

# **IN THE FEDERAL SHARIAT COURT**

( APPELLATE JURISDICTION )

## **PRESENT.**

**HON: MR. JUSTICE DR. FIDA MUHAMMAD KHAN.**  
**HON: MR. JUSTICE SAEED-UR-REHMAN FARRUKH.**  
**HON: MR. JUSTICE ZAFAR PASHA CHAUDHRY.**

**Cr. Appeal No. 45/L of 2002.**

**Cr. Murder Ref.No.1/L of 2002**

Ali Hussain S/o Munir Ahmad,  
Caste Arain, R/o Chak No. 181/RB Karri Bhait,  
Police station, Shahkot,  
District Sheikhpura --- Appellant

## **Versus**

The State. --- Respondent.

Counsel for the appellant --- Sh. Khizar Hayat,  
Advocate.

Counsel for State --- Mr.Aftab Ahmad Khan,  
Advocate.

FIR No. & Date --- No.84/2001 dated 21.2.2001.  
Police station Shahkot, District Sheikhpura.

Date of decision of --- 16.2.2002.  
trial Court

Date of Institution --- 25.2.2002.

Date of hearing --- 22.2.2006.

Date of decision --- 31.3.2006.

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**JUDGMENT**

**SAEED-UR-REHMAN FARRUKH, J.-** This appeal is directed against the judgment dated 16-2-2002 passed by the Additional Sessions Judge Sheikhpura, whereby the appellant was convicted under section 302-B PPC and sentenced to death as tazir with compensation of Rs.50000/- or in default to further undergo six months R.I. He was also convicted under section 18 read with section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to ten years R.I. The amount of compensation, if recovered, was ordered to be paid to the legal heirs of the deceased Asma Rafique.

2. Genesis of the case may be narrated. On 21-2-2001 Muhammad Rafique (PW-13) made a statement in writing Ex-PD before Ahmad Yar ASI police station Shahkot (PW-10) at Allied Hospital Faisalabad about the alleged occurrence that took place on 12-2-2001. The complainant alleged that he was resident of Chak No. 181/RB Karri Bhait and had four children, out of whom his eldest daughter Mst.

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Asma Rafique aged 16 years was student of 8<sup>th</sup> class and hafiza

Quran. On 12-2-2001 he alongwith his wife Mst. Sughran Bibi (PW-

14) had gone to Shahkot to fetch some medicines while younger

children had gone to school, leaving Mst. Asma Rafique alone in the

house. At about 10.00 a.m Ali Hussain appellant trespassed into the

house and on finding the deceased alone made indecent advances. She

refused to submit to his lust and raised hue and cry on which

grappling took place. After dragging her in the kitchen the appellant

sprinkled kerosene oil on her and lit the fire. Almost immediately

thereafter he (complainant) and his wife reached the spot. The

appellant succeeded in making good his escape. Number of persons

already gathered at the spot had extinguished the fire but in the

meantime Asma Rafique suffered major burns. She was shifted to

Shahkot hospital and given treatment by the doctor present there.

Later on, he referred her to Allied Hospital Faisalabad. The injured

remained admitted in the said hospital for nine days while he

(complainant) was busy in attending to her. It was under the weight of

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sheer worry and concern for his ailing daughter that he could not

lodge report at the police station, soon after the occurrence. Mst.

Asma Rafique succumbed to the injuries on 20-2-2001 at about 4.00

p.m. The complaint was, in due course, reduced into formal FIR (Ex-

PD/1).

3. Investigation was initiated. The appellant could not be apprehended as he had gone underground. He was ultimately arrested on 21-3-2001. After completion of investigation the appellant was challaned to court to face trial for offences under sections 302(b) PPC and sections 18 read with section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

4. The appellant pleaded not guilty to the charges levelled in the charge sheet on which the prosecution led its evidence. It examined as many as 15 witnesses in support of its case.

5. Muhammad Akram constable PW-1 deposed that on 21-2-2001 the dead body of Mst. Asma Rafique was handed over to him by the investigating officer in Allied Hospital, Faisalabad for post mortem

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examination. He escorted it to the mortuary at Sheikhpura. After post mortem examination the doctor handed over to him the last worn clothes of the deceased, which were produced before the investigating officer. These were taken into possession vide recovery memo Ex-PA.

6. Mushtaq Ahmad constable (PW-2) deposed that on 21-2-2001 he went to the spot alongwith Ahmad Yar ASI and others. Sumaira Bibi daughter of the complainant (PW-15) produced a bottle P-2, said to contain kerosene oil, which was found lying near the place of occurrence. It was taken into possession vide recovery memo Ex-PB.

He and Nasir Ahmad constable signed the memo as marginal witnesses. The bottle was sealed into parcel by the police. He went on to depose that on 14-3-2001 Mst. Sumaira Rafique produced a letter pad alongwith photo copy of the envelop P-3/1-2 addressed to Mr. Irshad Ahmad Haqqani, Senior Colum writer/Editor, Daily Jhang, Lahore which was taken into possession by the investigating officer vide memo Ex-PC. He and Nasir Ahmad signed this recovery memo

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also. According to him the bottle P-2, at the time of recovery, was empty.

7. Muhammad Imtiaz. Head Constable (PW-3) who was working as Moharrir Head Constable at police station Shahkot at the relevant time, deposed that the investigating officer handed over to him one sealed parcel said to contain a bottle for keeping the same in the malkhana. The appellant was arrested by Hamad Akhtar SHO on 21-3-2001. His fingerprints as well as the bottle were handed over to Nasir Ahmad constable for onward transmission to the Finger Print expert Lahore.

Nasir Ahmad constable PW-4 supported Mushtaq Ahmad constable about their visit to the spot alongwith Ahmad Yar ASI and recovery of bottle as well the documents, above mentioned.

He went on to depose that on 14-3-2001 he alongwith SHO proceeded to Lahore where photo copy of the letter addressed to Mr. Irshad Ahmad Haqqani and an envelop containing his address P-3/1-2 were obtained by the SHO vide memo Ex-PC. On 21-3-2001 the

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parcel said to contain empty bottle alongwith finger prints of the accused were handed over to him by the Moharrir for onward transmission to the office of Finger Print Bureau, Lahore. He produced the same in the said office intact.

Zulfiqar Ali Head Constable PW-5 recorded formal FIR on the basis of the written complaint of Muhammad Rafique PW, which was received in the police station.

Tahir Naeem PW-6 deposed about preparation of site plan at the pointation of the witnesses.

8. Statement of Dr. Foqia Asif, Women Medical Officer, District Headquarter Hospital Sheikhpura PW-7 is quite material. She deposed that on 21-2-2001 she conducted post mortem examination on the dead body of Mst. Asma Rafique daughter of Muhammad Rafique. She found the following injuries on her person:-

"External injuries

Superficial burn on face and both arms and neck and chest were deep burn. Total 45% burn. Deep burn on front of chest. Tracheostomy done and 3 cm incision present and vene section present on both legs".

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She went on to depose that this injury was ante mortem and was caused by fire.

In her opinion the death was caused due to shock and septicemia and cardiorespiratory failure due to 45% burn, which was sufficient to cause death in ordinary course of nature. Time between injury and death was nine days and between death and post mortem 20 to 24 hours. She proved the carbon copy of post mortem report as Ex-PF and pictorial diagram showing the location of the injuries as Ex-PF/1.

In reply to a question put by the defence counsel she gave description of burns as under:-

- |                              |   |     |
|------------------------------|---|-----|
| 1. Full arms including hands | = | 18% |
| 2. Full face and neck        | = | 9%  |
| 3. Upper part of trunk       | = | 9%  |
| 4. Lower part of trunk       | = | 9%  |



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She deposed that she had mentioned the deep burn on the chest, neck, face and both arms but she did not mention the condition of eyes or that the eye lids were burnt. According to her tracheotomy was done when trachea and "lyrancy" were inflammed and patient was facing difficulty in breathing. After tracheotomy the power of speech was lost. The tracheotomy was performed on 15-2-2001. The patient was badly septicimized.

9. Mrs. Pervaiz Aslam Sheikh Examiner of questioned documents, Forensic Science Laboratory, Lahore deposed that on 24-4-2001 she was posted as Examiner handwriting Expert in the above mentioned Laboratory. The "question paper" and the routine writing of Mst. Asma Rafique were received in the laboratory for comparison. She examined the "question paper" (Ex-PG) and the note book (Ex-PG/1) containing the writing of the deceased and found them to have been written by "one and the same handwriting" vide her report Ex-PH, which bore her signature as well as that of the Director of the Laboratory.

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She admitted that she was not in possession of the photographs and chart prepared by her with regard to the questioned writing on the basis of which she had formulated her opinion. The learned trial Judge directed her to bring the original record.

The witness again entered the witness box on 27-11-2001 and was subjected to further cross-examination. She deposed that she had compared all the letters of the "question paper" with the handwriting sample ( Note book Ex-PG/1) qua the corresponding letters available therein. She denied the suggestion that the sample writing was different from that of the "question paper". She volunteered that in case of illness or stress general appearance of the writing might differ but the characteristic remained consistent. She admitted that she did not prepare the graph for comparison. She denied the suggestion that she did not conduct proper examination and prepared a careless report.

10. Dr.Muhammad Shafique, Medical Officer PW-9 deposed that on 20-2-2001 he was working as House Officer in Allied Hospital

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Faisalabad. The injured Asma Rafique was admitted as patient in

Nishtar Ward of the hospital. On the same day she became pulseless and BP less. The attempts to resuscitate her failed and she was declared to be dead at 4.00 p.m. Report in this behalf (Ex-PJ) was in his hand and bore his signature.

According to the witness the patient remained under treatment in Allied Hospital for eight days. The whole face of the patient contained first degree burns right from the neck to the hair line including the ear and "hairs" were partially involved. The eyes lashes and eye brows were also burnt.

11. Ahmad Yar ASI (Retd.) PW-10 deposed that on 20-2-2001 while posted as ASI at police station Shahkot, on receipt of information through wireless, he proceeded to Allied Hospital Faisalabad and recorded statement of Muhammad Rafique son of Muhammad Sharif complainant (Ex-PD) which was sent to police station for registration of the case through Mushtaq Ahmad constable.. The statement was signed by Muhammad Rafique in

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token of its correctness. He prepared injury statement Ex-PJ and also inquest report Ex-PK (of the deceased) and handed over the dead body to Muhammad Akram and Riaz Ahmad constables. He also took into possession document Ex-PG which was produced by Muhammad Rafique complainant vide recovery memo Ex-PL. He then proceeded to the spot. An empty bottle alleged to contain kerosene oil lying at the place of occurrence, was produced by Sumaira Rafique. It was made into sealed parcel and taken into possession vide recovery memo Ex-PB.

He went on to depose that the offence under section 18/10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was added. The investigation was taken over by the SHO on 21-2-2001.

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The cross-examination of this witness is quite significant. He deposed that when he recorded the statement of the complainant {Ex-PD) he also produced Ex-PG, a written paper alleged to be in the handwriting of the deceased. He did not dispatch the document Ex-PG alongwith the complaint Ex-PD to the police station as he had

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taken the same into possession through a separate memo dated

21-2-2001 and had recorded supplementary statement of Muhammad

Rafique with regard to its production. He admitted that during the

course of his investigation 32 persons joined the investigation and

majority of them did not support the case of the prosecution.

12. Hammad Akhtar S.I./SHO PW-11 took over the investigation

of the case on 21-2-2001 and took further steps regarding

investigation inclusive of arrest of Ali Hussain and obtaining of his

thumb impressions (Ex-PN). He went on to depose that on 14-3-

2001 he appeared before the staff Officer of the then Governor,

Punjab and collected the photo copies of letter and envelope,

Ex-P-3/1 and Ex-P-3/2 respectively vide recovery memo Ex-PG. He

examined Dr. Shafique Niazi and Dr. Liaqat Ali Rana, Registrar

/M.O, Plastic Surgery Burn Unit, Allied Hospital, Faisalabad with

regard to the writing (Ex-PG) and both the doctors scribed their

comments on Ex-PL. He sent the finger prints of the accused

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alongwith the bottle (P-2) to the Finger Print Bureau through Naseer

Ahmad constable.

( The report of the Bureau at page 142 of the paper book was to the effect that no decipherable imprint could be found on the bottle.)  
After receipt of the report from the handwriting expert he prepared supplementary challan on 23-7-2001.

He deposed about collection of the record from civil Hospital Shahkot pertaining to the admission of the injured in the said hospital vide Ex-PD. He conceded that, as per direction of the DSP, a proclamation was made through loud speaker in the village that if any body had seen the accused committing this crime he should come forward but none except the PWs appeared in support of the prosecution version.

He established contact with Mr. Irshad Ahmad Haqqani with the request requested him to hand over the original letter but he refused to oblige. He, however, learnt from his office that a copy of the same was dispatched to the Governor by the aforesaid columnist.

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He then approached the P.S.O to the Governor and procured photo copies of the said letter (P-3/1) and the envelope (P-3/2). These were not sent to the hand writing expert.

13. Imtiaz Ahmad Cheema, D.S.P, Sangla Hill Circle appeared as PW-12 and deposed that on the receipt of the information about the occurrence he went to the spot and took over the investigation. On 18-4-2001 he took into possession a note book said to contain the handwriting of Mst. Asma Rafique vide memo Ex-PN. It was produced before him by Muhammad Rafique complainant. The note book was handed over to the SHO for onward transmission to the office of handwriting expert for comparison. On receipt of the report of handwriting expert he recommended for submission of the challan in the court.

During cross-examination, he stated that he took over the investigation of the case on 9-4-2001 and despite service the complainant did not turn up. He conceded that 65 persons appeared before him and he formed the view that the case was doubtful. He

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brought on record affidavits of fourteen persons in support of plea of

innocence of the accused. According to him, the occurrence took

place as a result of reprimanding of the deceased by her father. He

concluded that it was not a case of murder but it was a case of suicide

(objected to by the learned DDA). He stated that he did not

investigate the factum as to whether the school was middle school or

high school. The SHO had recorded the statement of Headmistress

regarding the note book produced by the complainant. The

headmistress was of Nathuwala High School and not of Karri Bhait

school (the village where occurrence took place). He denied the

suggestion that he prepared forged note book with the connivance of

the complainant to support his case.

14. Muhammad Rafique complainant did not appear in court for

recording his statement despite issuance of notices/ summons for

quite sometime. He ultimately entered appearance on 13-2-2002.

Strangely enough, the learned trial Judge administered oath to him



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and recorded his detailed statement (about his failure to promptly appear in court).

Be that as it may, significant reason was advanced by Muhammad Rafique complainant about his inability to appear earlier. He deposed that he left his house situated in village Karri Bhait Chak No. 181/R.B due to the fear of the residents of the village as they were pressurizing him to effect compromise with the accused party. The police failed to give him any protection. He even made an application before Hammad Akhtar Sheikh S.I for relief but to no effect. He was forced to leave his house alongwith his entire family and shifted to Jaranwala and then to Sahiwal and Pakpattan. He returned to his house one month earlier but during the interregnum the police never contacted him.

Thereafter, Muhammad Rafique complainant was again administered oath as PW-13 and he deposed about the occurrence. He stated that Mst. Asma Rafique aged about 16 years was his daughter.

She was Hafiza Quran and student of 8<sup>th</sup> class. On 12-2-2001 he

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alongwith his wife went to hospital of Muhammad Rashed at Shahkot

whereas his younger daughter Sumaira Rafique alongwith her

younger brother had gone to attend their school. Mst. Asma Rafique

was alone in the house. His nephew Mudasar received a telephone

call from his house with the information him that his daughter had

been set on fire by some one. His nephew again confirmed this

message from Naveed with a request to bring some transport to reach


the village immediately. When he came out of the hospital he found

Abdul Ghani his maternal uncle standing and a car was parked

besides him. He and his wife came to the village in that car. When he

entered his house he found his daughter lying on a bed covered with a

quilt. When he entered the kitchen room he found there was a sign of

fatness (  ) within the area of 3 x 4 feet on the floor. Two

match sticks was also lying there. He stated that the deceased was

shifted to Shahkot hospital and on enquiry from the doctor as to what

had happened he disclosed that he learnt from the people that she had

sustained burns from the oil stove. The injured was referred to Allied

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Hospital Faisalabad where she succumbed to the injuries after stay in the hospital for nine days. His statement (about the occurrence ) was recorded as Ex-PD.

He deposed that he produced written statement of Mst. Asma Rafique before the police which was taken into possession vide recovery memo Ex-PL. He also produced the note book containing to the hand writing of Mst. Asma Rafique deceased before DSP Sangla Hill which was taken into possession vide recovery memo Ex-PN. /

During cross-examination he stated that injured Asma Rafique did not talk as long as she remained in Shahkot hospital. She regained senses after three days in Allied hospital Faisalabad. Her right hand was in perfect condition. In the Allied hospital the doctor subjected her to tracheotomy. The injured talked to him by making gestures.

It is pertinent to note that the assertion of Muhammad Rafique about handing over to the police the written statement of the deceased (Ex-PG) and her note book (Ex.PG/1) as well as recovery memos

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prepared in lieu thereof (Ex-PL) and (Ex.PN) respectively, were not challenged by the defence during cross-examination.

15. Mst. Sughran Bibi, wife of Muhammad Rafique (PW-14) deposed that she alongwith her husband had gone to Shahkot leaving Mst. Asma Rafique alone in the house. They received a telephonic message that some body had put her daughter on fire. They rushed to their house in a car. Firstly her daughter was shifted to Shahkot hospital and then to Allied Hospital Faisalabad. She succumbed to the injuries after nine day's stay in the hospital. The witness deposed that her husband produced hand written statement of Mst. Asma Rafique in her presence to the police which was taken into possession by it.

16. Mst. Sumaira daughter of Muhammad Rafique (aged 14 years at the time of her deposition in court ) appeared as PW-15 to depose about the occurrence. On noticing that the witness was minor the learned trial Judge put a few question to test her ability to make statement. The witness gave clear and correct answers to the

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questions put to her whereafter she was administered oath and her statement was recorded.

Mst. Sumaira Rafique deposed that the deceased was her elder sister and was burnt to death one year ago. She (witness) was in her school at that time. Her sister was alone in the house. Her sister was sitting and the fire was extinguished when she reached home. The deceased told her that Ali Hussain accused had put her on fire. She stated that Ali Hussain was present in court as accused. She produced a bottle (P-2) said to contain kerosene oil before the investigating officer which was taken into possession vide recovery memo Ex-PB. The note book Ex-PG/1 belonging to her sister Asma Rafique deceased was produced by her father, before the police.

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During cross-examination she stated that her father and mother had not yet arrived there when she reached home. Number of females was present at that time. The deceased was lying on a charpai. Her sister was privately studying in 8<sup>th</sup> class. In reply to question, she asserted to have stated before the police about disclosure of her sister

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that she was set on fire by Ali Hussain appellant. She was confronted

with her statement Ex-DD (under section 161 Cr.P.C) and it was

found that it was so recorded there.

17. On 15-2-2002 the learned DDA tendered in evidence the report of chemical examiner Ex-PO and closed the case of the prosecution (this report was in negative).

18. After conclusion of the prosecution evidence, the statement of the appellant was recorded under section 342 Cr.P.C . He denied the correctness of all the allegations levelled against him during the course of trial and pleaded innocence. In reply to the question as to why the case has been registered against him he took up the plea that he was falsely implicated due to enmity and bad blood between him and the complainant who had earlier involved him (appellant) in a false case of theft. He was declared innocent by the police and the case was cancelled. He claimed that Mst. Asma Rafique committed suicide due to aggressive attitude of her father who was a mentally deranged person. The complainant "just to protect his family

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honour" cooked up a false story. He neither produced any defence evidence nor entered the witness box to depose on oath in terms of section 340(2) Cr.P.C in disproof of the allegations levelled against him.

19. We have heard the learned counsel for the parties at great length and perused the entire record with their assistance.

20. It was submitted by Shaikh Khizar Hayat, Advocate learned counsel for the appellant that the prosecution had miserably failed to prove its case against the appellant beyond reasonable doubt. He contended that Ex-PG was smuggled into the record later on as it was not mentioned in the FIR. The opinion of the handwriting expert Mrs.

Pervaiz Aslam Sheikh, PW-8 was criticized as being worthless in that no reasons were given by the lady expert for forming opinion as to the handwriting of the deceased on the "question document" (Ex-PG).

Besides, the sample document i.e. note book Ex-PG/1 was not proved to be in the hand of Asma Rafique deceased and therefore, question of comparison between the two hardly arose.

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On the other hand the learned counsel appearing for the State submitted that there was over-whelming evidence of incriminating nature against the appellant which conclusively proved his guilt. He contended that it was a case of dastardly murder of a young girl by the appellant who did not submit to his lust and lost her life in the struggle to save her chastity.

21. Undisputedly, Mst. Asma Rafique died as a result of burns caused by fire. According to the doctor the entire upper part of the body was burnt. The deceased was firstly admitted to Shahkot hospital and, apparently, finding her condition as precarious she was referred to Allied Hospital Faisalabad. She remained admitted in that hospital for nine days struggling between life and death and ultimately breathed her last on 20-2-2001. According to the doctor the death-occurred due to shock and septicemia and cardiorespiratory failure due to 45% burn, which was sufficient to cause death in ordinary course of nature.



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22. The moot question that required determination was as to whether she was put to fire by the appellant, as claimed by the prosecution, or she committed suicide.

Statement of Mst. Sumaira Rafique PW-15 is quite material for determining the cause of the fire which resulted in death of the deceased. She deposed that at the relevant time she was in her school while the deceased was alone in the house. When she reached home the fire of her sister had been extinguished. The deceased told her that Ali Hussain appellant had put her on fire. Mst. Sumaira Rafique was cross-examined at length but she stood her ground and gave cogent and consistent replies to all the searching questions put to her. The statement made by the deceased to Mst. Sumaira Rafique about the implication of the appellant for putting her on fire was of great significance which could not be brushed aside on any justifiable ground. Admittedly, Mst. Sumaria Rafique was not inimical towards the appellant. We were duly impressed by her deposition which had the ring of truth.

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23. It is in evidence that the statement of Muhammad Rafique was recorded in Allied Hospital Faisalabad by Ahmad Yar A.S.I PW-10 which was later on reduced into formal FIR. Soon thereafter he produced the paper Ex-PG before the police officer stating that the same contained the writing of the deceased. Both Muhammad Rafique and Mst. Sughran Bibi had deposed about it. This document was taken into possession by the I.O through memo Ex-PC and supplementary statement of Muhammad Rafique was recorded with regard thereto.

Muhammad Rafique appeared to be a man of scanty means as he described himself as "unemployed" when he appeared in court on 13-2-2002. He deposed that he could not withstand the pressure of the accused party to effect compromise and was forced to leave the village alongwith his family members. He was rendered shelterless and had to move from place to place as the police failed to provide him protection. He returned to the village after quite sometime and during the course of investigation, which was still underway, he

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produced the note book Ex-PG/1 which contained writing in the hand of the deceased covering many pages about her subject of science.

This note book of the deceased Ex-PG produced by Muhammad Rafique complainant before the police in Allied Hospital were sent to the handwriting expert on 24-4-2001 for comparison and opinion. The expert opined that writings of both these documents were of "one and the same handwriting". As noticed earlier, the assertion of Muhammad Rafique that document Ex-PG was in the handwriting of the deceased who handed it over to him in the Allied Hospital was not challenged by the defence during his cross-examination. Same is the position with regard to the statement of Sumaira Rafique as regard the note book being in the handwriting of the deceased.

We have carefully compared the writing in these two documents and have reached the conclusion that these were indeed in the hand of the same person.

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24. Having upheld the conclusion of the expert, noted above, we have perused the contents of Ex-PG. One must bear in mind that the deceased at that time was critically ill and under solemn sense of impending death. Her right hand, however, was in perfect condition as opined by doctor in his deposition. It seemed to be with great effort that Ex-PG was scribed by the deceased in a faltering and shaky manner. She wrote that at about 10' Clock Ali Hussain son of Munir Ahmad resident of village Karri Bhait finding her lonely figure in the house entered and pulled her dopatta saying that today there was no one between him and her. He tempted her for immoral act but she resisted on which he brought kerosene oil and after putting one hand on her eyes poured the oil on her body and set her on fire. He ran away while she raised alarm.....

It seems that soon after scribing the document the poor girl left this mortal world to appear before her Creator.

This document (Ex-PG) is to be legally treated as dying declaration. There is plethora of case law laying down the principles

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for appreciation of dying declaration and adjudication of the case on

the basis thereof. Some of the salient principles are; (i) there is no bar

that it cannot be made before a private person or it must be signed by

its maker. (ii) once proved to be made by the deceased the dying

declaration is to be treated as substantive evidence which if found to

be true, keeping in view the attending circumstances, the accused can

be convicted by solely relying on it. See " Farmanullah versus

Qadeem Khan and another" ( 2001 SCMR 1474 at 1481).

In the precedent case, at page 1482 of the report, it has been

laid down that dying declaration, once believed, is not legally

required to be supported by independent corroboration. However, in

the instant case, there is sufficient corroborative evidence available

on record in support the dying declaration like medical evidence and

the statement of the deceased made before Mst. Sumaira Rafique,

soon after the occurrence, that she had been put on fire by the

appellant on her refusal to submit to his lust.

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25. In his statement under section 342 Cr.P.C the appellant took up the pleas that (i) Mst. Asma Rafique committed suicide as she was reprimanded by her father who was mentally deranged person and (ii) her father was inimically disposed against him having earlier involved him in a false theft case which was cancelled and this was the cause of his implication in the instant case.

We find that the plea of alleged insanity of Muhammad Rafique was hollow. He deposed in court twice and no abnormality or derangement of mind was noticed. Perusal of his statements also negate this contention, Thus the question of the deceased putting to end of her life due to the reprimand of her father who allegedly did not possess a balanced mind did not arise.

Further, at no stage of the trial during the recording of evidence, this plea was raised so much so that not even a suggestion was made in this regard to Muhammad Rafique, Mst. Sughran Bibi and Mst.

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Sumaira Rafique, the inmates of the house, who deposed about the occurrence in this case for evidence.

As regards the alleged enmity of Muhammad Rafique with the appellant, suffice it to say that the same, too, was baseless. Since, allegedly, a theft case was registered at the behest of Muhammad Rafique which was cancelled having been found false the appellant could have easily procured documentary evidence about the said theft case to support his plea of animus with Muhammad Rafique. He failed to do so. No oral evidence was led, either, in this behalf.

He did not. enter the witness box to depose on oath in disproof of prosecution allegations.

26. It was really heart rending incident in which, a young pious girl who was Hafiza Quran, resolutely resisted the satanic desire of the appellant to sexually assault her and lost her life while defending her chastity.

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27. The appellant remained absconder after the occurrence for a considerable period. He was arrested on 21-3-2001 i.e. more than one month after the incident. He was burdened with guilt conscience and tried to stay away from the village in a bid to escape apprehension by the police.


28. The upshot of the above discussion is that the prosecution had fully succeeded in bringing home the guilt to the appellant and he was rightly convicted for the offences with which he was charged i.e. section 302(b) PPC and sections 18 read with section 10(3) of the Offence of Zina (enforcement of Hudood) Ordinance, 1979.


There were no mitigating circumstances, whatsoever, available on the record. It was a callous murder by the appellant and the learned trial Judge was fully justified in awarding death sentence to him under section 302(b) PPC, besides convicting and sentencing him for attempting to commit zina-bil-jabr with the deceased. Both the convictions and sentences imposed upon the appellant are upheld.




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29. Consequently, the appeal is dismissed. The death sentence is confirmed and murder reference is answered in positive.

  
 (Saeed-ur-Rehman Farrukh)  
 Judge

  
 (Dr. Fida Muhammad Khan)  
 Judge

  
 (Zafar Pasha Chaudhry)  
 Judge

Called out. Present none.  
 Announced.

  
 31/3/2006.

Fit for reporting

