have been convicted t under section 302 (b)/34 of Pakistan Penal Code and sentenced them to death. They shall be hanged by neck till death. They shall also pay an amount of Rs.100000/- each as compensation to the legal heirs of the deceased under Section 544-A Code of Criminal Procedure or in default thereof to further undergo six months S.I. The sentence of death is subject to confirmation by the Hon'ble Federal Shariat Court, Islamabad.

2. Vide Court's order dated 12.04.2010 the co-accused/appellant Jameel son of Muhammad Afsar, caste Pathan, resident of Takia Dehrian Usman Abad, Abbottabad was acquitted of the charge on the basis of compromise effected between the legal heirs of the deceased and appellant Jameel son of Muhammad Afsar.

3. Briefly facts of the case as narrated by PW Fazal Dad, ASI are that on 06.11.2002 at 0600 hours during patrol duty he received information about the dead body of a person lying in Water Nullah Beeran Da Khatta within the limits of Village Mor Kalan. On this information, he reached the spot and saw the dead body of a young person lying murdered at the said place. He found two injuries on the back of the dead body, an injury on left ribs, one injury on left back side of neck and one injury on head on right side. He prepared injury sheet Ex.PW.17/1 and inquest report Ex.PW.7/2 of the said unknown's person's dead body and sent the same to Ayub Teaching Hospital, Abbottabad for postmortem examination under the escort of Imran Constable 143. He also found signs of tyres of of the vehicle on the spot. He drafted Murasila Ex.PA/1 and sent the same to Police Station for registration of the case through Aziz-ur-Rehman constable No.1090, on the basis of which the case was registered, vide FIR Ex.PA bearing No.487, dated 06.11.2002 under Section 17(4) Harraba in Police Station, Mir Pur, Abbottabad.

PW Fazal Dad started investigation in this case. He drafted site plan Ex.PW.17/2, with its footnotes and drawings. He took into possession blood stained sand and a dagger Ex.P-1 from the place of occurrence and sealed them in parcel vide recovery

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memo Ex.PW.1/1. The dead body was identified to be of deceased Nazar Muhammad alias Naeem son of Khawaj Muhammad by the PWs. He took into possession blood stained garments Ex.P-3 and Ex.P-4 having corresponding cut marks and sealed the same in parcel vide recovery memo Ex.PW.8/1. He sent the blood stained articles for chemical analysis through Moharrar of the PS vide application Ex.PW17/3. On 09.11.2002 he also took into possession frame of Suzuki No.KH-1499 belonging to deceased Nazar Muhammad alias Naeem with Tarpal and four seats lying near the graveyard in Banda Sher Khan, on the information of PW Ali Asghar to the police on telephone, in presence of PW Muhammad Saleem brother of deceased, who identified the said articles vide recovery memo Ex.PW16/1 and prepared the sketch Ex.PW.17/4 of the place of recovery.

4. PW Shah Jehan S.I. on 14.12.2002 took over the investigation of this case. Accused Jameel and Muhammad Shafiq were arrested by the Police of PS Cantt., Abbottabad in case FIR No.175, dated 08.09.2002 under Section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 PS Nawabshehr and in case FIR No.853, dated 18.11.2002 under Sections 400/401/402/411/412/413/414 of Pakistan Penal Code. PW Shah Jehn S.I. learnt

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that accused had admitted the present occurrence, therefore, he arrested them in this case. On 27.11.2002 accused Muhammad Shafiq and Jameel led the police party to PS Cantt., Abbottabad on the pointation of accused Shafiq, he took into possession various parts of Suzuki No.KH-1499 vide recovery memo Ex.PW11/1. He also took into possession one stone Ex.P-5 on the pointation of accused Shafiq with which he struck the deceased vide recovery memo Ex.PW.11/2. He also took gas kit alongwith cylinder produced by PW Raja Khawar, which he had purchased from Shafiq accused for Rs.15000/- vide recovery memo Ex.PW.11/3. Similarly, on the pointation of accused, he took into possession four tyres with rims and battery of Suzuki No.KH-1499 from the house of absconding accused Zaheer vide recovery memo Ex.PW.11/4,. He also prepared sketch Ex.PW.14/2 of the house of said absconding accused. He also prepared pointation memo Ex.PW.11/5 on the pointation of accused Muhammad Shafiq and Jameel of the place where they left the frame etc of the Suzuki No.KH-1499 and also prepared sketch Ex.PW.14/1 of the said place. He also prepared sketch Ex.PW.14/1 of the place of recovery of stone Ex.P-5. He recorded the statements of the PWs. He got recorded confessional statements of accused Muhammad Shafiq and Jameel vide application Ex.PW.2/1

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and got recorded statement of PW Raja Khawar under Section 164 Code of Criminal Procedure. He got issued warrant under Section 204 and proclamation notice under Section 87 Code of Criminal Procedure against the absconding accused Zaheer vide application Ex.PW.14/3 and Ex.PW.14/4 and placed on file report Ex.PW.14/5 of the Chemical Examiner. He submitted complete challan against accused through SHO Shah Nazar Khan.

5. After observing due formalities, challan was submitted against the above said accused Jameel and Muhammad Shafiq, placing in column No.3 of report under Section 173 Code of Criminal Procedure, in the learned trial Court

6. After procuring the attendance of above mentioned accused, copies as required under Section 265-C of Code of Criminal Procedure were delivered to them and formal charge against them was framed on 27.01.2004 under Section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance 1979 and under Section 411 of PPC to which accused pleaded not guilty and claimed trial.

7. The prosecution in order to prove its case produced seventeen witnesses. The gist of prosecution evidence is as follows:-

- (i) PW.1 Muhammad Amin, IHC was marginal witness of recovery memo Ex.PW1/1, which was signed by him. In his presence, the I.O. took into possession blood stained sand and one churra from the place of occurrence.
- (ii) PW.2.Amjid Zia Siddique, Judicial Magistrate had recorded the confessional statements of appellant/accused Muhammad Shafiq and Jamil produced by Shah Jehan Khan, S.I. on 28.11.2002 vide application Ex.PW.2/1. He disclosed his identity to appellant/accused Muhammad Shafiq and asked him that he was not bound to record confession and if he did so it would be taken against him in evidence. Appellant/Accused was given half an hour to ponder over the mater. After observing all the legal formalities and his satisfaction that accused was making a true and voluntary confession, he recorded the confessional statement of said accused/appellant Muhammad Shafiq. The memorandum of inquiry Ex.PW.2/2, confession statement Ex.PW.2/3 and certificate Ex.PW.2/4

were signed by him. The confessional statement was also thumb impressed by the accused/appellant. Nazir Ahmad Khan, SHO had submitted complete challan in the case against the accused/appellant.

On the same day, after recording confessional statement of accused/appellant Muhammad Shafiq, accused/appellant Jamil was produced by Shah Jehan Khan, S.I. for recording his confession. He also observed all the legal formalities in recording the confession of the said accused/appellant. After he was satisfied that accused Jamil was making a true and voluntary confession, he recorded his confessional statement Ex.PW.2/5 which was signed by him and duly thumb impressed by accused/appellant Jamil. The memorandum of inquiry Ex.PW.2/6 and certificate Ex.PW.2/7 were correctly signed by him.



- (iii) PW. 3 Shah Nazar Khan, SHO stated that he had verified the investigation conducted by Fazal Dad and Shah Jehan and then submitted complete challan against the accused.
- (iv) PW.4 Aziz-ur-Rehman, Constable had escorted the dead body of deceased Muhammad Naeem from the spot to the hospital for postmortem examination. No body had interfered with the dead body in the way. He was also marginal witness to recovery memo Ex.PW1/1 through which the I.O. had taken into possession blood stained sand and a dagger Ex.P-1 from the spot and sealed the same into different parcels. The memo was correctly signed by him.
- (v) Dr. Khurram Shehzad, Medical Officer, ATH, Abbottabad appeared as PW.5 who deposed that on 06.11.2002 at 09:00 A.M he conducted the postmortem examination of deceased Mohammad Naeem son of Khawaj Mohammad aged about 21/22 years, dead body was identified by the PWs Imtiaz and Nisar Ahmed and found the followings:-

External Appearance.

A young man aged 21-22 years, lying supine on the table wearing light gray shalwar kameez. The clothes were wet and blood stained. He had sand and mud all over his body. There was three holes of stab wound on the back of Kameez measuring 3", 2", 2" respectively.

The following injuries were noted on the dead body.

1. A stab wound 3 inches in length deep penetrating in the back of left kidney.
2. Another stabs wound 2 inch on the back.
3. Another stab wound 2 inches just below the left scapula.
4. A lacerated would 2 inches on the back of head, muscle deep, bone intact.
5. An incised wound of 2 inches on the back of neck, muscle deep.

Thorax

Walls, ribs and plurae, larynx and trachea including right

lung left lung and pericardium and heart were healthy.

Blood vessels injury to the left renal vessel bleeding in  
the peritoneal cavity.

Abdomen Peritoneum-containing about? Litres of blood

in the peritoneum cavity. Left kidney was damaged

causing bleedings from the left renal vessels into the

peritoneal cavity. About 2 liters of blood was in the

cavity.

Opinion

In his opinion the cause of death of the deceased

is due to stab injury to the left kidney and left renal

vessels, causing excessive bleeding about two liters in

the peritoneal cavity, leading to shock and death of the

patient.

The shalwar and kameez of the victim was handed over  
to the police.

Time between injury and death 1 to2 hours.

Between death and postmortem 6 & 8 hours.

He has seen PM report Ex.PM and pactorial  
(six pages) which is in his handwriting and correctly  
bears his signature. He has seen the inquest report  
which correctly bears his endorsement which is Ex.PM/1

(vi) PW.6 is Ibrar Hussain, ASI, PS, Rajoia who deposed that on  
receipt of Murasila Ex.PA/1, he had registered the case vide FIR  
Ex.PA, which was in his handwriting and correctly signed by  
him.

(vii) PW.7 Imtiaz Ahmad had identified the dead body of deceased  
Nazar Muhammad, alias, Naeem before the police and the  
doctor.

(viii) PW.8 Abid son of Mohammad Suleman, caste Awan aged  
about 30 years resident of Taharana Ghariban appeared as

PW.8 who deposed that I was marginal witness to recovery memo Ex.PW.8/1, which was correctly signed by him. In his presence, the I.O. took into possession blood stained shalwar Ex.P-3 and shirt Ex.P-4 of deceased Nazar Muhammad, alias Naeem having cut marks and sealed the same in parcel.

- (ix) PW.9 Mohammad Saleem son of Khawaj Mohammad caste Tanoli, aged about 43 years resident of Bayian who deposed that Nazar Mohammad alias Naeem deceased was his real brother. During the days of occurrence deceased was residing at Taharana Gharbin with his brother in law, Muhammad Siraj. He was driving Suzuki No.KH-1499, owned by their father Khawaj Muhammad. On 06.11.2002, he was informed about the murder of Nazar Muhammad, alias, Naeem deceased. On this information, he went to ATH, Abbottabad where the dead body of the deceased was lying. The Suzuki driven by the deceased was not traceable. On 09.11.2002, frame, four seats and Tarpal of Suzuki No.KH-1499 was recovered by the police

lying in village Banda Sher Khan. He duly identified the said parts of their Suzuki. He charged the accused/appellants for commission of the offence.

- (x) PW.10 Asif Gohar Khan, SHO, PS Saddar, Haripur who deposed that accused/appellant Muhammad Shafiq, Jamil and two others were in police custody in case FIR No.853, dated 18.11.2002 under Sections 400/401/402/411/412/413/414 PPC/13 A.O. of PS Cantt., Abbottabad. During Interrogation, accused/appellants Muhammad Shafiq and Jamil disclosed that after killing deceased Muhammad Naeem, they had snatched his Suzuki No.Kh-1499. They had brought it to the residential house of accused/appellant Muhammad Shafique where the parts of the Suzuki were separated and those parts were in the house of accused/appellants Muhammad Shafique. On 18.11.2002 accused/appellants Muhammad Shafiq and Jamil and other led the police party to the residential house of Muhammad Shafiq, where, Muhammad Shafiq pointed out

various parts of Suzuki No.KH-1499 kept in the room of his house. He took all those parts into his possession vide recovery memo Ex.PW.10/1, attested copy Ex.PW.10/2 in case FIR No.853, dated 18.11.2002. Jamil accused/appellant after pointation of Muhammad Shafiq accused/appellant had also pointed out the same parts of stolen Suzuki No.KH-1499 lying in the house of Muhammad Shafiq accused/appellant. He had also prepared sketch copy of Ex.PW.10/3 of the place of recovery. The chassis and engine numbers of Suzuki No.KH-1499 were got verified and compared with the recovered engine and chassis and found the same as per record;

- (xi) PW.11 Muhammad Siraj son of Haji Muhammad Yousaf was marginal witness to recovery memo Ex.PW.8/1 which was correctly signed by him. In his presence, the I.O. took into possession blood stained Shalwar Ex.P-3 and shirt Ex.P-4 having corresponding cut marks of the deceased and sealed them in parcel. He had also seen the recovery memo of various

parts of Suzuki No.KH-1499, vide recovery memo Ex.PW.11/1 and recovery of stone Ex.P-5 vide recovery memo Ex.PW.11/2, on the pointation of accused/appellant Muhammad Shafiq while in custody of the police. Similarly, in his presence, accused/appellant Jamil and Muhammad Shafiq pointed out different points/places of occurrence to the I.O. vide pointation of memo Ex.PW.11/5. He was also marginal witness to recovery memo Ex.PW.11/3 vide which the I.O. took into possession gas kit produced by one Raja Khawar PW. Similarly on the pointation of Shafique he had also recovered four tyres with rims and one battery of the stolen Suzuki No.Kh-1499 from the house of absconding accused Zaheer, vide recovery memo Ex.PW.11/4.

- (xii) PW.12 Raja Khawar stated that some three and half years back at about 10.00 p.m. PW Khan Gul alongwith two persons came to him. Khan Gul PW asked him for payment of Rs.15000/- in lieu of a gas kit and cylinder. He paid Rs.15000/- and kept the



gas kit and cylinder with him as a trust. He was told that in case, the cash amount of Rs.15000/- was not paid back, then he would become owner of the cylinder and the gas kit. One of the persons with Khan Gul was one Shafiq and the police informed him later on about his name and that said Muhammad Shafiq was accused/appellant. He came to know that the gas kit and the cylinder were stolen property and then he handed over the same to the police.

- (xiii) PW.13 Khan Gul stated that Nasir and Zaheer had brought accused/appellant Muhammad Shafiq to him. They told him that Muhammad Shafique had gas kit for sale. He took them to Raja Khawar and informed him about the selling of gas kit. Raja Khawar paid Rs.15000/- to accused/appellant Muhammad Shafiq and Muhammad Shafique accused/appellant delivered him gas kit and the cylinder on the condition that, if Muhammad Shafique accused/appellant failed to pay back Rs.15000/- within a period of one month, the gas kit and the cylinder would

be in the ownership of Raja Khawar. Later on, when they came to know that the gas kit and the cylinder were the stolen property, the same were handed over to the police by Raja Khawar.

- (xiv) PW.14 Shah Jehan Khan, SHO/S.I. on 14.11.2002 took over the investigation of this case. Accused Jameel and Muhammad Shafiq were arrested by the Police of PS Cantt., Abbottabad in case FIR No.175, dated 08.09.2002 under Section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 PS Nawaanshehr and in case FIR No.853, dated 18.11.2002 under Sections 400/401/402/412/413/414 of Pakistan Penal Code and it was learnt that accused had admitted the present occurrence, therefore, he arrested them in this case. On 27.11.2002 accused Muhammad Shafiq and Jameel led the police party to PS Cantt., Abbottabad. Where on the pointation of accused Shafiq, he took into possession various parts of Suzuki No.KH-1499 vide recovery memo

Ex.PW11/1. He also took into possession one stone Ex.P-5 on the pointation of accused Shafiq with which he struck the deceased vide recovery memo Ex.PW.11/2. He also took gas kit alongwith cyclinder produced by PW Raja Khawar, which he had purchased from Shafiq accused for Rs.15000/- vide recovery memo Ex.PW.11/3. Similarly, on the pointation of accused Shafique, he took into possession four tyres with rims and battery of Suzuki No.KH-1499 from the house of absconding accused Zaheer vide recovery memo Ex.PW.11/4,. He also prepared sketch Ex.PW.14/2 of the house of said absconding accused. He also prepared pointation memo Ex.PW.11/5 on the pointation of accused Muhammad Shafiq and Jameel of the place where they left the frame etc of the Suzuki No.KH-1499 and also prepared sketch Ex.PW.14/1 of the said place. He also prepared sketch Ex.PW.14/1 of the place of recovery of stone Ex.P-5. He recorded the statements of the PWs. He got recorded confessional statements of

accused Muhammad Shafiq and Jameel vide application Ex.PW.2/1 and got recorded statement of PW Raja Khawar under Section 164 Code of Criminal Procedure. He got issued warrant under Section 204 and proclamation notice under Section 87 Code of Criminal Procedure against the absconding accused Zaheer vide application Ex.PW.14/3 and Ex.PW.14/4 and placed on file report Ex.PW.14/5 of the Chemical Examiner. He submitted complete challan against accused through SHO Shah Jehan Khan.

- (xv) PW.15 Hafiz Janis Khan, S.I. who deposed that he was the marginal witness of recovery memo Ex.EX.PW.10/1, attested copy of Ex.PW.10/2, which was correctly signed by him. In his presence, the I.O. took into possession various parts of Suzuki No.KH-1499 from the house of accused/appellant Muhammad Shafiq on the pointation of accused/appellants Muhammad Shafiq and Jamil.

(xvi) PW.16 Ghulam Murtaza, ASI who deposed that he was also the marginal witness to recovery memo Ex.PW16/1, which was correctly signed by him. In his presence, the I.O. took into possession a frame, four seats and Tarpal of Suzuki No.KH-1499 from a vacant plot situated near the graveyard of Banda Sher Khan.

(xvii) PW.17 Fazal Dad, ASI who deposed that on 06.11.2002 during patrol duty he received information about the dead body of a person lying in Water Nullah Beeran Da Khatta within the limits of Village Mor Kalan. On this information, he reached the spot and saw dead body of a young person lying murdered in the said place. He found two injuries on the back of the dead body, one injury on rib left side and one injury on head on right side. He prepared injury sheet Ex.PW.17/1 and inquest report Ex.PW.7/2 of the said unknown's person's dead body and sent the same to Ayub Teaching Hospital, Abbottabad for postmortem examination under the escort of Imran FC No.144.

He also found marks of tyres of the vehicle on the spot. He drafted Murasila Ex.PA/1 and sent the same to Police Station for registration of the case through Aziz-ur-Rehman FC No.90, on the basis of which the case was registered vide FIR Ex.PA bearing No.487, dated 06.11.2002 under Section 17(4) Harraba in Police Station, Mir Pur, Abbottabad.

PW Fazal Dad started investigation in this case. He drafted site plan Ex.PW.17/2, which is correct with all its footnotes and drawings. He took into possession blood stained sand and a dagger Ex.P-1 from the place of occurrence and sealed them in parcel vide recovery memo Ex.PW.1/1. The dead body of the deceased was identified by P.Ws Imtiaz Khan and Nisar Ahmed. He took into possession blood stained garments i.e. shalwar Ex.P-3 and Qameez Ex.P-4 having corresponding cut marks and sealed the same in parcel vide recovery memo Ex.PW.8/1. He sent the blood stained articles alongwith parcel No.1 containing blood stained sane for chemical analysis

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through Moharrar of the PS vide application Ex.PW17/3. On 09.11.2002 he also took into possession frame of Suzuki No.KH-1499 belonging to deceased Nazar Muhammad alias Naeem with Tarpal and four seats lying near the graveyard in Banda Sher Khan, on the information of PW Ali Asghar to the police on telephone, in presence of PW Muhammad Saleem brother of deceased, who identified the said articles vide recovery memo Ex.PW16/1 and prepared the sketch Ex.PW.17/4 of the place of recovery.

8. Learned trial Court after close of the prosecution evidence on 15.9.2005 recorded statement of accused namely Shafique under section 342 of the Code of Criminal Procedure. In the question why the P.Ws deposed against you? He replies as under:-

“ There is no eye witness of the occurrence. Initially, the case remained as unseen crime and Asif Gohar P.W-10 the author of FIR No.853 dated 18.11.2002 of P.S Cantt. Abbottabad who is the close relative of the deceased of the present case involved me and co-accused Jameel in connivance with the I.O. of the present case,

In this case as well as in so many other untraced cases we were prepared and the recoveries were planted by the I.O. There is no disinterested and independent witness in the present case. P.Ws Khawar and Khan Gul were the actual culprits as it seems from the facts and circumstances of the case, they were let free by the I.O. The confession was extracted after severe beating, threats, torture and all the third degree methods were adopted by the I.O. I, in order to get rid from the atrocities of the police, was compelled to make a false statement in the line of investigation as told by the I.O. "

However, the accused/appellant did not tender evidence on oath.

9. After hearing both the parties the learned trial Court convicted and sentenced the appellant as mentioned in opening para of this judgment.

10. Learned counsel for the appellant contended that recovery of alleged stolen vehicle i.e. Suzuki No.KH-1499 has not been proved. There is no eyewitness of the occurrence and the murder of deceased is a blind murder. No identification of recovered article i.e. parts of vehicle was conducted and the factum of sale of the part of Suzuki has not been proved. There are many contradictions in the statements of prosecution witnesses. The investigation officer did not investigate the case



honestly and accused/appellant Muhammad Shafiq son of Muhammad Ashraf has been falsely implicated in this case. The joint confessional statements of the appellants are not voluntarily and requirements of Law have not been fulfilled at the time of recording of the confessional statements of appellants. Neither medical evidence nor ocular account has supported the prosecution case, nor it can in any way be linked to the accused/appellant. He further contended that recoveries are not relevant because it was already in the possession of police in another case.

11. On the other hand, the learned counsel for State stated that the contents of FIR have been duly corroborated by the prosecution witness although accused were not named in the FIR. There is no ocular account of the occurrence but the I.O. clearly mentioned in the note of his site plan that it appears to be a case of robbery as he recovered the knife from the spot and found mark of the tyres of vehicle. He fully supported the prosecution case and submitted that prosecution has successfully proved the case against the appellant Muhammad Shafiq son of Muhammad Ashraf beyond any shadow of doubt as the appellants had made their confessional statement before the learned Judicial Magistrate.

12. We have given our anxious considerations to the respective contentions of learned counsel for the parties and also gone through the available record with their assistance, minutely. We have seen the file, the oral and documentary evidence of the prosecution as well as the statements of accused have been perused with the help of learned counsel. The relevant portions of the impugned judgment have been scanned. The points urged by the contending parties have been noted.

13. On careful analysis it becomes quite clear that there is no eyewitness of the occurrence and this is a blind murder. It is not even a 'last seen' case. Recoveries of the parts of snatched vehicle were already in the possession of police and no identification was held under the law to identify the said recovered parts of vehicle, which was necessary in these circumstances. Before recoveries, the accused/appellants were already in police custody in some other case. The prosecution solely hinges on the testimony of I.O. who is not eyewitness and his evidence has not been corroborated by other circumstances of the case. This is a case of murder and it is not proved that the present appellant had committed this offence as there is no sufficient evidence of this offence against him. Entire case

rests upon circumstantial evidence, not fully corroborated. Chain of circumstances in this case has been broken at many stages during the evidence. Confessional statement made by the accused is result of coercion and same is not voluntary, as he was already in police custody, and being interrogated with torture, as narrated by him before the learned trial Court in his statement under section 342 Cr.P.C.. The confessional statement has therefore been retracted. Furthermore it has not been recorded under the law, being recorded jointly, as both the accused were brought and presented together.

14. Learned counsel for State was asked to produce the engine No. of the vehicle engine which was stated to be of the said vehicle and which was claimed to be lying in the room of the accused and whether it was specifically got verified from the Excise and Taxation Deptt., as it could have been a valuable piece of evidence to link the accused with the offence if duly identified to be the part of the said vehicle.

But this could not be affirmed from the available record produced in evidence.

15. Confessional statements and the chief and the cross examination of the accused/appellants do not at any point lead to link the story of occurrence as to how the deceased victim was lead to the point/place where he was murdered in the

stated manner, or how and why the dead body was transported to that specific place/Nullah after the murder having taken place during the process of snatching of the vehicle from some other point. Instead of fleeing away with the vehicle, how and why the dead body was taken to that point/place, from where it was recovered. If it was transported in the said snatched vehicle, then why there is no reference to the blood staining of seats and similar other parts of the interior of the vehicle said to have been recovered on pointation.

16. Doctor, Dr. Khurram Shehzad, Medical Officer, ATH, Abbottabad appearing as PW.5, deposed about his post mortem report, Ex-PM that:-

"A young man aged 21-22 years, lying supine on the table wearing light gray shalwar kameez. The clothes were wet and blood stained. He had sand and mud all over his body. There was three holes of stabs wound on the back of Kameez measuring 3", 2", 2" respectively.

The following injuries were noted on the dead body.

1. A stab wound 3 inches in length deep penetrating in the back of left kidney.
2. Another stabs wound 2 inch on the back.

3. Another stab wound 2 inches just below the left scapula.
4. A lacerated would 2 inches on the back of head, muscle deep, bone intact.
5. An incised wound of 2 inches on the back of neck, muscle deep.”

The nature of injuries from behind (back), as stated by PW.5. Dr. Khurram Shahzad and that “there are three holes of stab wounds on the back of Kameez measuring 3”, 2”, 2” respectively, and the places/points of each injury on the body do not tally with those allegedly stated in the confessional statements, that the deceased/victim was straight stabbed in the belly four times i.e., from front.

Dr. Khurram Shehzad, Medical Officer, ATH, Abbottabad, PW.5, further goes on to record about post mortem report, Ex.PM

“Throx

Walls, ribs and plurae, larynx and trachea including right lung left lung and pericardium and heart were healthy. Blood vessels injury to the left renal vessel bleeding in the peritoneal cavity."

" Abdomen.

"Peritoneum-containing about 2 Liters of blood in the peritoneum cavity. Left kidney was damaged causing *bleedings from the left renal vessels into the peritoneal cavity*. About 2 liters of blood was in the cavity."

Above examination, report shows that the deceased/victim was murdered at the place from where the dead body was found. If he had been murdered at some other place and transported and shifted from one place to the other tilting/changing his positions, the fresh flowing blood to the extent of about 2 liters which remained in the interior/cavity, could have spilled over or oozed out from the holes of the sizes mentioned above alongwith each wound in the post mortem report/deposition. Then there could have been probably lesser quantity of bleeding remaining in the interior/cavity. Furthermore, there should

have been bloodstains on the recovered seats, etc. of the vehicles and the clothes of the accused/appellant involved in transporting and shifting of the body. Therefore, this creates a yawning gap in the chain of unseen occurrence solely dependent on circumstantial knit work of evidence. Dr. Khurram Shehzad, Medical Officer, ATH, Abbottabad, PW.5, goes on to record his opinion about post mortem report, Ex. PM

"Opinion

"In my opinion the cause of death of the deceased is due to stab injury to the left kidney and left renal vessels, causing excessive bleeding about two liters in the peritoneal cavity, leading to shock and death of the patient.

"Time between injury and death 1to2 hours.

"Between death and postmortem 6 & 8 hours."

17. From the above report/deposition of the doctor it is clear that the total time between the injury and the post mortem is 6 to 8 hours, whereas the occurrence took place in between the night of 5/6-11-2002 at 10:00 p.m. as per confessional statement of accused Muhammad Shafiq. FIR No.487 was lodged on 06.11.2002

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when the Investigation Officer traced out the dead body of the deceased/victim. The same day, the time of bringing it for post mortem to the hospital is 9:00 a.m. dated 06-11-2002, i.e. about 11 hours according to Ex.PM. This casts cloud of doubt over the prosecution evidence, from highlighting or bringing under spotlight the factual and actual course of occurrence.

18. Thus in view of evidence produced, case of prosecution, as presented, appears to be highly doubtful, to prove beyond any shadow of doubt the unbroken linkage of this very accused/appellant to the offence. It is a well-settled principle that where there is any discrepancy in the evidence of prosecution, the benefit of doubt will go to the accused. In the present case admittedly for all the discrepancies and contradictions in the statements of prosecution witnesses from the date of registration of FIR till its final disposal, in this unseen occurrence, merely implicating the appellant on the basis of retracted judicial confession and identification of recovered parts of Suzuki, without giving identification numbers of the appropriate parts, which were already in the possession of police, without independent witnesses, produced by the prosecution in this regard is not reliable piece of evidence.



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19. In view of foregoing reasons, we are of the view that prosecution has not been able to prove the guilt against the appellant, and the evidence as produced is full of contradictions. Therefore, this appeal is allowed. Conviction and sentences of the appellant namely Muhammad Shafiq son of Muhammad Ashraf awarded by the Additional Sessions Judge-I, Abbottabad vide his judgment dated 21.12.2005, in Hadd Case No.9/2 of 2003 is set aside. The appellant Muhammad Shafiq son of Muhammad Ashraf is acquitted from the charges by giving him the benefit of doubt. He shall be released forthwith if not required in any other custody case.

20. The Criminal Murder Reference No.1/I of 2006 is not confirmed and is answered in the negative.


21. Above are the reasons of our short order announced on 15.08.2011 whereby the appeal of the appellant was allowed and he was acquitted from the charge.

  
JUSTICE SHAHZADO SHAIKH

  
JUSTICE RIZWAN ALI DODANI

Islamabad, the  
15<sup>th</sup> August, 2011  
Hummayun Faiz Rasheed/-

*Fit for reporting.*

  
JUSTICE SHAHZADO SHAIKH