

Stereo. HCJDA 38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**1. Criminal Appeal No. 1802 of 2011**  
*(Misbah-ul-Hassan v. The State etc.)*

**2. Criminal Revision No.1202 of 2011**  
*(Syed Imran Haider v. The State etc.)*

**JUDGMENT**

<b>DATE OF HEARING</b>	<b>09-02-2018</b>
Appellant by:	<b>Ms. Bushra Qamar, Mr. Shahid Azeem and Mr. Farrukh Sultan, Advocates.</b>
State by:	<b>Mr. Muhammad Ikram Ullah Khan, DPG.</b>
Complainant by:	<b>Mr. Zafar Iqbal Chohan, Advocate.</b>

**Tariq Saleem Sheikh,J:-** Appellant Misbah-ul-Hassan was tried by the Additional Sessions Judge, Jhang, for committing *Qatl-i-Amd* of Syed Aqeel Haider in case FIR No.551/09 dated 18.06.2009 registered at Police Station Saddar, Jhang. The learned trial Court, vide judgment dated 29.10.2011, convicted the Appellant under Section 302(b) PPC and sentenced him to imprisonment for life with a fine of Rs.20,000/- and in default thereof to undergo simple imprisonment for a further period of six months. The Appellant was ordered to pay Rs.100,000/- as compensation to the legal heirs of the deceased in terms of Section 544-A Cr.P.C. Benefit of Section 382-B Cr.P.C. was accorded to him. The Appellant has assailed his conviction and sentence before this Court through Criminal Appeal No.1802/2011. On the other

hand, Complainant Syed Imran Haider has filed Criminal Revision No.1202/2011 for the enhancement of the sentence. I propose to decide both these matters by this single judgment.

2. Brief facts of the case are that on 18.06.2009 Complainant Syed Imran Haider (PW-6) made a statement Ex.PA before Fazal Hussain/SI (PW-8) that he was a resident of Garh Maharaja, Tehsil Ahmedpur Sial, District Jhang, and was employed as Supervisor in Nestle Pakistan Limited. On 17.06.2009 at about 06:00 p.m. he alongwith his cousins Syed Aqeel Haider (deceased), Asad Abbas (PW-7) and Akhtar Abbas (PW given up) proceeded from Jhang to Lahore in Car No.LY-3928. At about 9:30 p.m. when they reached Niazi Adda at Band Road, Lahore, Aqeel Haider stopped the car and met some unknown persons whom he could identify. Aqeel Haider decided to stay behind and asked the Complainant and the PWs to go to his house at Gulzar Colony, Thokar Niaz Beg, Lahore. They went and had no communication with him after 10:00 p.m. The following morning (i.e. 18.06.2009) at about 08:00 a.m. the Complainant was informed that some unknown persons had murdered Aqeel Haider and had thrown his dead body near the Chenab College, Chiniot Road, Jhang. It was alleged that Aqeel Haider had two driving licences (one of which was issued by the Government of Kuwait), Identity Card, bank card and Nokia mobile phone with SIM No.0300-8707170 with him. Fazal Hussain S.I (PW-8) sent the complaint Ex.PA to the police station through Ahmed Nawaz 774/C in pursuance whereof FIR No.551/2009 Ex.PA/1 was registered.

3. After sending the complaint to the police station as aforesaid, Fazal Hussain/SI proceeded to the place where dead body had been found. He took the corpse into custody, prepared Injury Statement Ex.PC and Inquest Report Ex.PD and then despatched it to the DHQ Hospital Jhang. He also prepared the rough site plan of place of recovery Ex.PS and recorded the statements of witnesses under Section 161 Cr.P.C. After the post-

mortem examination was done he took into possession the last worn clothes of the deceased vide Recovery Memo Ex.PE and handed over his dead body to his legal heirs. On 10.07.2009, the Complainant nominated the Appellant in this case through application Ex.DB. In the meanwhile, Fazal Hussain/SI was transferred. Ashiq Hussain/Inspector (PW-9) took over the investigation. On 27.08.2009 he arrested the Appellant and sent him to jail where his identification test parade was held under the supervision of Majid Hussain Gadhi, Area Magistrate (PW-4) on 09.09.2009. Thereafter he was also transferred and the investigation was handed over to Bashir Ahmad/SI (PW-10). On 19.09.2009, Bashir Ahmad/SI obtained the Appellant's physical remand for interrogation during the course of which he recovered various articles belonging to the deceased from him, including *Wheel Pana* (wheel spanner), the alleged weapon of offence. During his investigation he found that the Appellant was involved in the offence. Report under Section 173 Cr.P.C was submitted accordingly. The learned Additional Sessions Judge summoned the Appellant and indicted him on 15.03.2010. The Appellant denied the charge and claimed trial.

4. The prosecution examined 10 witnesses to prove its case. Imran Haider (PW-6) and Asad Abbas (PW-7) deposed that they last saw Aqeel Haider deceased with the Appellant. Imran Haider also witnessed recovery of articles (P-6 to P-14) from the Appellant. Dr. Hafiz Muhammad Mohsin (PW-2) furnished the medical evidence. Majid Hussain Gadhi (PW.4) deposed with respect to the identification parade. The Investigation Officers Fazal Hussain/SI (PW-8), Ashiq Hussain/Inspector (PW-9) and Bashir Ahmad/SI (PW-10) gave details of their investigation and the evidence they had collected in this case. Remaining witnesses were formal in nature. The learned prosecutor gave up PWs Ahmad Nawaz, Akhtar Abbas, Zawar Hussain, Ghulam Shabbir Shah/SI

being unnecessary. On 25.10.2011, he closed the prosecution evidence.

5. After the close of prosecution evidence the learned trial Court recorded the statement of the Appellant under Section 342 Cr.P.C. The Appellant denied the allegations and professed innocence. When asked as to why he had been involved in this case and why the witnesses had deposed against him he replied as under:

“PWs are related to the deceased and they are also related inter se. No PW from the alleged place of recovery of the dead body had been produced during investigation or during recording of evidence in the court. PWs are resident of Tehsil Ahmedpur Sial. I and the family of the deceased belong to Shia sect and the sectarian violence remained rampant in Jhang from 1990 to 2007. Anjuman Sipa-e-Sahaba representing Sunni sect whereas Tahreek Nifaz Fiqa Jafaria was representing Shia sect. My uncle Syed Sana-ul-Haq Advocate was elected Central General Secretary of Tahreek Nifaz Fiqa Jafaria. The father of the deceased, PWs and the other relatives of the deceased are big landlords and are well-off families of Garh Maharaja, Tehsil Ahmadpur Sial, District Jhang, and they used to oppose my uncle Syed Sana-ul-Haq advocate during his election as Central General Secretary of the above-said Tahreek. I was the main supporter of my uncle Sana-ul-Haq in the said election so they nourished a grudge against me and my family. When Aqeel Haider was murdered and thrown near Chenab College by unknown persons and they could not trace the real culprits they later on involved me in this false case due to the above-said grudge. The prosecution has introduced no motive against me to cause murder of Aqeel Haider deceased.”

6. The Appellant neither got his statement recorded on oath under Section 340(2) Cr.P.C. nor produced any evidence in his defence. On the conclusion of the trial the learned Additional Sessions Judge, vide judgment dated 29.10.2012, convicted and sentenced the Appellant as mentioned hereinabove.

7. In support of Criminal Appeal No.1802/2011 Ms. Bushra Qamar, Advocate, contended that it was a blind murder. The Complainant had falsely implicated the Appellant in this case due to political rivalry. She argued that, firstly, the learned trial Court had failed to appreciate that the last seen evidence furnished by the witnesses was not in consonance with the principle of

proximity of time and distance. Secondly, the prosecution case was that Allah Ditta Aaheer had seen the accused persons throwing the dead body of Aqeel Haider at Chiniot Road, Jhang, and he informed the Complainant about it. The said Allah Ditta Aaheer was a material witness but he was neither produced before any of the Investigation Officers nor the trial Court. Thirdly, as per statement of Zafar Iqbal 958/C (PW-3), the dead body of Aqeel Haider reached the DHQ Hospital at 12:15 p.m. but post-mortem was conducted at 7:45 p.m. The prosecution did not furnish any explanation for that delay. Fourthly, the identification test parade was of no legal consequence because the features of the persons whom Aqeel Haider allegedly met at the Niazi Adda were not described in the FIR and it was not conducted in accordance with law. Fifthly, articles P-6 to P-14 were not recovered from the Appellant and the police had foisted them on him in collusion with the complainant party. The learned counsel concluded his arguments with the submission that the prosecution case was replete with doubts which entitled the Appellant to benefit of doubt not as a matter of grace but as a right. She prayed that this appeal may be accepted and the Appellant be acquitted of the charge.

8. The learned Deputy Prosecutor General assisted by the learned counsel for the Complainant controverted the above contentions and supported the impugned judgment. He argued that the PWs had no enmity or ill-will against the Appellant and had no reason to falsely implicate him in this case. The FIR was initially registered against unknown persons. Subsequently the Appellant was traced from mobile phone call data and on its basis the Complainant named him through a supplementary application. The Appellant was correctly identified in the identification test conducted by the Area Magistrate, Majid Hussain Gadhi (PW-4). The learned Law Officer further argued that the last seen evidence furnished by PWs Imran Haider and Asad Abbas alongwith the identification test and the recovery of articles P-6 to P-14 fully

connected the Appellant with the offence. He prayed that the Appellant's appeal may be dismissed.

9. In support of Criminal Revision No. 1202/2011, the learned counsel for the Complainant/Revision Petitioner argued that Convict Misbah-ul-Hassan murdered Aqeel Haider in a gruesome manner by inflicting 26 injuries on different parts of his body. The prosecution had proved its case to the hilt. There were no extenuating circumstances in the case for which he could be given lesser punishment. He prayed that the sentence of Convict Misbah-ul-Hassan be enhanced and he be awarded death penalty.

10. I have heard the learned counsel for the parties and have examined the record with their able assistance.

11. Admittedly, it was a blind murder. The dead body of Aqeel Haider aged 32/33 years was found near Chenab College, Chiniot Road, Jhang, on 18.06.2009. The prosecution relies on circumstantial evidence comprising of the last seen evidence, the identification test, the medical evidence and the recovery of incriminating articles to bring home guilt of the Appellant.

12. As already noted, the evidence of last seen was furnished by Complainant Imran Haider (PW-6) and Asad Abbas (PW-7). The Hon'ble Supreme Court of Pakistan elucidated the principles for evaluating the last seen evidence in a recent judgment reported as "Fayyaz Ahmad v. The State" (2017 SCMR 2026). For facility of reference, they are reproduced hereunder *in extenso*:

- “(i) There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the prosecution.
- (ii) The proximity of the crime scene plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separate from the accused and onus in such regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.

- (iii) The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.
- (iv) There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.
- (v) Additionally there must be some motive on the part of the accused to kill the deceased otherwise the prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.
- (vi) The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.  

Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.
- (vii) The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.
- (viii) The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a preplanned and calculated murder.”

13. PWs Imran Haider and Asad Abbas testified that they travelled with Aqeel Haider deceased and PW Akhtar Abbas (given up) from Jhang to Lahore in their car on 17.06.2009. At about 9:30 p.m. Aqeel Haider dropped at the Niazi Adda, Lahore and met the Appellant in their presence whereafter they went home leaving him there. His dead body was found in Jhang the following morning. To begin with, the prosecution has not brought any material on the record to explain why all these men travelled together to Lahore on 17.06.2009. Further, it has not been established whether the alleged meeting between Aqeel Haider and the Appellant was pre-arranged and what was the purpose therefor. Assuring that all this happened

in the normal course, there is not an iota of evidence on record to suggest that after the alleged meeting the Appellant journeyed to Jhang and Aqeel Haider accompanied him. The precise place at where he was done to death is also not known. The proximity of that place with Niazi Adda could exclude the hypothesis of the innocence of the Appellant.

14. There is another important aspect of the matter. Imran Haider deposed that he was informed about the recovery of the corpse of Aqeel Haider at 8:00 a.m. During his cross-examination he stated that Allah Ditta Aheer gave him that information at Church Road, Hussain Clinic, Jhang. Asad Abbas also admitted this fact. This indicates that both the witnesses who claimed that they were in Lahore on 17.06.2009 till after 10:00 p.m. were in Jhang at 8:00 a.m. on 18.06.2009. There is no evidence when they returned to Jhang. More importantly, the prosecution has also not explained why they did not stay overnight at Aqeel Haider's house in Gulzar Colony and what made them rush back to Jhang. Since the purpose of their sojourn has not been stated, it seems doubtful that they ever travelled to Lahore.

15. Imran Haider nominated the Appellant in this case through an application Ex.DA on 10.07.2009, i.e. 22 days after the registration of FIR Ex.PA/1. However, while doing so he neither disclosed the source of this information nor the circumstances which made him suspect that the Appellant was involved in the offence. During the cross-examination when he was confronted with this omission he maintained that he learnt about involvement of the Appellant from the cell phone data. This claim is fallacious. During the course of investigation, Fazal Hussain/SI (PW-8) collected call data of different cell numbers which he secured through Ex.PT and PU. The name of the Appellant does not figure in any of those records. Fazal Hussain/SI deposed that from the scrutiny of the call data of the mobile phones of the deceased and his wife he found that they received calls from Cell Nos. 0300-

6505155 and 0321-6505155 which were in the use of the Appellant. However, there is nothing on the file to support that finding. The learned trial Court has thoroughly examined Ex.PT and PU and has held that they do not establish the Appellant's link with the deceased in any manner. I have no reason to disagree with it.

16. I next turn to the identification test. This test is generally conducted when an accused is not previously known to the witnesses and they have his momentary glimpse. In "Farman Ali v. The State" (1997 SCMR 971) the Hon'ble Supreme Court of Pakistan held that:

"Holding identification test becomes necessary in cases, where names of the culprits are not given in the FIR. Holding of such test is a check against false implication and is a good piece of evidence against genuine culprits".

17. The Rules and Orders of the Lahore High Court Volume-III Chapter 11 Part-C lay down the following procedure for conducting identification parade:

- (1) **List of all persons included in the parade should be prepared.**---- The Magistrate in charge of an identification parade should prepare a list of all persons, including the accused, who form part of the parade. This list should contain the parentage, address and occupation of each member of the parade.
- (2) **Note about identification by witnesses.**--- When any witness identifies a member of the parade, the Magistrate should note in what connection he is identified. A note should also be made if the witness identifies a person wrongly; in such a case it is incorrect to note that the witness identified nobody. All persons identified must be mentioned, whether the identification is right or wrong. If a witness, on being called for the purpose, states that he cannot make any identification, a note should be recorded by the Magistrate to this effect.
- (3) **Objection or statements by accused or identification witnesses to be recorded and power of Magistrate to decide objections.**---- Should the accused make any complaint or statement it should be recorded by the Magistrate. If from his personal knowledge the Magistrate is able to decide beyond doubt that the complaint is false or futile, a note to this effect should be made, but in other cases it is advisable to leave any decision as to the value to be attached to the objection to the court trying the case. The Magistrate should also record any statement made by a witness before making an identification.
- (4) **Duty of Magistrate to record precautions taken and to note other point.**---- The Magistrate should state-
  - (a) what precautions he has taken to ensure-

- (i) that the witnesses do not see the person to be identified by them before the identification proceedings commence;
  - (ii) that no communication which would facilitate identification is made to any witness who is awaiting his turn to identify; and
  - (iii) that after making identification the witnesses do not communicate with other witnesses who have yet to do so.
- (b) whether the person to be identified is handcuffed or is wearing fetters; and if so, whether or not other persons taking part in the parade are handcuffed or are wearing fetters, and also whether or not they are inmates of the jail.

18. Rule 26.32 of the Police Rules, 1934, while reiterating the above instructions adds<sup>1</sup>:

- (i) Identification should be carried as soon as possible after the arrest of the suspects.
- (ii) The suspects should be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up, and those who have not. If it is desired, through fear of revenge or for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand behind a screen or be otherwise placed so that they can see clearly without being seen.
- (iii) The results of the test shall be recorded by the senior police officer present in Form 26.32 (I) (e) as each witness views the suspect. On conclusion, the magistrate, or other independent witness or witnesses, shall be requested to sign the form and certify that the test has been carried out correctly and that no collusion between the police and witnesses or among the witnesses themselves was possible.
- (iv) Once the arrangements for the proceedings have been undertaken, the officer investigating the case or any police officer assisting him in that investigation should have no access whatever either to the suspects or to the witnesses.
- (v) Proceedings of the nature described above are extra-judicial. It is not the duty of the officer conducting them or of the independent witnesses to record statements or cross-examine either suspects or identifying witnesses, but they should be requested to question the latter as to the circumstances in which they saw the suspect whom they claimed to identify, and to record the answer in Column 4 of the form.

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<sup>1</sup> Only relevant excerpts have been reproduced.

19. Superior courts in our country have considered the aforementioned provisions in cases coming up before them over the years and have laid down following additional principles on the subject for the safe administration of justice.

- (i) Identification parade must be held as early as possible after the arrest of the accused but not later than 15 days. However, delay by itself is not sufficient to discard this piece of evidence.<sup>2</sup>
- (ii) It is the paramount duty of the police to ensure that the accused is not seen by the witnesses before the identification parade. All these precautions should not only be taken but should be proved during the trial. They should be recorded in the initial record like general diary of the police station and the daily register and the same should be produced in Court. In the absence of such precaution and evidence, no value can be attached to the identification of the accused by witnesses.<sup>3</sup>
- (iii) The accused must be identified with reference to the role played by him with reference to the commission of offence.<sup>4</sup>
- (iv) Where accused are known to the complainant conduct of identification parade is illegal.<sup>5</sup>
- (v) It is not safe to rely on an identification test parade to record a conviction unless reasonable description of the accused is given by the witnesses in their statements before the police.<sup>6</sup>
- (vi) Identification test cannot be conducted in a police station.<sup>7</sup>
- (vii) Joint identification parade of multiple accused persons is disapproved.<sup>8</sup>

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<sup>2</sup> Arif Masih and another v. The State (PLD 2001 SC 398), Muhammad Zaman v. The State (2007 SCMR 813), Khawand Bux and 3 others v. The State (1997 P.Cr.L.J 280).

<sup>3</sup> Shafqat Mehmood and others v. The State (PLJ 2010 SC 986), Imran Ashraf and 7 others v. The State (2001 SCMR 424), Kirir v. The State (PLD 1996 Karachi 246).

<sup>4</sup> Mehmood Ahmad and 3 others v. The State and another (1995 SCMR 127), Ghulam Rasul and 3 others v. The State (1988 SCMR 557) “Siraj-ul-Haq and another v. The State” (2008 SCMR 302), Khadim Hussain v. the State (1985 SCMR 721), Fayyaz v. The State (2012 SCMR 522), Azhar Mehmood and others v. the State (2017 SCMR 135).

<sup>5</sup> Adrees v. The State (2002 SCMR 1439), Khalid alias Khalidi and 2 others v. The State (2012 SCMR 327).

<sup>6</sup> Lal Pasand v. The State (PLD 1981 SC 142), Umaid Ali v. The State (2008 SCMR1419), Sabir Ali alias Fouji v. The State (2011 A.C 52).

<sup>7</sup> Pervaiz Iqbal alias Gogi v. the State (2000 YLR 600).

<sup>8</sup> Hakeem and others v. The State (2017 SCMR 1546).

- (viii) Conviction cannot be recorded on mere identification test as it is a corroborative piece of evidence and carries no weight if substantive evidence is discarded.<sup>9</sup>

20. In the instant case, it is observed that the identification test was conducted 13 days after the Appellant was arrested. The prosecution has not furnished any explanation for that delay. Even otherwise, on the touchstone of the law discussed above, there are a number of other factors which bereave the test of its credibility and significance. First, the description of the persons whom Aqeel Haider deceased met at the Niazi Adda was neither given in the FIR nor in the statements that the witnesses got recorded with the police. Secondly, the Complainant nominated the Appellant in this case through application Ex.DA on 10.07.2009, while the identification test was held on 09.09.2009. The Appellant was thus previously known to the Complainant party. Thirdly, through the cross-examination of Magistrate Majid Hussain Gadhi (PW-4) the Appellant succeeded in proving that his face was not muffled when the police produced him before the Area Magistrate for judicial remand on 27-08-2009. The prosecution thus failed in its primary duty to ensure that the Appellant was not seen by the witnesses before the identification test. Lastly, the Appellant was mixed up with eight dummies but without disclosing their addresses, occupations and the particular of the cases in which they were arrested. In this view of the matter, I am inclined to hold that the identification test is of no evidentiary value and cannot be considered to maintain the conviction of the Appellant.

21. The prosecution seeks corroboration of its case from the recoveries allegedly effected from the Appellant. Syed Imran Haider and Bashir Ahmed/ASI (PW-10) testified that wheel spanner P-8, the alleged weapon of offence, and personal belongings of the deceased including mobile phone P-6, locket P-9, Identity Card P-10, bank card P-11, finger ring P-12, wrist watch

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<sup>9</sup> Sabir Ali Waseem and 3 others v. The State (2007 YLR 2142).

P-13 and Passport P-14 were recovered at the instance of the Appellant from the almirah in his residential house. The alleged recoveries are extremely tainted. The wheel spanner P-8 was not blood stained and there is no evidence that it was used in the occurrence. As regards the other articles mentioned above, it is observed that it was never the prosecution case that the deceased was wearing finger ring P-12, wrist watch P-13 and was carrying passport P-14 when he stopped at the Niazi Adda. They do not find mention in FIR Ex.PA/1. The recovery of mobile phone P-6, Identity Card P-10 and bank card P-11 is also doubtful as the provisions of Section 103 Cr.P.C were not complied with. More importantly, since these recoveries have not been proved by independent evidence, they can hardly be used for any corroboration. It is a fundamental principle of justice that corroboratory evidence must come from an independent source. The following observations of the Hon'ble Supreme Court of Pakistan in Mst. Rukhsana Begum and others v. Sajjad and others (2017 SCMR 596) are quite instructive:

“It is fundamental principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eye-witnesses, therefore, eye-witnesses in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses.”

22. While we are still on the subject of recoveries, I must also refer to black Toyota corolla 2.OD car No.LH-417 (P-7) which the prosecution considers has immense evidentiary value. As the story goes, Allah Ditta Aaheer had witnessed certain culprits throwing a dead body from a black car near the Chenab College at Chiniot Road, Jhang, in the wee hours of 18-06-2009. Subsequently, during investigation it was found that the Appellant obtained Car P-7 on rent from Aroom Car Rentals, Islamabad, on 05-06-2009 and it remained with him until 26-06-2009. According

to the contract form of the afore-named rental service, the car was taken from Islamabad for Lahore. Aqeel Haider was murdered in the night between 17-06-2009 and 18-06-2009. The learned counsel for the Complainant argued that all these facts fully connect the Appellant with the commission of the offence. I am afraid, they do not. In the first instance, Allah Ditta Aaheer was neither produced before the Investigation Officer nor examined during the trial. The entire story is hearsay and is inadmissible. Furthermore, there is no evidence that it was car No.LH-417 (P-7) which was used to dispose of the corpse of Aqeel Haider and the Appellant was in it. This contention of the learned counsel for the Complainant is repelled.

23. The medical evidence furnished by Hafiz Muhammad Mohsin (PW-2) is of no avail to the prosecution because in the instant case the identity of the culprit could not be established. It is trite that medical evidence can only furnish details of the injuries received by a person, living or dead and the kind of weapon used in the occurrence but it cannot raise an accusing finger towards anybody. Reliance is placed on Altaf Hussain v. Fakhar Hussain and another (2008 SCMR 1103), Mursal Kazmi alias Qamar Shah and another v. The State (2009 SCMR 1410) and Jehangir Elahi v. Shoaib Ahmed and others (2017 SCMR 986).

24. The prosecution is not called upon to establish motive in every case. However, in a case which is entirely based on circumstantial evidence it may have some significance. In the instant case, the prosecution did not allege that the Appellant had any motive to murder Aqeel Haider.

25. In Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), the Hon'ble Supreme Court ruled that:

“... the entire case of the prosecution is based on circumstantial evidence. The principle of law, consistently laid down by this Court is, that different pieces of such evidence have to make one chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the

whole chain is broken and no conviction can be recorded in crimes entailing capital punishment....In cases of circumstantial evidence, the courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge.”

In the instant case, the prosecution has failed to provide any tangible evidence to connect the Appellant with the offence. Resultantly, he is entitled to benefit of doubt.

26. In view of the foregoing, this appeal is allowed. The impugned judgment is set aside and the Appellant is acquitted of the charge. Appellant Misbah-ul-Hassan is in jail. He shall be released forthwith if not required to be detained in any other case.

27. Since Mishah-ul-Hassan (Respondent No.2 in Criminal Revision No.1202/2011) has been acquitted of the charge, there remains no question of enhancement of his sentence. Resultantly, Criminal Revision No. 1202/2011 stands dismissed.

**(Tariq Saleem Sheikh)**  
**Judge**

Subhani\*

**Approved for reporting.**

**Judge**