JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : JAIL APPEAL NO.117-2022

Zahir Zakir Jaffar

Vs.

The State

CASE NO. : MURDER REFERENCE NO.03-2022

The State

Vs.

Zahir Zakir Jaffar

Appellants by	:	Mr. Muhammad Usman Sharif Khosa, Advocate (Jail Appeal No.117-2022) Mr. Muhammad Akram Qureshi and Mr. Zain Rehmat Qureshi, Advocates (Crl. Rev. No.93-2021) Mr. Kamran Murtaza and Mr. Shahzeb Jaffar, Advocates (Crl. App. No.111-2022) Raja Muhammad Shafaat Khan, Advocate (Crl. App. No.136-2022) Malik Umair Saleem, Advocate
Respondents by	:	Mr. Shah Khawar, Mr. Nisar Asghar, Mr. Qasim Nawaz Abbasi, Mr. Babar Hayat Samore, Mr. Waqas Ali Malik, Ms. Tayyaba Abbasi, Advocates Complainant in person. Mr. Azmat Bashir Tarar, Assistant Attorney General, Mr. Zohaib Hassan Gondal, Ms. Khadija Ali & Syed Fakhar Imam Ali, State Counsel with Abdul Sattar, Inspector and Asif, SI.
Dates of hearing	:	26.10.2022, 30.11.2022, 01.12.2022, 06.12.2022, 07.12.2022, 08.12.2022, 13.12.2022, 14.12.2022, 15.12.2022, 19.12.2022, 20.12.2022 & 21.12.2022.

AAMER FAROOQ C.J. This judgment shall decide the captioned appeal and Murder Reference No.03-2022 along with other criminal appeals and revisions mentioned in the Schedule attached herewith.

2. Zahir Zakir Jaffar (appellant in Jail Appeal No.117-2022) along with eleven others namely Muhammad Iftikhar, Muhammad Jan, Zakir Jaffar, Mst. Asmat Zakir Jaffar, Jamil Ahmad, Tahir Zahoor, Dileep Kumar, Wamiq Riaz, Samar Abbas, Abdul Haq& Amjad Mahmood were indicted in case FIR

No.380 dated 20.07.2021 under sections 302/511/201/109/176/118/376/364/365/368 PPC registered with Police Station Kohsar, Islamabad and after trial the appellant along with Muhammad Iftikhar and Muhammad Jan were convicted and accordingly sentenced by learned trial court vide judgment dated 24.02.2022. All other accused were acquitted by learned trial court through the same judgment. The appellant, since has been awarded capital punishment hence, Murder Reference was sent by learned Sessions Court for confirmation of the referred sentence (Murder Reference No.03-2022).

3. The appellant seeks his acquittal, which is the subject matter of Jail Appeal No.117-2022, Muhammad Iftikhar and Muhammad Jan also seek their acquittal through Criminal Appeal No.111 & 136-2022; the complainant Shaukat Ali Mukaddam has challenged acquittal of eight accused persons mentioned above through Criminal Appeal No.123-2022; the State also has challenged acquittal of referred persons by filing independent appeal i.e. Criminal Appeal No.157-2022. Muhammad Iftikhar and Muhammad Jan have also preferred Jail Appeals against their conviction and sentence (Jail Appeal No.132 & 133-2022). The complainant seeks enhancement of sentence awarded to the convicted persons, which is the subject matter of Criminal Revision No.28-2022). The State also seeks enhancement of sentences of the convicted persons and the same is the subject matter of Criminal Revision No.32-2022. Finally, one acquitted accused Amjad Mahmood filed a criminal complaint against Zahir Zakkir Jaffar, which was dismissed by learned trial court vide order dated 17.11.2021 and the same is the subject matter of Criminal Revision No.93-2021.

4. The case of the prosecution, against the accused persons, is that on 20.07.2021, above mentioned FIR was registered on the complaint of Shaukat Ali Mukaddam that his daughter went missing since 19.07.2021 and did not return home, however, at about 10:00 p.m., he received a call from Police Station Kohsar, Islamabad that his daughter has been found dead at the residence of the appellant i.e. House No.7, Street No.60, F-7/4, Islamabad.

5. Initially, one Zahir Zakir Jaffar was the sole accused, however, subsequently, supplementary statements were made by the complainant and other persons, named hereinabove, were made accused.

6. Learned counsel for the appellant in Jail Appeal No.117-2022 *inter alia* contended that there is considerable delay in lodging of FIR, which smacks concoction and deliberation; in this behalf, it was argued that the time of death, in the FIR, has been noted as 9:00 p.m., whereas it was lodged after 11:00 p.m., whereas travel time between the place of occurrence from the Police Station is hardly of five minutes. It was contended that prosecution has not rendered any explanation for the delay in lodging of FIR and even learned trial court has not met with the said argument. It was contended that during course of proceedings, application under section 465 Cr.P.C. was filed which was to the effect that appellant is a lunatic and is unfit to plead. Initially, learned counsel took up the position that referred application has not been decided by learned trial court, however subsequently, he did admit that application was decided by learned trial court, however, learned counsel did move similar application before this Court as well but did not really press the same with any vigor. It was the stance of learned counsel that appellant was a patient suffering from mental ailment and was seeking medical help including therapy work and was unable to plead or stand trial. It was contended that while dismissing the application, filed by the appellant, learned trial court did not take into consideration the law as propounded by the august Apex Court in the case noted in the footnote [[1]]. It was also argued that case of the prosecution is based on conjectures and surmises inasmuch the case is of circumstantial evidence and there is no ocular account; in this behalf, it was contended that statement of Shaukat Ali Mukaddam (the complainant) is incoherent and could not stand the test of cross examination. It was further pointed out that it seems that postmortem of the deceased was conducted by three different doctors and the person, who actually did the same, never really appeared before learned trial court. It was submitted that though DNA report conducted for the purposes of seminal swabs is positive yet it does not mean that there was non-

[1] Mst. Safia Bano and another Vs. Home Department Government of Punjab through Secretary and others (PLD 2021 SC 488)

consensual sexual intercourse by the appellant with the deceased; that there are bruises noted in the medical report on the thighs of the deceased but that does not mean that rape was committed. It was further submitted that investigation conducted by the police authorities is below par inasmuch as cellular phones of the parents of deceased Noor Mukaddam were not taken into custody. It was submitted that mobile phone of the deceased was taken in possession, but its screen was broken by the police authorities; that forensic report in this behalf is non-conclusive. Learned counsel argued that forensic of the mobile phone was essential inasmuch as complainant has stated in the complaint as well as in the FIR and in his testimony as prosecution witness that Noor Mukaddam called her mother to inform her about her whereabouts; that complainant has also deposed that he received a call from the appellant but the same is not reflected in CDR. It was submitted that Call Data Record (CDR), presented in the court, does not show that Noor Mukaddam called her parents. It was submitted that even-otherwise, no one entered appearance on behalf of mobile phone company/cellular company to vouch for the veracity of CDR and the same carries no evidentiary value in light of judgments of Hon'ble Supreme Court of Pakistan. Learned counsel also argued that it is not the case of abduction inasmuch as Noor Mukaddam voluntarily entered the premises of the appellant and the same is borne out from CCTV footage. It was submitted that she was a frequent visitor and she as well as the appellant were close friends and their families knew the same. It was submitted that in the CCTV footage, Noor Mukaddam has not been identified by the complainant. It was submitted that further evidence in the form of CCTV footage shows that appellant and deceased went out of the house voluntarily and they came back few minutes later and had it been the case of abduction, the deceased had the ample opportunity to abscond or run away. Learned counsel argued that learned trial court wrongly placed reliance on the forensic reports Ex.BJ & Ex.BL, as no fingerprints on the knife have been found and even on the body of the deceased, there is no DNA of the appellant. It was submitted that complainant had consistently changed his stance and there has been delay in recording the statement of the witnesses under section 161 Cr.P.C.

which is in violation of law and on the same count only, convictions of the accused persons can be set aside. Reliance was made to case law noted in the footnote[2]. Learned counsel pointed out that Muhammad Iftikhar, (the gatekeeper), was implicated through supplementary statement on 24.07.2021 and Muhammad Jan (Mali) on 08.08.2021. It was submitted that Tahir Zahoor, CEO of Therapy Works and its employees were implicated much later. Learned counsel argued that on the basis of *falsus in uno falsus in omnibus*, on the same set of evidence, eight persons have been acquitted while three have been found guilty and the same also merits acquittal. Reference was made to decisions noted in footnote [3]. It was contended that postmortem was conducted on 21.07.2021 at about 9:00/9:30 in the morning and as per the report, time of death seems to be midnight. It was submitted that phones recovered from the possession of the deceased and the appellant carry no weight, as IMEI numbers of the same are different and it is trite law that one tainted evidence cannot corroborate the other. It was submitted that recovery, in the facts and circumstances, is inconsequential. It was argued that DVR and the hard disk are inadmissible in evidence, as maker of the same never entered the witness box. Reliance was placed on case law which is footnoted [4]. Learned counsel argued that in case, the Court comes to the conclusion that there is substantial evidence to connect the accused, in the alternative, instead of capital punishment, life imprisonment is to be awarded under section 302(b) of Pakistan Penal Code inasmuch as there were mitigating circumstances. Reliance was placed on decision noted in footnote [5]. Learned counsel, in this behalf, argued that neither motive has been set up nor proved by the complainant, which in itself, is a reason enough for grant of lesser sentence of life imprisonment.

7. Raja Muhammad Shafaat Khan, Advocate appearing for the appellant in Criminal Appeal No.136-2022, argued that his client has been convicted for ten years imprisonment under section 368 PPC with fine of Rs.1,00,000/- and in default whereof, to undergo two months Simple Imprisonment. It was

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[2] Muhammad Khan Vs. Maula Bux (1998 SCMR 570)
[3] Notice to Police officer Khizar Hayat s/o Hadait Ullah on account of false statement: in the matter of (PLD 2019 SC 675)
[4] Imtiaz alias Taj Vs. State (2018 SCMR 344), Abdul Wali Vs. The State (2020 YLR 256) & Azhar Iqbal Vs. The State (2013 SCMR 383)
[5] Muhammad Shoban Vs. The State (2022 SCMR 1608)

contended that he has been convicted for ten years RI under sections 109 & 364 PPC. It was submitted that appellant is simply a Chowkidar and there cannot be any abetment or aiding; that there is nothing on record to show that there was any consultation or knowledge. It was submitted that even-otherwise, there is not an iota of evidence which shows that there is any *mens rea* on part of the appellant. Learned counsel pointed out that at about 7:12 p.m. on 20.07.2021, Muhammad Iftikhar was not present at the gate and in this behalf, findings of learned trial court are not correct. It was submitted that in the CCTV footage, appellant can be seen at the gate on the night of 19/20th July, 2021 at about 2:40/2:45 a.m., but at the relevant time, deceased went out voluntarily and came back at her own will. It was submitted that section 109 ibid is not attracted, as there is no overt act. It was submitted that there is no evidence of design on part of appellant with the principal accused. It was submitted that appellant has been implicated as a result of afterthought inasmuch as he was implicated through supplementary statement made on 24.07.2021. Learned counsel for the appellant contended that there is no case for enhancement of sentence in offences of rape and abduction rather it is a case of acquittal.

8. Mr. Kamran Murtaza and Shahzeb Jaffar, Advocates, appearing for the appellant Muhammad Jan in Criminal Appeal No.111-2022, adopted the submissions by learned counsel for the appellant in Jail Appeal No.117-2022 and reiterated that there is no design hence question of abetment was not made out. It was submitted that his client has been convicted and punished with ten years imprisonment under section 364/109 PPC and 10 years RI under section 368 PPC, whereas for offence under section 118 PPC, seven years RI with fine of Rs.100,000/-. It was contended that there is nothing on record which shows that appellant has been involved, especially when, CCTV footage was available from day one and taken into custody; that there was no justification for implicating the appellant on 08.08.2021. It was submitted that person, who copied DVR into hard disk, was Mudasir Alim with Belt No.3923, whereas Muhammad Mudasir appeared with Belt No.4323 and prosecution deliberately did not present the actual person. It was submitted that memo of recovery is defective, as there are no recovery witnesses.

9. Learned counsel for the complainant, while contesting the appeals against conviction and making submissions for appeals against acquittal as well seeking enhancement of the punishment, *inter alia* contended that there is no difference in IMEI numbers of mobile phones and that learned counsel for the appellant is trying to mislead the Court. It was submitted that there are no fingerprints on the knife, the weapon of offence, as it was stained with blood. It was contended that forensic reports Ex.BJ, Ex.BQ & Ex.BL clearly shows that there is sufficient evidence through forensic connecting the accused persons with the offences of rape and murder by Zahir Zakir Jaffar. It was submitted that there was no deliberation or concoction in registration of FIR inasmuch as police diligently performed its duties and it took time in the natural course of events for registration of the case. It was submitted that Muhammad Zubair Mazhar (PW-15) was one of the police officials to reach at the site and he did the spade work. It was submitted that all other police officials including Aqsa Rani and Muhammad Imran (PW-4 & 8 respectively) also reached around 10:00/10:15 p.m. and it was only when all those persons arrived and initially investigated the matter, FIR was lodged subsequently. Learned counsel contended that there is no question of insanity to be pleaded by the appellant and in this regard, learned counsel took the Court through the timeline, which indicated that appellant was not lunatic in the facts and circumstances for all medical purposes. He pointed out that appellant was arrested on 20.07.2021 and was presented before the Magistrate on 21.07.2021, whereas three days physical remand was allowed to the police authorities; on 24.07.2021, appellant was represented by the counsel when further remand was granted; that on 26.07.2021, 28.07.2021, 31.07.2021 & 02.08.2021, when the appellant was under judicial custody, he had legal representation and never ever the stance of lunacy was raised. It was submitted that even parents of the appellant neither raised a plea that their son is insane and is unfit to stand trial nor any evidence was placed on record during trial to show that appellant was undergoing some therapy or was on medication of some sort; that there is no ambiguity in the facts and circumstances that Mudasir Ali and Muhammad Mudasir is one and the same person. It was submitted that

difference in Belt Numbers of 3923 & 4323 is purely on account of mispronunciation and they are not two persons. It was submitted that in any case, if appellant wanted to so heavily rely upon this fact, he ought to have made a request for summoning of police official with Belt No.4323. It was submitted that burden was on the defence and not on prosecution to substantiate the referred plea. Learned counsel pointed out that there is no delay in conducting postmortem and the same was done fairly. Learned counsel explained timeline on the DVR and explained through the same the events and circumstance on evening of 20.07.2021 leading to discovery of death of Noor Mukaddam. He also took the Court through inquest report as well as medical findings to substantiate that the same is in order to establish the guilt. Reliance was placed on the case footnoted [6].

10. Learned counsel for the complainant contended that in the facts and circumstances, there does not exist any justification for acquittal of other eight accused person inasmuch as there is sufficient evidence available on record. It was pointed out that CDR clearly shows that parents of the appellant were in touch with him and made phone calls shortly before or approximately at the time of commission of offence; that there was exchange of telephone calls. It was submitted that it is not possible to believe that they were ignorant of the occurrence. It was submitted that only after their phone call that the workers of therapy work reached the scene of crime and tried to eliminate the evidence. It was contended that employees of therapy work made no effort to call the police rather they tried to apprehend the accused on their own and erase the evidence. It was pointed that Muhammad Iftikhar and Muhammad Jan have been held liable by learned trial court hence there was no justification or basis for grant of lesser sentence. It was argued that likewise in the case of Zakir Jaffer he was awarded lesser punishment for the offence of rape, which is not justified in the facts and circumstances and there was cogent and clear evidence available that the appellant committed offence of rape of Noor Mukaddam and there were no mitigating circumstances for awarding lesser sentence.

[6] Abdul Rehman Vs. State (1998 SCMR 1778), Rehmat Zeb Vs. The State (2013 P.Cr.LJ 864)

11. Ms. Khadija Ali, appearing for the State, reiterated and adopted the arguments by learned counsel for the complainant but also submitted that DVR clearly shows timeline to indicate that appellant and deceased Noor Mukaddam were seen together; in this behalf, reliance was placed on case mentioned in footnote [7]. It was contended that there is no delay in the medical report and the same is in line with the settled principles. Reliance was placed on cases reported as [8]. It was contended that the parents of appellant as well as employees of therapy works have tried to erase the evidence and help the appellant to abscond.

12. In rebuttal, learned counsel for the appellant reiterated the contentions and cited case law as to the mitigating circumstances with respect to motive and the effect of legal implication of defective postmortem. With respect to motive, reliance was placed on cases referred in the footnote [9]. In so far as postmortem is concerned, reliance was placed on decisions which are footnoted [10].

13. Submissions made by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

14. As noted above, prosecution's case initially implicated only Zahir Zakir Jaffar (the appellant), however subsequently, other persons, named above, were involved in the matter. As already noted above, instant judgment is to decide not only the issue of convictions but also acquittal of eight accused persons by learned trial court.

15. We take up first the question of acquittal of eight persons named above. Against the acquittal, State as well as complainant has filed appeals. The acquitted persons can be safely placed in three sets for the purposes of discussion of the evidence and case; firstly, Muhammad Jamil (Cook), who as per the prosecution was present at the scene of crime at the relevant time; secondly, the parents of appellant, who were not in the city at the relevant time and thirdly, the CEO of Therapy Works and its employees.

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[7] The State Vs. Ahmed Omar Sheikh (2021 SCMR 873)

[8] Dasaru Siva Prasad Reddy Vs. Public Prosecutor, High Court of A.P. (AIR 2004 SC 4383), Thangavelu Vs. State of Tamil Nadu (AIR 2002 SC 2759)

[9] Muhammad Suhail alias Sohila (2021 SCMR 795), Abdul Wasay Vs. State (2021 SCMR 1059), Ali Muhammad Vs. State' (2020 SCMR 2143), Nadeem Ramzan Vs. The State (2018 SCMR 149), Munir Khan Vs. State (2022 MLD 157)

[10] Ghaffar Ali Vs. The State (2021 SCMR 354), Bakht Muneer Vs. The State (2020 SCMR 588) & Muhammad Sharif Vs. The State (PLD 2009 SC 709)

16. Before embarking upon discussing the merits of the case regarding acquittal and findings of learned trial court, it is appropriate to briefly refer the law as to the standards required for reversing the acquittal findings. The Apex Court of the country in the footnoted decision [11], observed that there exists double presumption where the accused is acquitted; firstly, every accused person is presumed innocent and prosecution has to prove or discharge that burden and secondly, State or complainant in plea against acquittal has to discharge an additional burden that the findings of learned trial court are erroneous on some counts.

17. In so far as Muhammad Jameel, Cook is concerned, there is nothing on record to establish that he actively participated in the offence of abduction, rape or murder of deceased; perhaps, he was present in the basement, but in CCTV footage, he cannot be seen actively involved in any manner, despite the fact that he was present in the house no cogent evidence has been led by the prosecution to show involvement of Muhammad Jameel, hence to his extent, we do not feel that any interference is warranted in the findings of learned trial court.

18. The parents of the appellant namely Zakir Jaffar and Mst. Ismat Zakir were not present at the scene of crime, but despite case of the prosecution that they were telephonically engaged with the appellant and the staff and also informed the CEO of therapy work and on their call, employees (other accused of therapy work), came at the scene of crime, the evidence presented by the prosecution i.e. Call Data Record (CDR) of the referred person(s), shows that there was exchange of communication, however, since transcripts are not available, hence nothing can be said for sure as to the nature of conversation. Nowhere, the prosecution has led any evidence to the effect that the parents knew about design of the appellant regarding abduction, rape or murder of the deceased or came to know about it subsequently. Since the evidence is silent about nature of communication between parents and the appellant and also Zakir Jaffar and Mst. Ismat Zakir with CEO of Therapy Works, it cannot be said for sure that they had any actual knowledge of the occurrence. It is also the position that the

[11] Mst. Anwar Begum Vs. Akhtar Hussain alias Kaka (2017 SCMR 1710)

representatives of the Cellular Companies, from whom CDR was obtained, also were not called in evidence to prove the veracity of the same; reference solely on the availability of CDR, without any other proof, would not be sufficient to cross the hurdle of double presumption as laid down by the august Apex Court. The Indian Supreme Court in AIR 2004 SC 4384 [12] observed that strong suspicion against the accused cannot be said to be the basis for conviction and in such circumstances, the benefit of doubt is to be granted to the accused. This dictum clearly shows that if there are strong reasons for suspecting that a person is involved, does not automatically lead to his/her conviction, as in the instant case, it is unlikely that the parents were not aware of the misdoings of their son but since there is nothing on record about actual telephonic conversation, one cannot hold beyond reasonable doubt that they actually participated or were aiding and abetting their son in the commission of offences. The findings of learned trial court, in our opinion, do not suffer from any error of facts or law for them to be interfered with.

19. Lastly, the CEO of Therapy Works namely Tahir Zahoor and other employees were also implicated in the case in question. All, except CEO, arrived at the scene of crime at about 8:00 pm and as is clear from the CCTV footage, they after some effort/improvisation, were able to enter into house and it seems that then only, they overpowered the appellant and in this entire adventure, one of them namely Amjad Mahmood also got injured, who was taken to the hospital for treatment. The fault, perhaps of the employees of Therapy Works, is that they ought to have informed the police authorities regarding the incident, which they did not; naturally, they are not involved in abduction, rape or murder of deceased, as there is no prosecution evidence to the effect, but the question whether they aided, abetted or in any way facilitated the appellant in doing so, perhaps is the best case of the prosecution. There is no actual evidence, whereupon it can be said that they aided or abetted the appellant, hence findings of guilt on charge under section 109 PPC against them would be an unfair conclusion. Though they never really recorded their statements or anything to that

[12]Dassai Shiba Parsad Reddy Vs. Public Prosecutor (AIR 2004 SC 4384)

effect, but perhaps under section 201 PPC, they could be implicated for destroying the evidence or may be under section 186 PPC for obstructing a public officer in performance of his duties, but with respect to commission of the actual substantive crime or aiding or abetting of the same, there is nothing on record to establish the referred fact. Even, with respect to sections 186 & 201 PPC, there is nothing on record that they prevented the police authorities from performance of their duties and/or tampered with the evidence or anything at the scene of crime. The prosecution has not put forth anything to the effect that had the police not arrived at the scene of crime the referred employees of Therapy Works would have facilitated the appellant or otherwise cleaned the scene of crime; conjectures and surmises cannot form basis of conviction of the employees of Therapy Works, as there is no actual evidence to establish charges under sections 186 & 201 PPC. Therefore, the findings of learned trial court against CEO of Therapy Works and employees also do not need any interference in any manner.

20. Next, we take up the appeal of Zahir Zakir Jaffar (Jail Appeal No.117-2022) as well as Murder Reference No.03-2022). It is relevant to state that Zahir Zakir Jaffar was implicated for offence under section 302 PPC and was convicted and sentenced under section 302(b) PPC as Tazir with capital punishment and pay fine of Rs.500,000/- as compensation; for offence under section 364 PPC, he was convicted and sentenced to ten years RI with fine of Rs.100,000/- and in default of payment of fine to undergo two months SI; for offence under section 342 PPC, he was sentenced to one year RI; in respect of offence under section 376(1), he was awarded sentence of 25 years RI with fine of Rs.200,000/- and in default of payment of fine, to undergo three months SI.

21. The appellant naturally has challenged, in his appeal, the convictions as well as sentences, however, complainant has also filed a Criminal Revision, for enhancement of sentences of the appellant for offences under section 364 PPC as well as 376 PPC.

22. The appellant, through his appeal, has made many-fold attacks on the judgment of learned trial court. It was argued by learned counsel for the appellant that there is delay in lodging of FIR; in this behalf, learned counsel

took the Court through statements of number of police officials to show that they reached the scene of crime promptly but the FIR was lodged at about 11:30. Learned counsel drew the attention of the Court that in the FIR, occurrence is of 9:00 p.m. on 20.07.2021; then he referred to the statement of Abid Latif (PW-2) to show that he reached the scene of crime i.e. House No.7, Street No.60, F-7/4, Islamabad after 10:00 p.m.; in cross examination, he submitted that at about 9:45 p.m., on the date in question, he was asked to reach to the House in question (the place of occurrence) and he reached there after about 20/25 minutes; likewise, in cross examination, Basharat Rehman (PW-3) has conceded that he reached the scene of crime at about 9:30 p.m. after having received the call at about 9:00 pm. Ms. Aqsa Rani (PW-4), in cross-examination, admitted that she reached the scene of occurrence at about 10:00 pm. In the referred backdrop, learned counsel drew attention of the Court to the evidence of complainant Shaukat Ali Mukaddam (PW-18) that he was informed about murder of his daughter at about 10:00 pm; learned counsel argued that any single police official, who reached at the scene of crime, could have reported the matter, which could have resulted in lodging of FIR. To the contrary, learned State Counsel argued that delay in reporting of FIR is immaterial unless it causes prejudice in the sense that there is any proof of concoction or deliberation. In 'Zahid Vs. State' [13], which involved modesty of a married woman and there was delay in reporting the crime to the police, the Apex Court maintained the conviction. Likewise, the Supreme Court observed that in rape cases victims and/or their families may be reluctant to come forward to promptly report the crime because of the trauma that had been suffered and they may have a perception of shame or dishonour in having the victim invasively examined by a doctor [14].

23. In the instant case as well, it seems that the workers of Therapy-Works arrived at about 8:00 pm and made efforts to enter inside the house and were finally successful and as noted above in the entire effort, one of them was seriously injured, however, they were able to overpower the appellant. It is not clear from the record as to who informed the police, but perhaps,

[13] Zahid Vs. State (2020 SCMR 590)
[14] Irfan Ali Sher Vs. The State' (PLD 2020 SC 295)

someone from among the neighbors did so and at about 9:00 pm or thereabout, the police officials came to know about the occurrence. The occurrence was naturally not a petty offence as a young woman was put to death in the most gruesome manner inasmuch as her neck was amputated and separated from her body; naturally, such course of event required involvement of senior officials and also the near and dear ones of the deceased. Identification of the deceased and tracing her father/relatives took some time and the same is borne out from the statement of the complainant who deposed to the effect that he was informed about the occurrence at about 10:00 pm. In the cross-examination conducted by the defence, they were unable to impeach the evidence of the complainant regarding time in any manner and even with respect to other police officials, who arrived at the scene of crime after 9:00 pm. Naturally, after reaching the scene of occurrence in about 30/45 minutes, father would have taken some time to absorb and have the complaint lodged by drafting the same and handing it over to the police officials, who then took it for registration of the case. No evidence exists as to the concoction or deliberation or nothing surfaces from record of the case to the effect hence it can safely be concluded that lodging of FIR at about 11:30 pm, as such, did not amount to significant delay and has any consequence or bearing on the case of prosecution.

24. The major assault was made by learned counsel for the appellant with respect to delay in conducting postmortem of the deceased and that it was done by a number of doctors; in this behalf, learned counsel for the appellant drew attention of the Court towards postmortem report (Eh.PAC) to show that the time of death has been indicated on the same as 12:10 am and the time of conducting of postmortem is 9:30 am; he also pointed out that time between death and postmortem has been pointed out as 9/10 hours and signatures on the postmortem report is of Dr. Shazia Nazir (PW-10). Learned counsel argued that three other doctors were led by the prosecution namely Dr. Hammad Hussain (PW-13), Dr. Anam Shahzadi (PW-14) and Dr. Sara Ali Hashmi (PW-16) and some of them conducted the postmortem in piecemeal. Learned counsel argued that it is the sufficient

ground for acquittal of the appellant. To the contrary, learned State Counsel contended that postmortem, in itself, is inconsequential in case it can be proven even-otherwise, that death was caused by the appellant. In the FIR, time of occurrence has been mentioned as 9:00 pm, however, in the postmortem report, same has been mentioned as 12:10 am, which does not tally and perhaps in this regard, postmortem is not correct; occurrence is of even before 9:00 pm on 20.07.2021, however, it remains the fact that postmortem was conducted next day at about 9:30 am; meanwhile, different doctors did examine the deceased and the same is acknowledged in their testimonies.

25. There is nothing on record to show that postmortem was conducted in violation of the principles laid down with respect to the same i.e. Rule 25.37 of the Police Rules, 1934. The Supreme Court in 'Muhammad Rafique Vs. State [15], discussed the relevant rules regarding postmortem examination by holding that where the body of a person, who died in unnatural or suspicious circumstances and taken over in custody by the police officer, following steps are to be followed:

i) firstly, there should be a complete chain of police custody of the dead body right from the moment it was taken into custody until it was handed over to the relatives;
ii) secondly, postmortem examination of a dead person could not be carried out without the authorization of competent police officer or the Magistrate;
iii) thirdly, postmortem of a deceased person could only be carried out by a notified government medical officer;
iv) finally, at the time of handing over of the dead body by the police to the medical officer, all reports prepared by the investigating officer were also to be handed over to the said medical officer.

Delay in conducting of postmortem, as such, is not fatal inasmuch as it usually takes a while for the police to prepare inquest report and other documents for the same to be handed over; even-otherwise, the medical evidence is only corroborative in nature and does not, in any case, is considered as a substantive piece of evidence, whereupon the verdict of the accused hinges upon. The Supreme Court in 'Abdur Rehman Vs. State [16],

[15] Muhammad Rafique alias Feeqa Vs. State (2019 SCMR 1068)
[16] Abdur Rehman Vs. The State (1998 SCMR 1178)

opined that non-performance of postmortem *per se* is not fatal, if death is proven to have caused through cogent evidence by the accused. There is another element to the fact that as per Modi, there is strong case for daylight postmortem examination, especially in cases of South Asian women. Likewise, the Apex Court in 'Ghulam Rasool Vs. State' [17], opined that delay in conducting postmortem is not fatal to the case of the prosecution. Postmortem report (Ex.PAC) and testimonies of PW-10, 13, 14 & 16 conclusively opined that death of deceased was caused by stoppage of oxygen and blood supply due to severance of the neck of the deceased. This report conclusively supports the evidence of the police officials who reached initially at the place of occurrence, who unanimously deposed including Abdul Sattar Inspector (PW-19) that the deceased had her head severed and was lying in the room in east to west position.

26. The primary and the foremost piece of evidence in the present case is the DVR, which contains CCTV footage as well as hard disk; in this regard, DVR is Ex.P13 and hard disk prepared by one Muhammad Mudasir (PW-17) is Ex.P14. The use of modern devices as evidence forms part of Qanoon-e-Shahadat Order, 1984. In this regard, under Article 164 of the referred Order, the court may allow to produce in evidence that may have become available because of modern devices or techniques. Learned counsel for the appellant raised objection to the admissibility of DVR and hard disk on the basis that referred piece of evidence was not proved in accordance with law. Reliance on this count was tried to be placed on the judgments of this Court titled 'Munir Khan Vs. State' [18] as well as of Supreme Court of Pakistan which are footnoted [19]. In the latter case, the august Apex Court laid down the guidelines for proving any audio or video recording. The referred case pertains to video recording made of Muhammad Arshad Malik, Judge Accountability Court-II, Islamabad (since deceased). The referred guidelines and principles, as such, are not applicable to the facts and circumstances of present case inasmuch as therein the issue before the august Apex Court was the video footage prepared of the Judge of the conversation he made

[17] Ghulam Rasool Vs. The State (2010 SCMR 1579)
[18] Munir Khan Vs. State (2022 MLD 157)
[19] Ishtiaq Ahmed Mirza Vs. Federation of Pakistan (PLD 2019 SC 675)

with someone. The acceptance and acknowledgement of CCTV footage as a piece of evidence is universally accepted. Such acknowledgement was handed down by this Court in case mentioned below [18]. In the said case, the incident of theft was recorded in the CCTV footage on a bus stand and then the referred footage was transferred in USB and the maker of the same tendered evidence. The Court did accept said piece of evidence. Similarly, 'Asfandyar Vs. Kamran [20], the Court did recognize and acknowledge CCTV footage as valid piece of evidence, however, opined that in case, there is any controversy about it, it has to be proved in accordance with law. In a fairly recent judgment titled 'Ali Haider Vs. Jamil Hussain' [21], while opining on significance of Article 164 of Qanoon-e-Shahadat Order, 1984, it was observed that for the law to serve people in today's technologically complexed society, courts needed to understand and be open to science and its principles, tools and techniques; legal decisions of the courts must fall within the boundaries of scientifically sound knowledge; a judge and more so a trial judge, acted as a gatekeeper of the scientific evidence and must, therefore, enjoy a good sense and understanding of science; as science grows so will the techniques, tools and devices therefore, courts must be open to developments in forensic science and embrace new techniques and devices to resolve a dispute, provided said technique and device was well established and widely accepted in the scientific community as a credible and reliable technique or device. In the referred backdrop, as noted above, DVR contains CCTV footage of not exactly the crime in itself but somewhat to facts leading to the same and happenings there-after. Learned trial court meticulously recorded the timeline with respect to events that could be discerned from the recording. With respect to the evening in question, it is duly recorded that deceased Noor Mukadam apparently jumped out of the window or some other opening from the 1st floor and landed on the railing at the side of the house; then she limps towards main gate of the residence, whereupon, Muhammad Iftikhar, Chowkidar cross-checks that the gate is locked and proceeds to the basement not paying any heed to the state of affairs and condition of Noor Mukaddam; subsequently,

[20] Asfandyar Vs. Kamran (2016 SCMR 2084)
[21] Ali Haider alias Papu Vs. Jameel Hussain and others (PLD 2021 Supreme Court 362)

at almost same time or little there-after, the appellant jumps and lands on the floor of the porch and snatches mobile phone of Noor Mukaddam and locks her in the cabinet near the main gate of the house meant for Chowkidar; he fiddles with the mobile phone of Noor Mukaddam and then opens the cabinet by physically assaulting her, whereupon Muhammad Jan, the Cook does not make any effort to stop the appellant rather pats him on his back. The appellant then drags back Noor Mukaddam inside the house and that is the last seeing of her on CCTV footage. It is pertinent to observe that we, during course of proceedings, also watched from the USB provided by one of learned counsels for the appellant and watched relevant parts of the recording mentioned hereinabove. The referred recording was sent for forensic examination, by the police, and the report thereof is Ex.PBH dated 04.08.2021. According to the report, recording was not edited in any way and the facial comparison of the appellant/person in the recording, when compared with the appellant, was found to be positive, or in other words, it matched with the appellant. In the presence of said forensic report and especially the fact that now-a-days CCTV footage is not being recorded by any person manually but only is on the disk or computer, no person is required to give evidence with respect to same as it is all technology. Though Mudasir Alam (PW-17) working as Computer Operator in Police Station Kohsar, Islamabad did appear as witness and confirmed that he played the relevant parts from DVR and also made copy of it on the hard disk and handed over the same to the Investigating Officer.

27. The controversy was raised about identity of referred person ,PW 17, by learned counsel for the appellant that his name in the statement under section 161 Cr.P.C. is of some other person and that in evidence, another person has been produced, but no plausible evidence was sought to be produced before the Court to substantiate the referred misunderstanding; in this behalf, it was argued that Belt No. of the person, who appeared in the witness box is 3923, whereas in the statement under section 161 Cr.P.C., the police official, who appeared had the Belt No.4323. Learned State Counsel clarified the position by saying that misunderstanding took place due to dialect in Punjabi with respect to the initial figure of Belt 39 & 43 and stated

that the person, who appeared before learned trial court as a witness, is the same who was present at the scene of crime and recorded/transferred the data and also played footage for everyone present there. Firstly, misunderstanding seems to be purely of technical/clerical error and secondly, even-otherwise, there does not seem to be any doubt about veracity of the DVR and its transfer to the hard disk, especially in presence of the forensic report mentioned above, which clearly shows a positive match of the appellant with the person in DVR.

28. Learned counsel for the appellant pointed out that statements of some of the witnesses under section 161 Cr.P.C. have been recorded with considerable delay and where such is the position, conviction cannot stand. Reference was made to decisions which are footnoted [22]. There is no cavil with the principles laid down in the referred judgments, however, every case is to be examined on its own facts and circumstances in Criminal Jurisprudence. Learned counsel for the appellant did not point out any unjustifiable delay in recording of the statements of the witnesses under section 161 Cr.P.C. and the prejudice caused, if any. This Court is mindful of the fact that instant offence is an unseen occurrence and yet in another way, it is a seen occurrence with the help of the modern technology albeit exact commission of offence is not recorded on that device. Moreover, offence in question, immediately received hype and all the police officials were grappling with the situation and recording statements of the witnesses as and when the circumstances were unfolding. No injustice has been caused to any person, especially the appellant due to belated recording of statements under section 161 Cr.P.C.

29. Another issue, which was highlighted by learned counsel for the appellant, was with respect to identity of mobile phone of the deceased; in this regard, mobile phone of Mst. Noor Mukaddam was got recovered on pointation of the appellant from one of the rooms upstairs and same was validly recovered through memo of recovery. It was submitted that police deliberately destroyed screen of said phone, as data there-from could not be recovered. No plausible evidence was presented in the Court to believe

[22] Muhammad Khan Vs. Maula Bux (1998 SCMR 570) & Muhammad Yamin alias Raja Vs. State (2009 SCMR 84)

the said version; in fact, as noted above, in the evening in question, it can be clearly seen in the CCTV footage that appellant is using deceased's mobile phone before he drags her out of the cabin and pulls her in. Learned counsel for the appellant mentioned that identity number of the phone (IMEI No.) is different from the one now in possession of the police, however, learned State Counsel clarified the issue by showing us the IMEI No. of the deceased's phone.

30. Learned counsel for the appellant submitted that learned trial court has erred in recording conviction of the appellant on the basis that entire evidence led by the prosecution was not confronted to the appellant under section 342 Cr.P.C. and argued that same is fatal to the prosecution's case; he placed reliance on various decisions mentioned in the footnote [23]. He also argued that statement under section 342 Cr.P.C. is to be accepted in toto i.e. either accepted in totality or rejected. On the contrary, learned State Counsel argued that there is no violation of principles contained in section 342 Cr.P.C. and even if there is, it is inconsequential. Reliance was placed on decisions mentioned below [24]. In the referred judgment, the august Apex Court opined that statement of an accused recorded under section 342 Cr.P.C. was to be accepted or rejected in its entirety and where prosecution evidence was found to be reliable and exculpatory and inculpatory part of such statement was established to be false and excluded from consideration, then the inculpatory part of such statement might be read in support of prosecution's evidence. In the instant case, where the appellant has denied commission of murder or rape or abduction of Mst. Noor Mukaddam, he also has put forward his own version in response to one of the questions put to him under section 342 Cr.P.C. In response to Question No.22, he provided elaborate response by stating that he and deceased were good friends and upon insistence of the deceased, a drug party was arranged, wherein he consumed intoxicant drugs and became unaware of his surroundings and when he became aware, he found himself tied. The referred exculpatory statement acknowledges the presence of the appellant as well as Mst. Noor

[23] 'Imtiaz alias Taj Vs. The State and others (2018 SCMR 344), Mazhar Iqbal Vs. The State (2022 MLD 752) & Zahid Karim Vs. State (2021 P.Cr.LJ 308)
[24] Azhar Iqbal Vs. The State (2013 SCMR 383)

Mukaddam but his own version about drug party or consumption of intoxicant drugs does not seem to be correct inasmuch as in the CCTV footage, no outsider can be seen entering the house (the place of occurrence). Likewise, in the autopsy report, there does not seem to be any effect of intoxicant drugs (Ex.PBM), which clearly states that drugs/poison were not deducted in liver and stomach contents.

31. During course of proceedings before learned trial court, an application under section 465 Cr.P.C. was filed by the appellant on the basis that he being lunatic is of unsound mind, hence is incapable of making his defence. Both sides placed reliance on case of 'Safia Bano Vs. Home Department' [25]. Learned counsel for the appellant contended where such a plea is raised, learned trial court ought to have referred the matter for medical examination of the accused and call report in this behalf, whereas learned State Counsel as well as learned counsel for the complainant submitted that before referring the matter to the Medical Board, the court has to form prima facie opinion that the accused is incapable of understanding the proceedings. To resolve the controversy and for ease of convenience, the relevant part from the judgment in question, is reproduced below:

> *"Once the Court had formed a prima facie tentative opinion that the accused may be incapable of understanding the proceedings of trial or make his/her defence, it became obligatory upon the Court to embark upon conducting an inquiry to decide the issue of incapacity of the accused to face trial due to mental illness. Medical opinion was sine qua non in such inquiry".*

The bare reading of above paragraph of the judgment of the august Apex Court clearly shows that before referring the matter, the Court has to form an opinion that the accused is of unsound mind and is incapable of putting his/her defence. Learned trial court, while dismissing application under section 465 Cr.P.C., has given detailed reasons for the conclusion; in the order, it has been mentioned that from the time the appellant was arrested and his physical custody was obtained by the police, he had the legal representation and even before commencement of trial he had the legal

[25] Mst. Safia Bano and another Vs. Home Department Government of Punjab through Secretary and others (PLD 2021 Supreme Court 488)

representation and even though the parents were the co-accused, such a plea was never raised either on behalf of appellant or on behalf of his parents. Moreover, no evidence was also sought to be adduced on part of the appellant regarding the fact that he was seeking medical help for his mental indisposition. It was sought to be argued that in fact the workers of Therapy Works knew the appellant only because he had been seeing them for consultation but no tangible evidence to the effect was brought on record during course of proceedings before learned trial court; even in the instant appeal, an application was filed but learned counsel for the appellant did not press the same seriously.

32. In the alternative to seeking acquittal of the appellant, learned counsel for the appellant argued that if the Court is not convinced regarding acquittal of the appellant, it may consider reduction in sentence by way of life imprisonment under section 302 (b) of Pakistan Penal Code. In support of his stance, learned counsel argued that there are mitigating circumstances which call for reduction in sentence. In this behalf, he submitted that motive was never alleged nor proved, which in itself, is a mitigating circumstance. Likewise, he contended that fingerprints on the knife (the weapon of offence) were never detected. In support of this plea, learned counsel placed reliance on case reported as 2022 SCMR 1608 supra and other cases noted below[26]. Learned counsel argued that absence of motive or absence of proof of the same is a ground for converting death sentence into life imprisonment. Likewise, he contended that it seems that occurrence took place at the spur of moment without premeditation, hence death sentence needs to be altered to life imprisonment. Reliance was placed on 'Ghaffar Ali Vs. State' & 'Bakht Munir Vs. State' [27]. On the contrary, learned State Counsel vehemently argued that the judgments cited at bar by learned counsel for the appellant are distinguishable inasmuch as there is a marked difference in motive raised and not proved and not raised at all. She argued that where motive is raised but not proved, that can be regarded as mitigating circumstance, whereas if it is not raised at all, then

[26] Shamsher Ahmad and another Vs. The State and another (2022 SCMR 193) & Azhar Hassan and another Vs. The State and others (2022 SCMR 1907)
[27] Ghaffar Ali Vs. The State (2021 SCMR 354) & Bakht Muneer Vs. The State (2020 SCMR 588)

there is no requirement to prove the same and has no bearing on the sentence. In 'Talib Hussain Vs. State' [28], the Apex Court observed that allegation and proof of motive is not a legal requirement to award maximum penalty of death in a murder case. Likewise, in 'Haroon Rashid Vs. State' [29], it was observed by the Hon'ble Supreme Court that absence of motive or its weakness would not come in the way of prosecution if there is strong, confidence aspiring, unimpeachable and reliable evidence in support of prosecution case. We tend to agree with learned counsel for the complainant and the State that there is a difference between raising motive and not been able to prove or not raised at all. The judgments relied upon by learned counsel for the appellant are precedent in the circumstances where motive was alleged but not proved and the courts considered that as a mitigating factor for awarding lesser sentence. In the instant case, since motive was not really raised hence there was no requirement on part of prosecution to prove it and learned trial court rightly awarded capital punishment as Tazir under section 302 (b) PPC inasmuch as under section 367(5) Cr.P.C., where sentence provided is capital punishment, the court has to spell out the reasons for awarding lesser sentence, which in the instant case, are none.

33. The instant case seems to be one of last seen. The concept of 'last seen' evidence was explained by the Supreme Court of Pakistan in 'Muhammad Abid Vs. State' [30], it was opined that theory of 'last seen' together was one where two persons were seen together alive and after an interval of time, one of them was found alive and the other dead, where the period between two was short, presumption could be drawn that the person alive was author of the other's death. The august Apex Court went on to establish the principles of last seen evidence which are as follows:

> *"Time gap between the sighting and the occurrence should be such as to rule out possibility of somebody else committing the crime. The circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. There must be evidence to link the accused with the murder of his companion, such as incriminating facts as recovery, strong motive and the proximate time when they were last seen together and the time when the deceased was killed. Last seen evidence as circumstantial evidence must be incompatible with the innocence of the*

[28] Talib Hussain Vs. State (1995 SCMR 1776)
[29] Haroon Rasheed Vs. State (2005 SCMR 1568)
[30] Muhammad Abid Vs. State (PLD 2018 SC 813)

> *accused and should be accepted with great caution. It must be scrutinized minutely so that no plausible conclusion should be drawn therefrom except guilt of the accused".*

Similarly, in 'State Vs. Ahmed Umer Sheikh' [31], it was observed that once the prosecution had proved that the deceased was last seen with the accused, then the 'legal burden' under Article 117 of Qanoon-e-Shahadat Order, 1984 on the prosecution would stand discharged and then for the accused to avoid conviction for the charge of abduction, is placed. The CCTV clearly shows that little before occurrence, the appellant and deceased were seen together. Though in the FIR, time of death/occurrence has been noted as 9:00 pm but it is before that. In a span of short while, after they were seen together, when the appellant pulls the deceased inside the house, employees of Therapy Works come to the place of the occurrence and can be seen in recording of the DVR; no outsider has been picked as entering the house in any of the cameras installed at different places within the boundaries of the same; after the appellant drags the appellant in the house no other person entered except employees of Therapy-Works who tried to enter the house and when it is done, one of the acquitted accused Amjad Mehmood, tried to overpower the appellant and in the process got injured, but subsequently, employees were successful in apprehending the appellant. The CCTV recording, as noted above, does not record any other person entering the house. The only persons present were Muhammad Iftikhar Chowkidar, Muhammad Jan Mali and Jameel, the Cook. In the said circumstances, it gives rise to an irresistible conclusion that the appellant caused the death of Mst. Noor Mukaddam. In reaching said conclusion, this Court is fortified by the judgment of Supreme Court titled 'Syed Ali Bepari Vs. Nibaranmollah' [32], wherein the august Apex Court observed that the parties do not generally come out with the true story. It is a normal incident of an "adversary proceeding" to minimize one's own part in the incident. In such a case the Court must not be deterred by the incompleteness of the tale from drawing the inferences that properly flow from the evidence and circumstances.

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[31] The State Vs. Ahmed Umer Sheikh (2021 SCMR 873)
[32] Syed Ali Bepari Vs. NibaranMollah (PLD 1962 SC 502)

34. As noted above, the appellant challenged his conviction on all counts and not only for offence under section 302(b) PPC but also abduction and rape. The stance of learned counsel for the appellant was that Mst. Noor Mukaddam came to the residence of the appellant on her own volition. Likewise, it was argued that sexual encounter between deceased and the appellant was consensual. In so far as findings regarding abduction are concerned, the deceased might have entered the house of the appellant voluntarily but it is clearly borne out from CCTV footage (which we have already held to be an admissible piece of evidence) that she tried to escape but was not allowed by the appellant and Muhammad Iftikhar and Muhammad Jan; under the law the offence of abduction is committed and completed, where the victim is prevented from departing. Likewise, the medical evidence shows that there are lacerations on the thighs of the deceased which exclude the chances that sexual intercourse between the appellant and the deceased was voluntary. The medical evidence shows presence of semen and the same matched with DNA of the appellant. Likewise, DNA of the appellant is on the body of the victim. Reference is made to Ex.PVJ, PVK, PVN & PVQ.

35. The complainant as well as State has filed criminal revision petitions for enhancement of sentence of the appellant on account of rape. Under section 376 PPC, the punishment for the offence is either death sentence or imprisonment for a description which is not to be less than 10 years or more than 25 years and fine. Under section 367(5) Cr.P.C., where the punishment provided for the offence is capital punishment and it is not awarded, reasons for lesser sentence are to be provided. Learned trial court has recorded findings of conviction under section 376 PPC, however, no justification has been provided for awarding sentence of imprisonment of 25 years, which ought to have been done under the mandate of section 367(5) Cr.P.C. There are no mitigating circumstances that can be pointed out for awarding lesser sentence hence the criminal revision filed by the complainant and the State are allowed and the sentence awarded to the appellant for offence under section 376 PPC is enhanced from 25 years imprisonment to capital punishment; he is to be hanged till death.

36. In so far as Muhammad Iftikhar, Chowkidar and Muhammad Jan, Mali is concerned, they have been awarded conviction for offence of abduction and related offences and have been awarded ten years imprisonment; they seek their acquittal through Jail Appeal and appeals filed through their lawyers as mentioned above. It is their stance that they have no role to play in either abduction of deceased Mst. Noor Mukaddam or other related offences. We are afraid that we are unable to bring ourselves to agree with the contentions of the said appellants inasmuch as, as noted above, Muhammad Iftikhar ensured on the evening in question that the front gate of house is locked, when Mst. Noor Mukaddam jumped from the first floor and lands on the railing; he does not do anything and proceeds towards basement. Likewise, Muhammad Jan, Mali is standing next to Zahir Zakir Jaffar, when he drags Mst. Noor Mukaddam out of the cabin and rather when he is trying to drag/pull her, Muhammad Jan pats him on the back of appellant and thereupon when again Zahir Zakir Jaffar pulls Mst. Noor Mukaddam inside the house, Muhammad Jan does not do nothing. It is an admitted position that both Muhammad Iftikhar and Muhammad Jan are domestic helpers at the residence of Zahir Zakir Jaffar and the family and perhaps are drawing nominal wages and did not have the courage and audacity to challenge him, however, law does not acknowledge or recognize such excuse; in a way, they deliberately helped Zahir Zakir Jaffar by ensuring that the gate is locked and pats him on the back; they were not only encouraging by patting him hence were abetting and aiding in the commission of offence and evidence to the effect is again as clear as day light in the events recorded in the CCTV footage (which is admissible in evidence as per our findings hereinabove). The referred persons have been awarded ten years imprisonment. Though a request has been made that they should be awarded more severe punishment by way of life imprisonment, however, we feel that learned trial court has appropriately awarded sentence of ten years imprisonment, which is an alternate sentence as provided in section 364 PPC, so we neither find any justification for enhancement in sentence nor we are inclined to acquit referred persons.

37. There is another Criminal Revision i.e. Crl. Rev. No.93-2021 filed by Amjad Mehmood, who was one of the co-accused on the basis that since Zahir Zakir Jaffar attacked him, hence he is to be proceeded for the criminal offences attracted in the facts and circumstances. Learned trial court, vide judgment dated 17.11.2021, dismissed the referred criminal complaint. However, we feel that the judgment handed down by learned trial court is well-reasoned and matter stands settled and the controversy has been put to rest by virtue of aforementioned reasons, hence no justification is made out for interference at this stage. The Criminal Revision is accordingly dismissed.

38. In conclusion to the above discussion, we are of the opinion that prosecution has been able to prove its case beyond reasonable doubt against Zahir Zakar Jaffar, Muhammad Iftikhar and Muhammad Jan through cogent evidence. Through there are certain discrepancies in the evidence but the same are trivial in nature and are not significant enough to upset the findings recorded by learned trial court. Reference is made to 'Shamsher Ahmed Vs. State' [33]. As noted above, it is an unseen occurrence but modern device of CCTV footage made it possible for the learned trial court and even for us to decide the issue without any ambiguity. The trivial discrepancies regarding time of occurrence, delay in performance of postmortem, absence of fingerprints on the knife or for that matter, the delay in lodging of FIR, the confusion about Mudasir Alim, are of such nature that has no consequence on the guilt of said persons. Had there being no CCTV footage, perhaps the fate or the result of trial as well as appeals, would have been different.

39. We feel that that the judgment of learned trial court is well-reasoned and does take into account all the aspects and hence warrants no interference except for the issue of enhancement of sentence of Zahir Zakir Jaffar for offence under section 376 PPC.

40. To sum up the above discussion, Criminal Appeal filed by Zahir Zakir Jaffar (Jail Appeal No.117-2022) against conviction and sentence is dismissed and Murder Reference No.03-2022 is answered in '**positive'** by

[33] Shamsher Ahmed Vs. State (2022 SCMR 1931)

way of confirmation of capital punishment awarded by learned trial court to appellant for the offence mentioned hereinabove. Similarly, Criminal Appeal filed by Muhammad Iftikhar and Muhammad Jan (Crl. App. Nos.111 & 136-2022 along with Jail Appeals No.132 & 133-2022 are hereby dismissed, as we are not inclined to either set aside the conviction of the referred appellants nor reduce the sentence; Criminal Appeal No.123-2022 filed by the complainant against acquitted accused is also hereby dismissed for the reasons mentioned hereinabove; Criminal Revisions No.28-2022 & 32-2022 to the extent of enhancement of sentences of Muhammad Iftikhar and Muhammad Jan are dismissed, however, for enhancement of sentence of Zahir Zakir Jaffar to the extent of offence under section 376 PPC are allowed and he is awarded maximum sentence of capital punishment for offence under section 376 PPC, as there are no mitigating circumstances available for awarding lesser sentence, however, there is no justification for enhancement of sentence of Zahir Zakir Jaffar regarding abduction. Crl. Appeal No.157-2022 is also dismissed. Criminal Revision No.93-2021 is dismissed. All pending applications are accordingly disposed of.

(SARDAR EJAZ ISHAQ KHAN) **(CHIEF JUSTICE)**
JUDGE

Announced in Open Court on 13.03.2023

(JUDGE) **(CHIEF JUSTICE)**

Zawar

Serial No.	CASE NO./YEAR	TITLE
1.	Crl. App. No.111-2022	Muhammad Jan Vs. The State
2.	Crl. App. No.123-2022	Shaukat Ali Mukadam Vs. Zakir Jaffar etc.
3.	Crl. App. No.136-2022	Muhammad Iftikhar Vs. Shaukat Ali Muqadam& Another
4.	Crl. App. No.157-2022	The State through Advocate General, ICT Vs. Zakir Jaffar etc.
5.	Jail Appeal No.132-2022	Muhammad Jan Vs. The State
6.	Criminal Appeal No.133-2022	Muhammad Iftikhar Vs. The State
7.	Crl. Rev. No.28-2022	Shaukat Ali Mukadam Vs. Zahir Zakar Jaffar etc.
8.	Crl. Rev. No.32-2022	The State through Advocate General, ICT Vs. Zahir Zakar Jaffar etc.
9.	Crl. Rev. No.93-2021	Amjad Mehmood Vs. Zahir Zakar Jaffar & Another