

**2022 Y L R Note 210**

**[Lahore]**

**Before Ch. Abdul Aziz and Muhammad Amjad Rafiq, JJ**

**MUHAMMAD RIZWAN and others---Appellants**

**Versus**

**The STATE and another---Respondents**

Criminal Appeals Nos. 57199, 57200, 57201 and 57203 of 2019, decided on 22nd December, 2021.

**(a) Penal Code (XLV of 1860)---**

---Ss. 365-A, 170 & 171---Anti-Terrorism Act (XXVII of 1997), S. 7---Qanun-e-Shahadat (10 of 1984), Art. 129(g)---Kidnapping or abduction for extorting property, valuable security, etc., personating a public servant, wearing garb or carrying token used by public servant with fraudulent intent, act of terrorism---Appreciation of evidence---Withholding best evidence---Scope---Prosecution case was that wife of complainant along with accused persons extorted Rs. One Crore from him and extended threats of taking his life---Record showed that the complainant was residing in a Society along with family comprising his wife and two daughters---Wife of complainant was also arrayed as one of the accused in the case and was even arrested but as per prosecution case while she was brought to the house of her husband for recovery, she committed suicide by jumping from the rooftop---So far as, the daughters of complainant were concerned, despite being fully grown up young-girls and having mature age of deposing before the court, none of them appeared before the Trial Court to lift veil from the actual genesis of the transaction in question---None out of the two daughters was even made witness in the case---Though that was the prerogative of the victim of crime to decide the citing of the witness in the case but if the evidence of an important witness was excluded for no good reason, such omission given rise to many doubts and foremost out of them was to the effect that had such person appeared in the dock, he would have deposed unfavourably---Present case was no exception as even after skimming the file, no one came across even a single legally acceptable explanation for withholding the important evidence of both the daughters--- In such circumstances, no other option was left but to draw an inference in terms of Art.129 illustration (g) of Qanun-e-Shahadat, 1984---Circumstances established that the guilt of the accused persons remained unproved and they were handed down guilty verdict despite the prosecution case was bereft of sufficient proof---Appeal was allowed and accused were

acquitted by setting aside convictions and sentences recorded by the Trial Court.

Nisar Muhammad v. Khanzali and another PLD 1959 (W.P) Pesh. 115; Nasarullah v. The State 1995 MLD 515; Mumtaz Khan v. The State 1992 PCr.LJ 412; Muhammad Uzair v. The State 2005 YLR 1533; Mst. Asia Bibi v. The State PLD 2019 SC 64; Mst. Mehboob Bibi v. The State 2017 SCMR 1835; Ihtesham-ul-Haq v. The State 2010 PCr.LJ 852; Hamza Alam v. The State 2021 YLR 380; Arbab Tasleem v. The State PLD 2010 SC 642; Saeed Ahmad alias Saeed Akbar v. The State 1985 SCMR 1455; Roshan v. The State 1985 PCr.LJ 2312; Mumtaz and another v. The State 1992 MLD 1448 and Muhammad Hafeez v. Special Judge, Anti-Terrorism Court, Mirpurkhas and 2 others 2001 PCr.LJ 199 ref.

Muhammad Rafique and others v. State and others PLJ 2011 SC 191 rel.

**(b) Penal Code (XLV of 1860)---**

---Ss. 365-A, 170 & 171---Anti-Terrorism Act (XXVII of 1997), S. 7---Criminal Procedure Code (V of 1898), Ss. 265-J & 164---Kidnapping or abduction for extorting property, valuable security, etc., personating a public servant, wearing garb or carrying token used by public servant with fraudulent intent, act of terrorism---Appreciation of evidence---Power to record statements and confessions---Scope---Prosecution case was that wife of complainant along with accused persons extorted Rs. One Crore from him and extended threats of taking his life---During trial the prosecution case was mainly structured upon the examination-in-chief of complainant but his death before the cross-examination gave rise to a legal intricacy and it called for in-depth indulgence---Examination-in-chief of complainant was recorded but the case was adjourned as the defense counsel requested for an opportunity to prepare his brief---Subsequent thereto complainant could not appear in the witness box so as to be cross-examined by the defense and died natural death---During investigation, a statement under S.164, Cr.P.C of complainant was recorded by Judicial Magistrate---In the impugned judgment, the Anti-Terrorism Court placed explicit reliance upon 164, Cr.P.C. statement of the complainant and apparently by treating it as substantive evidence handed down guilty verdict to all the accused persons---Trial Court under erroneous legal notion treated 164, Cr.P.C. statement of complainant as admissible through necessary implication of S. 265-J, Cr.P.C.---Language of S. 265-J, Cr.P.C., was explicit in sense and shedded no ambiguity that statement of a witness under S. 164, Cr.P.C. recorded during investigation could only be treated as evidence, firstly if it was recorded in presence of accused, secondly if the accused had prior notice of it, thirdly if he was given an opportunity of cross-

examination, fourthly if such witness was produced and examined during trial--Police through application requested the Judicial Magistrate for recording the statement of complainant under S.164, Cr.P.C. and the needful of recording such statement was done---Nothing as such was available on record to gather that the accused in custody were served with some notice about the recording of such statement, thus the condition precedent of "if he had notice of it" postulated in S. 265-J, Cr.P.C. remained unfulfilled---Even otherwise, cross-examining a witness was essentially a right of accused to be provided with all fairness and seriousness---Though accused cross-examined complainant, but the fact remained that they had no prior knowledge about the exact nature of such statement and indeed were taken by surprise---Even the case diaries and the deposition of Investigating Officers were in eternal silence about the serving of a notice upon the accused persons so as to intimate them about the 164, Cr.P.C. statement to be recorded on the following day---Serving of a notice in accordance with S. 265-J, Cr.P.C. was not a simple formality, rather essentially a legal requirement which if not fulfilled was likely to entail consequences of discarding such incriminating evidence---Non-adherence to the mandatory provision of serving a notice before recording 164, Cr.P.C. statement in the case left not even least prospect of treating it as evidence---While being examined under S. 342, Cr.P.C, no question from the accused persons was asked about the 164, Cr.P.C. statement which inescapably was the mainstay of the prosecution case---Examination of an accused under S. 342, Cr.P.C., after the closure of prosecution evidence was an integral part of the trial and any flaw divulging therefrom was destined to have an adverse significance for prosecution case--- Circumstances established that the guilt of the accused persons remained unproved and they were handed down guilty verdict despite the prosecution case was bereft of sufficient proof---Appeal was allowed and accused were acquitted by setting aside convictions and sentences recorded by the Trial Court.

Ghulam Muhammad v. The State 1985 PCr.LJ 829; Abdul Hakeem and another v. The State PLD 1982 Kar. 975 and Muhammad Farooq v. The State PLD 1970 Lah. 845 rel.

### **(c) Criminal Procedure Code (V of 1898)---**

---S. 342---Examination of accused---Scope---According to the legislative mandate of S. 342(1), Cr.P.C., the accused was incumbently required to be confronted with the circumstances, which later could be used for awarding him guilty verdict---Section 342(1), Cr.P.C. comprising of two parts, out of which the earlier is a discretionary, whereas the latter was mandatory---According to first part, the court might be at any stage of inquiry or trial put questions to accused

regarding the incriminating circumstance but the second part of foregoing provision made it obligatory for the court to confront the accused with such evidence---Legislative wisdom ensuing from 342(1), Cr.P.C., rests in the idea that at the fag end of trial accused must be apprised about the incriminating evidence having come on record during prosecution evidence so as to provide him a fair opportunity to put forth explanation and to lead some defense evidence, if need be--- If the accused was not provided an opportunity to offer explanation for the part of incriminating evidence led by the prosecution, the very purpose of 342, Cr.P.C. would be rendered nothing but nullity.

Abdul Wahab v. Crown PLD 1955 Federal Court 88; Ali Ahmad and another v. The State and others PLD 2020 SC 201; Haji Jalat Khan v. Habibullah and others 2010 SCMR 1009; Sheral alias Sher Muhammad v. The State 1999 SCMR 697; Iftikhar Ahmed v. The State and others 2014 SCMR 7 and Qaddan and others v. The State 2017 SCMR 148 rel.

**(d) Penal Code (XLV of 1860)---**

---Ss. 365-A, 170 & 171---Anti-Terrorism Act (XXVII of 1997), S. 7--- Kidnapping or abduction for extorting property, valuable security, etc., personating a public servant, wearing garb or carrying token used by public servant with fraudulent intent, act of terrorism---Appreciation of evidence---Recovery of cash amount and other incriminating materials--- Scope---Prosecution case was that wife of complainant along with accused persons extorted Rs. One Crore from him and extended threats of taking his life---Record showed that recoveries were effected from the ordinary place of their abode but on different dates---Preposterously, the accused persons would get recovered the cash amount from the same place in successive intervals comprising upon 20 to 25 days---House which was cohabited though by the other family members of the accused persons but they ensured to keep the remaining cash amount at the same place so as to be recovered later on---Alleged ransom amount was neither tainted nor the currency numbers were noted at the time of payment---Recovery of such cash amount could in no manner be treated as incriminating in nature, in circumstances---Neither the recovered cash amount was placed in the custody of Moharrar/Station Clerk nor his statement under S. 161, Cr.P.C., was recorded in that regard---Though sound system and vehicle were recovered from accused and wife of complainant (since dead) respectively but no effort was made to ascertain the dates when said articles were purchased---Said omission gained significance when seen in the context that the accused persons allegedly purchased the said articles from the ransom amount---Investigating Officers candidly conceded about not incorporating their departure in the station diaries while leaving the police station for the afore-mentioned recoveries---Such recovery of untainted currency notes in a case of ransom for abduction was considered as a ground sufficient to term the supporting proceedings as dubious---Circumstances established that the guilt of the accused persons remained unproved and they were handed down guilty verdict despite the prosecution case was

bereft of sufficient proof---Appeal was allowed and accused were acquitted by setting aside convictions and sentences recorded by the Trial Court.

Sultan-e-Rome v. The State and another 2018 YLR 2535; Rehmat Ali alias Rehma v. The State and others 2018 YLR 1181 and Ihtesham-ul-Haq v. The State 2010 PCr.LJ 852 rel.

Babar Waheed, Rana Zulfiqar Ali Mehar Muhammad Iqbal and Zafar Pervaiz for Appellants.

Ch. Jawad Mehmood for the Complainant.

Hamayun Aslam, Deputy Prosecutor General for the State.

Date of hearing: 22nd December, 2021.

## **JUDGMENT**

**CH. ABDUL AZIZ, J.**---Appellants, namely, Muhammad Rizwan, Atif Sharif, Naveed Javed and Syed Muhammad Mukarram involved in case FIR No.1129/2018 dated 18.07.2018 registered under sections 265-A, 170 and 171, P.P.C. read with section 7 of the Anti-Terrorism Act, 1997 (hereinafter referred to as "ATA, 1997") at Police Station Nishtar Colony, Lahore, were tried by learned Judge Anti-Terrorism Court No.II, Lahore. Trial court vide judgment dated 02.08.2019 proceeded to convict and sentence the appellants in the following terms:--

"(i). Under section 365-A, P.P.C. to suffer imprisonment for life with forfeiture of whole property in favour of State.

(ii). Under section 7(e) of ATA, 1997 to suffer imprisonment for life.

Both the sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C was also extended to the convicts".

Challenging their conviction and sentence, Muhammad Rizwan, Atif Sharif, Naveed Javed and Syed Muhammad Mukarram filed Criminal Appeal No.57199 of 2019, Criminal Appeal No.57200 of 2019, Criminal Appeal No.57201 of 2019 and Criminal Appeal No.57203 of 2019, respectively. Since all these appeals are inter se connected, hence we intend to dispose of the same through this single judgment.

2. Succinctly stated the case of prosecution as unveiled by Kamran Munir Mirza (PW.1) in FIR (Exh.PA/1) is to the effect that he is resident of HBFC Society, Lahore and a businessman by profession; that he inherited house in Gulberg, which was sold out for Rs.13-crore; that he received his share of Rs.5 crore from the said sale proceeds and deposited it in HBL; that he came to know about the insincerity of his wife Mst.Zaiba, who in connivance with his adopted son Muhammad Rizwan after hatching conspiracy planted some bottles of liquor in his house; that Muhammad Rizwan along with his friends Atif, Naveed

and Muqarram while posing themselves as employees of ANF conducted raid, and recovered liquor from his residence; that his wife along with others extorted Rs.1 crore from him and extended threats of taking his life; that on 01.05.2018 at about 8:30 p.m. Rizwan again placed bottles of liquor and heroin in his house and Atif etc. as fake officials of ANF conducted raid and took him to an unknown place; that the accused detained the complainant at unknown place for 36-hours and threatened that if he did not give them Rs.3 crores, he would be slain; that accused Atif, Muqarram and Naveed Butt conversed with his wife and an amount of Rs.2 crores was settled to be given in lieu of avoiding the legal implications, which he promised to pay after reaching home; that on 09.05.2018 he along with his wife went to HBL and drew an amount of Rs.2 crores and came to house; that he rang Rizwan etc. to visit his house and in pursuance thereof they came and Atif received Rs.2 crores from him; that the accused extended threats that if he disclosed this fact to police, he would be done to death; that his wife had been frightening him that the accused were very cruel and they would commit his murder.

3. The matter after the registration of FIR was probed by Fayyaz Ehsan Inspector (PW.5), Muhammad Ameen Inspector (PW.12), Qadeer Bashir Inspector (PW.13), Umer Daraz Inspector (PW.23), Anwar Saeed Kingra DSP (PW.24) and Rana Muhammad Akmal Inspector (PW.25), during which they took steps towards the completion of investigation like arrest of the appellants and their co-accused, who in pursuance of their respective disclosures got recovered articles/cash amount on different dates. The detail of these proceedings in reference to the nature of articles, the date and place of recoveries are mentioned in the below mentioned schedule.

Name of appellant	Date of recovery	Place of recovery	Recovered article (s)
Muhammad Rizwan	18.07.2018	Ashyana Road	Motorcycle 125
	18.07.2018	Bank Stop His	through memo
	29.07.2018	house situated at	Exh.PD Rs.5 Lac
	07.09.2018	Korray Stop	through memo
	13.09.2018	Walton Shop of	Exh.PG Rs.5 Lac
	24.09.2018	his father His	through memo
	01.10.2018	house situated at	Exh.PD Car
	08.10.2018	Walton Road	through memo
		Koray Pind,	Exh.PM Sound
		Lahore His house	System worth
		situated at Street	Rs.4 Lac through
		No.2, Mohallah	memo Exh.PQ
		Qasian His	Rs.2 Lac through
		General Store	memo Exh.PK

		situated at Qasian Wali Gali Walton Road His house situated at Street No.2 Qasian Wali Gali Korray Pind His house situated at Korray Pind, Qasian Wali Gali	Rs.3 Lac through memo Exh.PT. Rs.5 Lac through memo Exh.PL
Zeba	18.07.2018	House of Muhammad Rizwan	Rs.2 Lac through memo Exh.PB
Syed Muhammad Muqarram	22.10.2018 29.10.2018 13.11.2018 06.01.2019 10.01.2019	His house situated at Ghousia Colony Fateh Garh His house situated at Ghousia Colony Fateh Garh His school in the name and style of Avicenna situated at Canal Point Housing Scheme House situated at Street No.4, House No.9, Walton Road, Lahore His house situated at House No.9, Street No.4 Walton Road, Lahore	Rs.50,000/- through memo Exh.PR Rs.50,000/- through memo Exh.PS Rs.50,000/- through memo Exh.PW. Rs.1 Lac through memo Exh.PHH Rs.1 Lac through memo Exh.PLL
Muhammad Usman	06.01.2019 08.01.2019	His house No.E-336, Street No.3, Walton, Lahore His house situated at 336-E Street No.3, Walton Road, Lahore	Rs.8 Lac through memo Exh.PGG Rs.2 Lac through memo Exh.PJJ
Atif Sharif	28.01.2019 11.02.2019 21.02.2019 02.03.2019 09.03.2019 17.03.2019	His house situated at 235-E Street No.2, Qadri Colony Walton Road, Lahore His house No.235-E Street No.2, Qadri	Rs.10 Lac through memo Exh.PMM Rs.5 Lac through memo Exh.PNN Rs.15 Lac through memo

		Colony Walton Road, Lahore His house No.235-E, Street No.2 Qadri Colony Walton Road, Lahore His house No.235-E, Street No.2 Qadri Colony Walton Road, Lahore His house No.235-E, Street No.2 Qadri Colony Walton Road, Lahore His house No.235-E, Street No.2 Qadri Colony Walton Road, Lahore	Exh.PRR Rs.10 Lac through memo Exh.PTT Rs.8 Lac through memo Exh.PVV Rs.3 Lac through memo Exh.PXX
Abdul Rasheed	11.02.2019 21.02.2019 02.03.2019 09.03.2019 17.03.2019	His shop situated at Street No.2, Mohallah Qasian Walton Road, Lahore Shop situated at Street No.2 Mohallah Qasian Walton Road, Lahore House No.E-201/3 Qasab Colony Street No.2 House No.E-201/3 Qasab Colony Street No.2 House No.E-201/3 Qasab Colony Street No.2	Rs.1 Lac through memo Exh.PQQ Rs.1,40,000/- through memo Exh.PSS Rs.2 Lac through memo Exh.PUU Rs.2 Lac through memo Exh.PWW Rs.2 Lac through memo Exh.PYY
Naveed Javed	13.09.2018 24.09.2018 13.11.2018 10.01.2019	His house situated at Qadri Colony Street No.2 His House situated at Qadri Colony Street No.2 Canal Paint Housing Scheme Harbanspura Lahore in	Rs.1 Lac through memo Exh.PN Rs.2 Lac through memo Exh.PJ Photocopy of rent deed through memo Exh.PX Rs.1 Lac through memo Exh.PKK

		Avicenna School His house situated at 233-E Street No.2, Walton Road, Lahore	
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4. The police after the completion of investigation placed the matter before the trial court where prosecution in order to prove its case against the appellants produced 26-PWs, out of them, Kamran Munir Mirza (PW.1), who is abductee as well as complainant of the case, Fayyaz Ehsan Inspector (PW.5), Muhammad Ameen Inspector (PW.12), Qadeer Bashir Inspector (PW.13), Umer Daraz Inspector (PW.23), Anwar Saeed Kingra DSP (PW.24) and Rana Muhammad Akmal Inspector (PW.25) who investigated the case at different point of time and Ishtiaq Ahmed Khan Civil Judge/Cum-Judicial Magistrate (PW.26) who recorded the statement of Kamran Munir Mirza under section 164, Cr.P.C. After the conclusion of prosecution evidence, the learned trial court also examined the appellants under section 342, Cr.P.C. during which they were asked the questions arising out of the prosecution evidence but they denied almost all such questions while pleading their innocence and false involvement in the case. Appellants neither made statements under section 340(2) of Cr.P.C. nor produced any evidence in their defence. On the conclusion of trial, the appellants were convicted and sentenced as afore-stated, hence the instant criminal appeals.

5. It is contended on behalf of appellants that the case of prosecution is nothing but jumble of lie arising out of matrimonial dispute of complainant with his wife to which the appellants also became victims; that the incident of abduction took place on 01.05.2018 whereas it was reported to police on 18.07.2018 and for this delay no explanation whatsoever was offered; that the delay gains more significance when seen in the context that the complainant was well connected and one of his cousins was a senior officer of FIA; that the detail of occurrence was brought on record during trial by complainant Kamran Munir Mirza as PW.1 but before cross-examination he died natural death, thus his statement could not be made basis for awarding conviction; that learned trial court committed an error by treating the statement of Kamran Munir Mirza recorded under section 164, Cr.P.C. as substantive evidence under Article 47 of Qanun-e-Shahadat Order, 1984; that though during investigation some cash amount was recovered from the appellants and was canvassed as proceeds of ransom amount but on account of flaws in the recovery proceedings, the same had no legal sanctity; that daughters of complainant were important witnesses in the case but none of them appeared during trial as witnesses and their non-appearance gives rise to an inference under Article 129 (g) of Qanun-e-Shahadat Order, 1984 and that since the prosecution failed to prove its case beyond ambiguity, thus conviction awarded to the appellants is

not maintainable. In support of afore-mentioned arguments, reliance was placed upon Nisar Muhammad v. Khanzali and another [PLD 1959 (W.P) Peshawar 115), Nasarullah v. The State (1995 MLD 515), Mumtaz Khan v. The State (1992 PCr.LJ 412), Muhammad Uzair v. The State (2005 YLR 1533), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Mst. Mehboob Bibi v. The State (2017 SCMR 1835) and Ihtesham-ul-Haq v. The State (2010 PCr.LJ 852).

6. On the other hand, the learned law officer assisted by learned counsel for the legal heirs of complainant came forward with the submissions that the delay in the registration of an abduction case is always considered insignificant and cannot be used to the detriment of prosecution case; that non-appearance of complainant for cross-examination was due to his demise, thus from this omission no premium can be given to the appellants; that even otherwise, during investigation complainant got recorded his statement under section 164, Cr.P.C. and since the appellants were provided ample opportunity of cross-examination, hence such statement of the complainant was admissible under Article 47 of Qanun-e-Shahadat Order, 1984; that the guilt of appellants was further established from the recovery of cash amount as well as from the sound system, motorcycle and the car purchased from the crime proceeds; that the appellants also pointed out the place where complainant was detained; that even the date of withdrawal of amount for paying ransom was proved from the corresponding dates of cheques exhibited during trial and that since prosecution proved its case against the appellant, hence the conviction awarded to them calls for no interference. In support of afore-mentioned arguments, reliance was placed on Hamza Alam v. The State (2021 YLR 380), Arbab Tasleem v. The State (PLD 2010 SC 642), Saeed Ahmad alias Saeed Akbar v. The State (1985 SCMR 1455), Roshan v. The State (1985 PCr.LJ 2312), Mumtaz and another v. The State (1992 MLD 1448) and Muhammad Hafeez v. Special Judge, Anti-Terrorism Court, Mirpurkhas and 2 others (2001 PCr.LJ 199).

7. Arguments heard. Record perused.

8. The gluttony of an unfaithful wife Zeba is canvassed by the prosecution as the root cause of this crime. Her husband Kamran Munir Mirza (PW.1) had derived handsome share from the sale of ancestral house and the amount was deposited in his bank account. Zeba (since dead) orchestrated a design with her self-proclaimed son Rizwan (appellant) for extorting money from her husband Kamran Munir Mirza (PW.1) and thereby foisted liquor and narcotics on two occasions, got him arrested in a sham raid conducted by fake officials of ANF. Since the tale of the crime is mentioned in para-2 above, hence it is not being recapitulated in the instant para as it will be an exercise in futility.

9. An in-depth analysis of the record unfolds that the crime is comprising upon two transactions, on each occasion the liquor and narcotics were foisted upon the complainant and handful of amount was extorted from him on the pretext of avoiding the legal implications of such recoveries. As per prosecution case, the raid was conducted by appellants Atif, Muqarram and Naveed Butt, who introduced themselves as ANF officials. The first incident occurred on 01.05.2018 and the second took place on 09.05.2018 but their detail was reported to police by Kamran Munir Mirza (PW.1) through his written application (Exh.PA) on 18.07.2018. The afore-mentioned delay of about 2 months gains significance when seen in the context that Kamran Munir Mirza was a well-settled businessman and one of his relatives, namely, Dr.Usman was Director, FIA, who even remained posted as DPO in different districts. Keeping in view the fact that as per canvassed accusations, an amount of Rs.30.000 Million was extorted from the complainant thus the crime, if having some truth, for all practical purposes was of higher magnitude. In accordance with attending circumstances, afore-mentioned delay of 2 months in reporting the crime to police, is disastrous for the case of the prosecution. In the case reported as Mst. Mehboob Bibi and others v. The State (2017 SCMR 1835) while dilating upon the factum of delay in a case of abduction for ransom, the Hon Hon'ble Apex Court held as under:-

"As per the prosecution, Usman Hameed was abducted on 01.12.2005 at about 04:00 p.m. but the FIR was got registered after four days i.e. 05.12.2005 at 03:30 p.m., therefore, there is a delay of four days in setting the machinery of law in motion. The complainant tried to explain the delay in reporting the crime to the Police by mentioning in the FIR that the appellants' side had threatened him that in that eventuality his son would be murdered but the said explanation does not appear to be plausible."

10. A circumspective scanning of record unfolds that the main edifice of prosecution case rests upon the evidence of complainant Kamran Munir Mirza (PW.1). Even during investigation, he was the sole person who provided the detail of crime like planting of narcotics, conducting of sham raid, his detention and release, payment of amount so demanded by the perpetrators as well as the imparting of crime's information to police. Kamran Munir Mirza (PW.1) was residing in HBFC Society, Lahore along with family comprising upon his wife Zeba and two daughters Arooba etc. The afore-mentioned Zeba was also arrayed as one of the accused in the case and was even arrested but as per prosecution case on 19.07.2018 while she was brought to the house of her husband for recovery, she committed suicide by jumping from the rooftop. So far as, the daughters of

Kamran Munir Mirza (PW.1) are concerned, despite being fully grown up young-girls and having mature age of deposing before the court, none of them appeared before the trial court to lift veil from the actual genesis of the transaction in question. It is anxiously noticed by us that none out of the two daughters was even made witness in the case. Though this is the prerogative of the victim of crime to decide the citing of the witness in the case but still if the evidence of an important witness is excluded for no good reason, such omission gives rise to many doubts and foremost out of them is to the effect that had such person appeared in the dock, he would have deposed unfavourably. The case in hand is no exception as even after skimming the file we have not come across even a single legally acceptable explanation for withholding the important evidence of both the daughters. In the foregoing circumstances, we are not left with any other option but to draw an inference in terms of Article 129 Illustration (g) of Qanun-e-Shahadat Order, 1984 (hereinafter referred to as "QSO, 1984"), which for ready reference is mentioned hereunder:-

129. Court may presume existence of certain facts. The Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and the public and private business, in their relation to the facts of the particular case.

#### Illustrations

The court may presume:

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

The Hon'ble Supreme Court of Pakistan in the case of Muhammad Rafique, etc. v. State and others (PLJ 2011 SC 191) observed as under:-

" .that if any party withholds the best piece of evidence then it can fairly be presumed that the party had some sinister motive behind it. The presumption under Article 129 (g) of Qanun-e-Shahadat Order can fairly be drawn that if PW would have been examined, his evidence would have been unfavourable to the prosecution."

11. Every complex legal question provokes the minds of jurists to ponder upon it and case in hand is of no exception. As mentioned above, during trial the prosecution case was mainly structured upon the examination-in-chief of complainant Kamran Munir Mirza (PW.1) but his death before the cross-examination gave rise to a legal intricacy and it calls for our in-depth indulgence. The examination-in-

chief of Kamran Munir Mirza (PW.1) was recorded on 31.05.2019 but the case was adjourned as the learned defence counsel requested for an opportunity to prepare his brief. Unfortunately, subsequent thereto Kamran Munir Mirza (PW.1) could not appear in the witness box so as to be cross-examined by the defence and died natural death. A pressing need is felt to mention here that during investigation, a statement under section 164 Cr.P.C (Exh.PBBB/1-11) of Kamran Munir Mirza was recorded on 07.08.2018 by Ishtiaq Ahmed Khan Judicial Magistrate (PW.26). In the impugned judgment, the learned Judge ATC placed explicit reliance upon 164, Cr.P.C statement of the complainant and apparently by treating it as substantive evidence handed down guilty verdict to all the appellants. It appears that the trial court under erroneous legal notion treated 164, Cr.P.C. statement of complainant Kamran Munir Mirza as admissible through necessary implication of section 265-J, Cr.P.C. The provision of section 265-J is placed in Chapter-XXII-A of Criminal Procedure Code, 1898 inserted through Law Reforms Ordinance, 1972 which pertains to trials before courts of Session. In order to adjudge the applicability of section 265-J to the case in hand it is considered essential to have a look upon its phraseology:-

"The statement of a witness duly recorded under Section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872." (emphasis provided)

The language of section 265-J is explicit in sense and sheds no ambiguity that statement of a witness under section 164, Cr.P.C recorded during investigation can only be treated as evidence, firstly if it is recorded in presence of accused, secondly if the accused had prior notice of it, thirdly if he is given an opportunity of cross-examination, fourthly if such witness is produced and examined during trial.

It is noticed that the police through application (Exh.PAAA) requested the Judicial Magistrate Model Town, Lahore for recording the statement of Kamran Munir Mirza under section 164, Cr.P.C and the needful of recording such statement was done on 08.08.2018. Nothing as such is available on record to gather that the accused in custody were served with some notice about the recording of such statement, thus the condition precedent of "if he had notice of it" postulated in section 265-J, Cr.P.C remained unfulfilled. Even otherwise, cross-examining a witness is essentially a right of accused to be provided with all fairness and seriousness. Though accused

cross-examined Kamran Munir Mirza, but the fact remains that they had no prior knowledge about the exact nature of such statement and indeed were taken by surprise. Even the case diaries and the deposition of Investigating Officers are in eternal silence about the serving of a notice upon the appellants so as to intimate them about the 164, Cr.P.C statement to be recorded on the following day. The serving of a notice in accordance with section 265-J, Cr.P.C. is not a simple formality, rather essentially a legal requirement which if not fulfilled is likely to entail consequences of discarding such incriminating evidence. The non-adherence to the mandatory provision of serving a notice before recording 164, Cr.P.C statement in the instant case, left not even least prospect of treating it as evidence. The question of serving prior notice for recording 164, Cr.P.C statement came up for hearing before the Hon'ble High Court of Sindh in case reported as Ghulam Muhammad v. The State (1985 PCr.LJ 829) and was dealt with the following observation:-

"When statement of P.W. Ayyub made under section 164, Cr.P.C. is tested in the light of the above principles laid down in PLD 1982 Kar.975, it is found that in the circumstances of this case much reliance cannot be placed on such statement. No notice in writing had been given to the appellant before such statement was recorded. Neither the police diary nor the statement of Investigating Officer indicates that any verbal notice in this regard was given to the appellant."

The mandatory requirement of notice arising out of section 265-J, Cr.P.C was further thrashed by a Division Bench of the Hon'ble Sindh High Court in another case reported as Abdul Hakeem and another v. The State (PLD 1982 Karachi 975) with the following observation:--

"A reading of this section makes it plain that the statement should be recorded in the presence of the accused, the accused should have notice of the recording of such statement, and he should have notice of the recording of such statement, and he should also be given an opportunity of cross-examining the witness. On the fulfillment of these conditions, the statement should be brought on record, within the discretion of the court. Such discretion should be exercised if in the process of recording such statement sanctity attaches to it, as normally, such statements are recorded only in cases involving capital sentence. The mere fact of a police officer stating that he put the accused on notice would not be sufficient. Such notice should be in writing and should also state that he has a right to cross-examine the witness. Normally, in these circumstances, the accused knowing peril in the process would attempt to engage an advocate and

ask for copies of police statements in advance, so as to effectively cross-examine the witness. Non-compliance with the spirit underlying section 265-J exposes the statement to serious criticism. After all, if an accused is suddenly marched off to the court and asked to cross-examine a witness, he cannot effectively exercise his right under the law. It is also cardinal principle of law enshrined even in the Constitution that every person has a right to be defended by an advocate of his choice. In these circumstances, if no proper notice is given, failure of justice might inevitably result and the court has to be on caution. Applying these tests to the instant case, we find that no notice in writing was given to the appellants before recording the statements under section 164 Cr.P.C. and there is absence of mention even in the police diary, as according to the Investigating Officer he did not even mention this fact in the police diary."

It further follows from the plain review of section 265-J, Cr.P.C that the 164, Cr.P.C statement of a witness will attain the status of evidence if the witness subsequently appears before the trial court and more importantly is examined as such. The appearance of witness and his examination are to be read in conjunction and not in isolation from each other so as to attain admissibility. Now the question arises what in law means the examination and whether the examination-in-chief of a witness in isolation from cross-examination can be treated as examination. The term "examination" is not defined in Article 2 of QSO, 1984 which stands for interpretations but a clue about it is traceable from Articles 132 and 133(1) wherein the examination of a witness is described to be comprising upon examination-in-chief, cross-examination and re-examination. The language of 133(1) of QSO, 1984 is of higher legal import, thus the foregoing provision is referred hereunder:-

"Witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined then (if the party calling him so desires) re-examine."

From Article 133(1) it convincingly evinces that the term "examination", compulsorily includes right of cross-examination, if so desired by the adversaries. In the instant case, the desire of the accused to cross-examine Kamran Munir Mirza (PW.1) is strongly reflected from the request of adjournment made on their behalf. In the given circumstances, we have no doubt in our minds that non-conducting of cross-examination of Kamran Munir Mirza in pursuance of his death rendered his examination incomplete. As a necessary corollary, the statement of Kamran Munir Mirza (PW.1) does not fit

into the requirements of section 265-J, Cr.P.C. so as to be treated as evidence during trial. This Court in case reported as Muhammad Farooq v. The State (PLD 1970 Lahore 845) while dilating upon almost similar proposition observed as under:-

"According to Section 137 of the Evidence Act, the examination of a witness means his examination-in-chief, his cross-examination and re-examination. Again section 138 of the Evidence Act confers a right of cross-examination upon the adverse party and regulates the order in which a witness can be examined in-chief, cross-examined and re-examined. The word "examination" used in section 252 of the Criminal Procedure Code has, therefore, to be read with reference to the meanings attached to the same word in section 137 of the Evidence Act."

(Note: Sections 137 and 138 of Evidence Act, 1872 are pari materia with Articles 132 and 133 of QSO, 1984).

12. In a wrestle with the proposition, we have also given considered thought to the applicability of Articles 46(1) and 47 of QSO, 1984 to the facts of the case in hand as these provisions were canvassed by the prosecution to be relevant. So far as, Article 46(1) of QSO, 1984 is concerned, from plain reading it is found to have no applicability to the facts of the case. Article 46(1) is restricted to the statement of a person regarding the causes and circumstances later leading to his death. Admittedly, Kamran Munir Mirza (PW.1) died natural death before cross-examination and 164, Cr.P.C statement (Exh.PBBB) narrates the tale of his ordeal arising out of an incident wherein a sizeable amount was extorted from him. Unambiguously, the 164, Cr.P.C statement (Exh.PBBB) of the complainant in the given circumstances by no stretch can be treated as relevant under Article 46(1) of QSO, 1984. So far as, Article 47 is concerned, before dilating upon its applicability, the foregoing provision is incumbently required to be looked into, thus is quoted hereunder:-

"Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;

Provided that

the proceeding was between the same parties or their representative-in-interest;

the adverse party in the first proceeding had the right and opportunity to cross-examine;

the question in issue were substantially the same in the first as in the second proceeding.

In order to better comprehend the true import and legislative intent of Article 47, it would be in fitness of things to bisect the foregoing provision and then to shed light upon its relevancy to the proposition in hand. Previous statement of a witness, whose appearance is unprocurable at trial will qualify for acceptance under Article 47 if it fulfills following prerequisites:-

- (i) It must be evidence of a witness;
- (ii) Such evidence must be recorded either in a judicial proceeding or before any person legally entitled to record it;
- (iii) Such evidence can be used in a subsequent judicial proceedings if its maker is dead or cannot be found or becomes incapable of giving evidence etc;

In the wake of what is mentioned above, we are confronted with the questions of foremost importance that whether the statement of Kamran Munir Mirza recorded under Section 164 Cr.P.C can be equated with evidence and whether such statement is recorded during judicial proceedings. So far as, the term "evidence" is concerned, it is defined in Article 2 (c) of QSO, 1984 and for reference sake is being quoted below:-

"Evidence" includes

- (i) all statements which the Court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry, such statements are called oral evidence, and
- (ii) all documents produced for the inspection of the Court; such documents are called documentary evidence;"

Though Article 2(c) is categorical in sense but still we intend to lay emphasis that it defines the evidence as all statements made by witnesses in the court regarding matters under inquiry. So far as, section 164, Cr.P.C is concerned, it pertains to statement of a witness and confession of an accused. Both the afore-mentioned terms are oftenly intermingled but indeed are distinct in legal sense and even the procedure to record them is at variance. We intend to reiterate

here that Article 47 of QSO, 1984 can be made applicable only for the evidence recorded during judicial proceedings, whereas a statement under section 164, Cr.P.C. can legally be recorded before the commencement of inquiry or trial as is evident from its subsection (1), which again for the clarity of proposition is being referred:-

"Any Magistrate of the First Class and any Magistrate of the Second Class specially empowered in this behalf by the Provincial Government may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial." (emphasis provided)

The specific embargo placed in Section 164 (1) Cr.P.C for recording a statement before the commencement of inquiry and trial is sufficient to hold that such statement is neither recorded by a court nor during judicial proceedings. Section 164, Cr.P.C. is placed in Chapter-XIV of the Code of Criminal Procedure, 1898 which is titled as "INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATION". Without scintilla of any ambiguity, the provision of 164, Cr.P.C, so far as it relates to statements of a witness, is a tool provided for collecting evidence and nothing beyond it. Even otherwise, at 164, Cr.P.C. stage, neither there is any lis pending before the Magistrate nor he is required to decide ultimately the fate of any pending controversy between the parties. The term evidence, in our view, stands for every type of proof presented before the court in accordance with some express legal provision intended to persuade the judge regarding the truth of alleged facts. The expression "judicial proceedings" used in Article 47 includes proceedings in the course of which evidence is or may be legally taken on oath. The proceedings before a judge or magistrate who has no jurisdiction to decide the pending lis cannot be equated with judicial proceedings in terms of Article 47 of QSO, 1984. Similar view was expressed by M. Monir in the Principles and Digest of the Law of Evidence (Fourth Edition) while embarking upon section 33 of the Evidence Act, 1872 (Article 47 of QSO, 1984). The term "judicial proceedings" was expounded upon in a case reported as Mir Sanad Khan and 6 others v. The State (PLD 2014 Balochistan 113) as under:-

" So far as judicial proceeding is concerned, it includes any proceeding in the course of which evidence is or may be taken on oath; however, it is not necessary that every proceeding in which evidence has taken on oath can be termed as judicial proceeding. Sometimes, Magistrate, while taking evidence on oath, does not do so judicially, because he, while doing so, does not determine the rights and liabilities between the parties inter

se. It is also suffice to add here that criminal trial and inquiry proceedings are independent of each other and different standard of evidence is required in both such proceedings. Result of one could not influence the other."

We have also given considered thought to the portion of Article 47, according to which the evidence of such witness is relevant if previously given before any person authorized by law to take it. Section 164, Cr.P.C is an enabling provision to record the statement of a witness prior to the commencement of trial but cannot in legal parlance be declared as evidence when read in conjunction with Article 2(c) of QSO, 1984. We reiterate here that according to Article 2(c), only such statement will attain the status of evidence which is made in relation to matters of fact under judicial probe. Accordingly, it can authoritatively be held that the magistrate while recording statement under section 164, Cr.P.C cannot be held as competent to take evidence. For further elucidating the proposition, we intend to illuminate the legislative wisdom spelling out from the phrase "evidence given in accordance with law before a competent authority" used in Article 47 of QSO, 1984. It manifests that a previous statement of a witness who subsequently becomes incapable of appearing in the dock at trial stage will become relevant if it was recorded by a competent authority through powers blessed by an express statutory provision, enabling him to record evidence. Since it is postulated in Article 47 that a previous deposition in order to be relevant in subsequent proceedings must be taken and recorded in accordance with law, therefore a statement under section 164, Cr.P.C. cannot be treated as relevant if such witness does not turn up during trial. Even otherwise, when such witness is not cross-examined, it will be fallacious to treat it as substantive evidence by ignoring the stance of the defence that a subsequent cross-examination was likely to shatter the facts so stated by the witness in his 164, Cr.P.C. statement. Now the question arises in what circumstances a previous statement of a witness can attain relevancy in subsequent judicial proceedings, without his appearance in the witness box. According to our wisdom, the provision of Article 47 of QSO, 1984 aims at protecting the evidence of a witness in cases like de novo trial wherein his attendance as witness cannot be procured on account of his death etc. In such an eventuality, Article 47 becomes operative because the previous deposition would be in line with the first and third proviso of Article 47 as question in issue involved and parties litigating are the same. The law favours an accused for providing him fair opportunity of defence and if the scope of Article 47 is widened to the extent of treating a 164, Cr.P.C. statement as substantive evidence it is likely to destroy the basic legal fabric. It needs no explication that in a criminal trial the accused is asked to counter the prosecution evidence in reference to the indictment and 164, Cr.P.C. statement is recorded without formulation of accusations and that too at investigation stage. The finding of the learned trial court on the question under consideration, if given legal backing by endorsing it is likely to entail consequences of legal complexity. It will give vent to a shrewd litigant to make a statement under section 164, Cr.P.C and then to go in hiding so as to persuade the court for treating his previous statement as a

legal substitute for examination during trial. The menace of getting adjournments on the pretext of preparation for cross-examination can well be catered and taken care of by the trial court through the appointment of counsel at State expense if the reluctance of privately engaged lawyer continues to persist.

13. There is yet another factor which impelled us to discard 164, Cr.P.C. statement (Exh.PBBB) of the complainant and not to use it as an incriminating circumstance for upholding the guilty verdict awarded to the appellants. It is noticed that while being examined under Section 342 Cr.P.C, no question from the appellants was asked about the 164 Cr.P.C statement which inescapably was the mainstay of the prosecution case. The examination of an accused under Section 342 Cr.P.C after the closure of prosecution evidence is an integral part of the trial and any flaw divulging therefrom is destined to have an adverse significance for prosecution case. According to the legislative mandate of Section 342(1) Cr.P.C, the accused is incumbently required to be confronted with the circumstances, which later can be used for awarding him guilty verdict. Section 342(1) comprises of two parts, out of which the earlier is a discretionary, whereas the latter is mandatory. According to first part, the court may at any stage of inquiry or trial put questions to accused regarding the incriminating circumstance but the second part of foregoing provision makes it obligatory for the court to confront the accused with such evidence. The legislative wisdom ensuing from 342(1) rests in the idea that at the fag end of trial accused must be apprised about the incriminating evidence having come on record during prosecution evidence so as to provide him a fair opportunity to put forth explanation and to lead some defence evidence, if need be. It goes without saying that if the accused is not provided an opportunity to offer explanation for the part of incriminating evidence led by the prosecution, the very purpose of 342, Cr.P.C. will be rendered nothing but nullity. The view so formed by us is having the backing of well entrenched principle emanating from long list of judicial precedents and foremost out of them is Abdul Wahab v. Crown (PLD 1955 Federal Court 88) and an excerpt therefrom is quoted below:-

"The opening words of the section are very important. It is for the purpose of enabling the accused to explain the circumstances appearing in evidence against him that his examination is needed. Where the circumstances appearing in evidence against him are not put to the accused and his explanation is not taken thereupon, it cannot be said that the purpose of section 342 has been fulfilled. It is not a mere formality, but is an essential part of the trial that the accused should be given notice of the point or points which he must meet in order to exonerate himself. In Tani's case 20 Cr.LJ 12 (Nag.), it was held in order that the

accused may explain all the facts appearing in the evidence against him, it is necessary that his attention should be directed to all the vital parts of the evidence against him, specially if he is an ignorant person who cannot be expected to know or understand what particular parts of the evidence are or are likely to be considered by the Court to be against him. In Alimuddin's case (52 Cal. 522), it was laid down the Court should not only point out to the accused the circumstances appearing in the evidence which require explanation but it must out of fairness of the accused exercise that power in such a way that the accused may know that points in the opinion of the Court require explanation and failure or refusal on the part of the accused to give the explanation will entitle the Court to draw an inference against him. In the Calcutta case cited above, it was also pointed out that the word 'generally' does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the questions should relate to the whole case generally, and should not be limited to any particular part or parts of it. The word 'generally' does not mean that the accused cannot be subjected to a detailed examination by the Court. The law intends that the salient points appearing in the evidence against the accused must be pointed out to him in a succinct form and that he should be asked to explain them if he wished to do so."

In a recent pronouncement reported as Ali Ahmad and another v. The State and others (PLD 2020 Supreme Court 201), the Hon'ble Apex Court while dilating upon an omission of trial court to confront the accused with incriminating evidence during his 342, Cr.P.C examination observed as under:-

"Bare reading of section 342, Cr.P.C shows that its primary purpose is to enable the accused to know and to explain and respond to the evidence brought against him by the prosecution. It is essential that attention of the accused must be brought to all the vital parts of the evidence brought against him by the prosecution, especially if he is an ignorant person who cannot be expected to know or understand what particular parts of the evidence are or are likely to be considered by the Court to be against him. The purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain."

If any further reference is required that can be made to the cases reported as Haji Jalat Khan v. Habibullah and others (2010 SCMR 1009),

Sheral alias Sher Muhammad v. The State (1999 SCMR 697), Iftikhar Ahmed v. The State and others (2014 SCMR 7), Qaddan and others v. The State (2017 SCMR 148).

14. We have also eloquently pondered upon the recoveries effected from the appellants and are leaned to hold that the infirmities noticeable from record render such proceedings unworthy of any credence. Since the detail of articles recovered from the each appellant is mentioned in para-3 above, hence we feel no compulsion to recapitulate them in the instant para. Firstly, it is noticed from the above data that most of the above-mentioned recoveries were effected from the ordinary place of their abode but on different dates. It seems preposterous that the appellants would get recovered the cash amount from the same place in successive intervals comprising upon 20 to 25 days. It sounds no logic that the house which is cohabited though by the other family members of the appellants but they ensured to keep the remaining cash amount at the same place so as to be recovered later on. Secondly, it is noted that the alleged ransom amount was neither tainted nor the currency numbers were noted at the time of payment. In the foregoing circumstances, the recovery of such cash amount can in no manner be treated as incriminating in nature. Thirdly, it is observed that neither the recovered cash amount was placed in the custody of Moharrar/Station clerk nor his statement under section 161, Cr.P.C. was recorded in this regard. Fifthly, we have taken note of the fact that though sound system and vehicle were recovered from Muhammad Rizwan (appellant) and Zeba (since dead) respectively but no effort was made to ascertain the dates when these articles were purchased. This omission gains significance when seen in the context that the appellants allegedly purchased these articles from the ransom amount. We also took exception of the fact that the Investigating officers candidly conceded about not incorporating their departure in the station diaries while leaving the police station for the afore-mentioned recoveries. In the case reported as Sultan-e-Rome v. The State and another (2018 YLR 2535), the recovery of an incriminating article effected from the same place but on second occasion was declared to be doubtful and discarded. Similarly, in another case reported as Rehmat Ali alias Rehma v. The State and others (2018 YLR 1181), the failure of prosecution to prove the exclusive possession of accused over the place of recovery persuaded the Court to reject such proceedings. Likewise, in the case reported as Ihtesham-ul-Haq v. The State (2010 PCr.LJ 852), the recovery of untainted currency notes in a case of ransom for abduction was considered as a ground sufficient to term the supporting proceedings as dubious.

15. The crux of above discussion, if summarized, leads to an irresistible conclusion that the guilt of the appellants remained unproved and they were handed down guilty verdict despite the prosecution case was bereft of sufficient proof. On a departing note, we intend to dilate upon another issue which cropped up from the submission of the case law authored by one of us which though was not approved for reporting but still was printed in a law journal. The

publication of a judgment is regulated through Law Reports Act (XVIII of 1875) and its sections 6 and 7 are reproduced hereunder:--

"6. Restriction on the publication of judgments and orders. No judgment or order of a Court or Tribunal shall be published or printed by any publisher, printer or any other person, unless it is approved for reporting by a Court or Tribunal or is certified under Section 5.

7. Penalty. (1). Whosoever contravenes the provisions of section 6 shall be punished with fine which may extend to one lac rupees or in default of payment of fine with simple imprisonment for a term which may extend to six months.

(2). All copies of a publication in respect of which a person is convicted under subsection (1) shall stand forfeited to the Provincial Government."

The provisions of Law Reports Act (XVIII of 1875) were challenged through a Shariat Appeal before the Hon'ble Apex Court in case reported as Dr. Abdul Malik Irfani v. Federation of Pakistan (1999 SCMR 2690), by canvassing them repugnant to the injunctions of Islam but met the fate of dismissal. Apparently, the wisdom behind the enactment of Law Reports Act (XVIII of 1875) aims at ensuring progression of jurisprudence, the one source of which is judicial precedents. Indeed, when a judge writes a judgment and approves it for reporting, he contributes his humble effort towards the evolvement of proper jurisprudence which otherwise is a tool of learning for the legal fraternity. Without commenting any further upon this issue, it is expected that the publishers of Law Digests will give a second thought to printing a judgment, not approved to be reported by its author judge.

16. Above are the reasons of our following short order of even date:-

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"For the reasons to be recorded later, the afore-captioned criminal appeals are allowed and while giving benefit of doubt in favour of appellants, namely Muhammad Rizwan, Atif Shrif, Naveed Javed and Syed Muhammad Mukaram, they stand acquitted of the charges; resultantly their conviction and sentence passed by the learned Judge Anti-Terrorism Court-II, Lahore through judgment dated 02.08.2019 in case FIR No.1129/2018 18.07.2018 registered under Sections 365-A, 170, 171, P.P.C. read with section 7 of Anti-Terrorism Act, 1997 at Police Station Nishtar Colony, Lahore, whereby all the appellants were inflicted the following sentence, is set aside:-

(i). Under section 365-A, P.P.C. to suffer imprisonment for life along with forfeiture of their whole properties in favour of State.

(ii). Under section 7 (e) of Anti-Terrorism Act, 1997 to suffer imprisonment for life.

Both the sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C. was also extended to the appellants.

Appellants, namely Muhammad Rizwan, Atif Shrif, Naveed Javed and Syed Muhammad Mukaram are in custody; they be released forthwith if not required to be detained in any other criminal case."

JK/M-80/L Appeals allowed.

