

IN THE FEDERAL SHARIAT COURT.

(Appellate Jurisdiction)

PRESENT.

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

**CRIMINAL APPEAL NO.282/I OF 2002 Linked With
CRIMINAL MURDER REF.NO.12/I OF 2002**

Abdul Jabbar S/o Muhammad Nawaz,
Caste Baloch, R/o Nai Abadi,
Attock Road, Fateh Jang,
District Attock. --- Appellant.

VERSUS

The State --- Respondent.

Counsel for the Appellant --- Malik Rab Nawaz Noon,
Advocate

Counsel for the State --- Mr. M. Sharif Janjua,
Advocate.

CRIMINAL REVISION NO.39/I OF 2002

Muhammad Banaras **VERSUS** Abdul Jabbar

Counsel for the Petitioner --- Mr. M.Siddique Awan,
Syed Tahir Hussain Bukhari
And Mr.Manan Ali Khan.
Advocates.

Case F.I.R No, date --- No.282, dated 20.10.2002
& Police Station --- P.S. Fateh Jang,
District Attock

Date of Judgment --- 26.11.2002
of trial Court.

Date of Institution --- 30.11.2002 & 17/12/2002 and
19.12.2002, respectively.

Date of hearing --- 04.10.2005

Date of decision --- 27-10-2005

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J. - This judgment will dispose of, Criminal Appeal No.282/I of 2002, Criminal Murder Reference No.12/I of 2002 and Criminal Revision No.39/I of 2002. Abdul Jabbar appellant stands convicted under section 302 (b) PPC and sentenced to death. He has also been ordered to pay Rs.2,00,000/- (as compensation under section 544-A, Cr.P.C to the legal heirs of deceased Mst. Sobia Tabassam, in default whereof to suffer six months S.I. Conviction has also been recorded under section 10 (3) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (hereinafter referred to as the Ordinance) and sentenced to suffer 10 years R.I. The appellant has filed appeal against his conviction and sentence awarded by Mr. Sohail Nasir, Additional Sessions Judge, Attock vide his judgment-dated 26.11.2002. Murder Reference has been submitted by the learned trial Judge for confirmation of sentence of death awarded to Abdul Jabbar, appellant. Complainant Muhammad Banaras, father of Mst. Sobia Tabassam, has filed Revision Petition No.39/I of 2002 for enhancement of sentence awarded to the appellant under section 10 (3) of the Ordinance and also compensation under section 544-A, Cr.P.C.

2. The prosecution story as narrated by Muhammad Banaras (PW.16), father of victim Mst. Sobia Tabassam is that he is resident of Fateh Jang. He has been residing there along with his five daughters and two sons. Mst. Sobia Tabassam aged about 14 years, was his youngest daughter. She was student of 6th class in Government Community Primary School No.2, in the Evening Shift. On 19.10.2002 at about 2.00 p.m. she left her house to attend her school and was supposed to return by 5.00 p.m. She did not return home after the school was over. Search was started on 20.10.2002 at 2.00 p.m. whereafter her dead body was found in a nearby 'Jawar' field. She had been strangled to death with her own dopatta. After tracing the dead body, the complainant left Ameer Afzal and Fazal Dad to guard the same and he himself left for Police Station for lodging the report.

On his, i.e. Muhammad Banaras's statement case FIR No.282 was registered on 20.10.2002 at 3.00 p.m. under section 302 PPC. After registering the FIR Ameer Zaman, S.I dispatched the dead body to mortuary for post mortem examination. He inspected the place of occurrence and collected blood stained earth from the site. More significant is recovery of golden locket with chain, which apparently fell from the neck of

the murderer during the incident. A sandal of the left foot of the deceased was also found near the dead body.

3. The investigation was carried out and necessary evidence was collected. The post mortem report revealed that the deceased Mst. Sobia Tabassam had been subjected to rape before committing murder. Section 10 of the Hudood Ordinance was added to section 302 PPC. During investigation sufficient evidence was collected against the appellant, therefore, he was arrested as an accused. On completion of the investigation, the appellant was found guilty and sent up to court to face trial. He was charged under section 10 (3) of the Ordinance as well as under section 302 PPC for committing Zina-bil-jabr with Mst. Sobia Tabassam and thereafter committing her murder. As the appellant pleaded not guilty, the trial commenced where the prosecution examined 17 witnesses in support of the charge.

4. PW.1, lady doctor Tabassam Shaheen conducted post mortem examination of the deceased Mst. Sobia Tabassam. Her age was recorded as 14 years. She was wearing white shalwar, dopatta and blue qameez, i.e. her school uniform. She was carrying school bag as well. Circular ligature with white dopatta around the neck was observed in the front. The mark was in shape of contusion below the thyroid. On examination of

her private parts hymen was found torn. It admitted two fingers easily. Three Vulva and vaginal swabs were obtained and sent to the chemical examiner for detection of semen. Stained shalwar was also sent for chemical examination. The death was found to be on account of asphyxia, which was declared as homicidal. All injuries were antemortem. The deceased was found to have been subjected to sexual intercourse as well. During cross-examination she described the hymen as freshly torn. In answer to another question the doctor explained that it is possible that even after first sexual intercourse the hymen can admit two fingers easily.

Next to the evidence of lady doctor six xx other witnesses, i.e. PW.2 to PW.7 were examined who may be termed as formal because they mainly deposed about the various functions they performed during investigation.

PW.8 Miss.Samina Nazli, Headmistress of the school stated that deceased Mst. Sobia Tabassam was student of 6th class. On 19.10.2002, i.e. the date of occurrence, she attended the school from 2.30 p.m. to 5.00 p.m. being student in the second shift. Her date of birth was recorded as 19.6.1988 in the school record.

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PW.9, Mehmood Sultan, Goldsmith is an important witness in the sense that appellant Abdul Jabbar got prepared Golden locket along with its chain for him. The letter "J" was got engraved by the appellant on the locket. He paid Rs.1500/- as advance. The locket P.5 and the chain P.6 weighed 7.5 grams. This witness identified the locket and chain before the police during investigation and also in the court being the same, which got prepared by Abdul Jabbar, appellant/accused.

PW.10, Dr. Muhammad Luqman examined the appellant and found him potent.

PW.11 Asad Ali Khan is an important witness, because the accused/appellant confessed before him commission of the offence. According to this witness, on 26.10.2002, i.e. after one week of the occurrence, he along with Misri Khan PW.12 were sitting in his house when at about 7.00 or 7.30 a.m. Abdul Jabbar appellant came to his house and confessed that on 19.10.2002 he committed zina with Mst. Sobia Tabassam at about 5.15 p.m. in the Jawar field and thereafter committed her murder by strangulating her to death with her own dopatta. According to him, his conscience was pricking him, therefore, he confessed his guilt and requested that he may be got pardoned and a compromise be effected with Banaras, father of the victim.

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This witness, i.e. Asad Ali Khan along with Misri Khan PW.12 thereafter took him to the police station and produced him before Malik Ameer Zaman Duty Officer. During cross-examination, the witness stated that the distance between his house and that of the appellant was about three quarters of a kilometer. To a suggestion on behalf of the accused, the witness answered that he was not aware that wife of the accused had been deserted by him. A number of questions were asked to demonstrate that this witness was in fact a stock witness. The suggestions were categorically denied and the witness satisfactorily explained that he was not a stock witness of the police.

PW.12 Misri Khan is another witness of the confessional statement made by the accused/appellant. He described the making of the confessional statement in the same manner as had been done by PW.11, Asad Ali Khan. He made statement is fully in line with the statement already made by the former witness, i.e. Asad Ali Khan, as such he supported and corroborated him on all material points. Like the previous witness, this witness was also subjected to lengthy cross-examination. A number of questions were asked with an attempt to label him as a stock witness but nothing substantial could be

extracted from him, which could suggest that this witness was a stock witness. He could neither be falsified nor could be detracted from the statement by him.

PW.13 Fazal Dad identified the dead body of Sobia deceased before her postmortem examination.

PW.14 Muhammad Aslam is a witness who brought on record a circumstance that Abdul Jabbar appellant and Sobia deceased was seen by him within the vicinity of place of occurrence. According to him, he along with Ajaib, PW saw the appellant sitting at the 'banna' of jawar field. As they were proceeding further, at that very moment they saw Sobia deceased coming on the same banna leading towards her house. During cross examination, this witness stated that in his view the accused / appellant went upto the three steps in the field was not visible thereafter on account of height of the crop.

PW.15 Rab Nawaz is another witness in the same sequence as according to him, he was coming from Adda Fateh Jang and then from metalled road proceeded towards 'jawar' field. He saw Abdul Jabbar coming out of the field who looked to be confused and perplexed. On query by this witness as to why he looked so confused, he did not make any reply and drifted away.

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Muhammad Banaras, PW.16 is the complainant. He reiterated the facts already narrated by him in the police report Exh.PB and attested the same. He further added that he joined the police investigation and in his presence police took into possession blood stained earth which was secured vide memo Exh.PH. The sandal P.7 of the left foot of the deceased was also secured vide memo Exh. PJ. More important is securing of golden locket P.5 and broken golden chain P.6. They were taken into possession vide memo Exh.PK. On the locket letter 'J' had been engraved. These recoveries were attested by him as well as Najabat Ali, PW. A number of questions were put to him through cross-examination but nothing could be elicited which would have belied or falsified any part of his statement. He also explained the order of recoveries, i.e. that first of all blood stained earth was secured and then sandal of the deceased and then the locket and the chain.

PW.17 is Ameer Zaman, S.I of the police. He furnished the details of the investigation carried out by him. He also explained narrated the order in which the various functions were performed. In the first instance he prepared the injury statement of the deceased Exh.PL and then inquest report Exh.P.M. and thereafter dispatched the dead body for post

mortem examination. Afterwards he inspected the place of occurrence and secured blood stained earth, a sandal P.7 of the left foot of the deceased, a golden locket P.5 and chain P.6. which had fallen from the neck of the offender during commission of the offence. They were taken into possession vide memo Exh.PJ and Exh.PK respectively. It was specifically stated that letter 'J' had been engraved on the locket. The witness described various other steps taken by him towards conclusion of the investigation. This witness again during cross-examination in answer to a question affirmed that the place of occurrence was in fact inspected after the inquest report had been prepared. He stated that the factum of recovery of locket and chain had been duly mentioned in the inspection notes. This witness was enquired as to why Sultan Zargar was summoned on 26.10.2002, he explained that the accused himself had informed after he was arrested that the locket and the chain recovered from the place of occurrence belonged to him. During lengthy cross-examination nothing could be brought on record to cast any doubt on the veracity of the prosecution version.

After examining the aforesaid 17 witnesses, the prosecutor tendered in evidence Exh.PO and Exh.PP reports of Chemical Examiner pertaining to the blood stained earth

collected from the place of occurrence and vaginal swabs obtained from the person of the deceased.

5. As evident from the above resume of the prosecution case, there is no eyewitness to the occurrence. The prosecution case is based on the circumstantial evidence which comprises of evidence of recoveries of incriminating articles, the extra-judicial confession made by the accused/appellant before Asad Ali, PW.11 and Misri Khan, PW.12. Apart from these pieces of evidence there is evidence of witnessing Abdul Jabbar appellant as well as Mst.Sobia deceased quite close to the place of occurrence. This evidence has been furnished by Muhammad Aslam, (PW.14) which is supplemented rather supported by the statement of Rab Nawaz (PW.15), who saw the appellant coming out of the Jawar crop where the offence had been committed. He appeared to be quite confused and perplexed. Next is medical evidence of lady doctor Tabassam Shaheen PW.1 who examined the deceased and in her opinion the deceased expired due to asphyxia as a result of strangulation. The clinical examination of the deceased revealed that she had been subjected to sexual intercourse before commission of murder. According to prosecution these pieces of evidence if appraised and assessed together lead to an irresistible conclusion that the appellant

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committed both the offences, i.e. rape and murder.

6. The recoveries comprise of various articles secured from near the dead body. Ameer Zaman, I.O. (PW.17) on receipt of information visited the place of occurrence. He secured the blood stained earth from the place of occurrence. Collection of blood stained earth from inside the Jawar field confirms that the occurrence took place inside the Jawar field as stated by the prosecution witnesses. The I.O also recovered one sandal Exh.PK of the deceased. The most important recovery is that of golden locket and chain, which were lying near the dead body. It was found that the letter 'J' had been engraved on the locket. 'J' is the first letter of the appellant's name, i.e. Jabbar. Locket and chain were taken into possession vide memo Exh.PJ. These recoveries were attested in court by Ameer Zaman I.O as well as Muhammad Banaras (PW.16). Muhammad Banaras joined the police investigation. In his presence locket along with chain as well as sandal were recovered from the place of occurrence. This witness attested the recovery memo through which the articles were secured.

7. The learned counsel for the appellant has vehemently contested the recovery of locket and chain. The main argument advanced in this behalf is that the inquest report

does not find any mention of the locket or chain to have been recovered from near-by the dead body. The learned counsel has referred to column No.23 of inquest report which requires that any weapon of offence or other article found near or about the dead body, should be entered therein. The objection by the learned counsel stands explained rather clarified by the I.O in his statement before the court. In answer to a question the I.O explained that after reaching the place of occurrence firstly dead body was secured, then injury statement and inquest report were prepared and thereafter on spot inspection he found locket, chain and sandal lying over there. It means that before the locket and chain were spotted, the injury statement as well as inquest report had already been prepared. Even otherwise, the occurrence took place in a field of 'Jawar', which is quite thick and tall crop. A small object like locket and chain would not have been seen or spotted while preparing the inquest report. The possibility of fabrication or foisting the recovery of these articles is also ruled out by the statement of Sultan Zargar (Goldsmith, PW.9). Sultan was cited and examined in court as prosecution witness. He deposed on oath that on 13.2.1999 the accused/ appellants Abdul Jabbar got prepared a golden locket P.5 and chain P.6. He was also asked by the appellants to engrave the

letter "J" on the locket. This witness identified both locket and the chain in the court. Sultan has no enmity to falsely depose against the appellant. He is a totally independent witness; there is no reason not to disbelieve his statement. By taking into consideration the statement of Ameer Zaman along with statements of Muhammad Banaras and that of Sultan Zargar, there remains no doubt that the chain and locket belonging to the accused / appellant were recovered from near the dead body.

Learned counsel for the prosecution regarding non-mention of articles in column No.23 of the inquest report has referred to the case of Muhammad Zamurrad & two others..Vs.. The State (PLD 1977 Lahore 136) holding that "omission of Investigation Officer to fill column No.23 does not violate spirit of section or the rules"

8. The next set of witnesses relate to extra-judicial confession. They are Asad Ali Khan (PW.11) and Misri Khan (PW.12). According to Asad Ali Khan, on 26.10.2002 he along with Misri Khan (PW.12) were sitting in his house when at about 7.30 a.m. Abdul Jabbar came to them and made a confession that on 19.10.2002 he committed Zina with Mst.Sobia Tabassam at about 5.15 p.m. in the jawar field. Thereafter he strangulated

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her to death with her dopatta. Misri Khan, PW.12, has made the same statement. He supported Asad Ali Khan and affirmed that the appellant had confessed his guilt before them. Asad Ali Khan is a respectable of the locality and resides within the neighbourhood of the accused/appellant. His house is located at a distance of three quarters of a kilometer. Same is the position with Misri Khan (PW.12). Both these witnesses were cross-examined at length. The defence counsel mainly attacked and disputed their veracity alleging that they were stock witnesses of the police. A large number of questions were put to suggest that they had been appearing in a number of cases at the behest of the prosecution. All these questions were denied rather strongly reaffirmed that they did not appear as a witness. The defence quoted one or two cases wherein Misri Khan PW had appeared as a witness. Similar was the case with Asad Ali Khan. It was explained by the witnesses that it happened a long time ago and in those cases the witnesses had their personal interest. A witness cannot be treated or labeled as stock witness unless it is shown that he habitually appears as a witness merely at the behest of the police. No such material could be brought on record. Both these witnesses made consistent and natural statements. The conduct of both the witnesses is very natural

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and confidence inspiring i.e after the confessional statement was made before them. Both the witnesses apprehended the accused/appellant and produced him before the police whereafter he was formally arrested.

The learned counsel apart from assailing the confessional statement on factual plain also raised legal objection vis-à-vis the reliability of extra-judicial confession. According to the learned counsel, the confession has been retracted. In support of his contention the learned counsel has cited ruling laid by the Hon'ble Supreme Court in case of Rasab Khan..Vs..The State (2003 SCMR 1385). In this case their lordships did not accept extra-judicial confession. Their lordships observed that old enmity existed between the accused and the prosecution witnesses. Also unnatural and inhuman conduct was shown by the said witnesses. It was ruled that evidence of extra-judicial confession requires strict scrutiny and also observed that reliable corroborative evidence should be looked for in case of retracted extra-judicial confession. Their lordships referred to cases of Zia-ur-Rehman.Vs. the State (2000 SCMR 528) and Sarfaraz Khan..Vs..The State (1996 SCMR 188). Respectfully following the rule laid down in the cited case, we find that in this case the evidence of extra-judicial confession is strongly

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corroborated by the recoveries especially of the locket P.5 and chain P.6 from near the dead body during the first spot inspection. Apart from the recovery, the confessional statement is supported by the medical evidence furnished by Dr. Tabassam Shaheen (PW.1). According to the finding recorded by the lady doctor, the deceased had expired on account of asphyxia due to strangulation. The medical evidence as such supports the confessional statement. Apart from the said fact the vaginal examination of the deceased revealed that she had been subjected to sexual intercourse. This finding is significant in the sense that it was only the medical expert who could detect that the deceased was subjected to sexual act or, it would be known to the person who committed that act. The confessional statement is as such amply corroborated and supported by the said pieces of evidence i.e. recovery of locket along with chain.

9. Apart from the aforesaid pieces of evidence, there are two witnesses, namely Muhammad Aslam (PW.14) and Rab Nawaz (PW.15). The former saw the appellant near the 'Jawar' crop, the place of occurrence and within the sight of this witness he entered the 'jawar' crop which was of man's height and according to the latter, i.e. Rab Nawaz he saw Jabbar coming out of the 'jawar' field. Although evidence of Muhammad Aslam

cannot be strictly treated as evidence of last seen as he did not see the appellant and Mst. Sobia victim together, but he did witness both of them present soon before the occurrence nearby the 'jawar' field. Similarly Rab Nawaz saw the appellant coming out of the field who appeared to be confused and perplexed. The evidence of these witnesses appears to be trustworthy because they did not exaggerate or add anything beyond what had been actually seen by them. Had these witnesses to tell lie, they could very conveniently state that they saw the appellant and Sobia together entering the field or coming out of the same. The witnesses restricted themselves to the fact, which had actually been witnessed by them. Their evidence thus lends support to the prosecution case by adding a circumstance.

10. After assessing and evaluating the evidence keeping in view the entire scenario of the case it can safely be concluded that it is the appellant who in the first instance committed rape with the young girl and thereafter committed her murder (Qatl-i-amd). The prosecution had thus proved the charges under sections 10 (3) of the Ordinance and 302 PPC beyond doubt. The prosecution has cited the case of Muhammad Shahbaz..Vs..The State (PLD 2002 Lahore 425) where in similar circumstance and on similar evidence the learned Judges maintained the conviction

of murder and sodomy. In this case reference was made to the case of Muhammad Ayyub @ Nikka..Vs..The State (PLD 1983 S.C 27).

11. The appellant had been sentenced to death under section 302 (b) PPC and to pay Rs.2,00,000/- as compensation under section 544-A,Cr.P.C. This sentence in view of the heinous and inhuman act of the appellant appears to be just and proper. The sentence of 10 years R.I under section 10 (3) of the Ordinance is also not excessive because the victim Sobia was only 14 years old whereas the appellant was a grown up person of 30 years at the time of occurrence.

12. We do not find any merit in the appeal, the same is accordingly dismissed. The conviction of the appellant under section 302 (b) PPC and section 10 (3) of the Ordinance along with sentences awarded thereunder are upheld and maintained.

The sentence of death is confirmed. The murder reference is answered in affirmative.

For the various reasons recorded in this judgment, we are of the view that the sentence of 10 years under section 10 (3) especially when the appellant has been sentenced to death, does not appear to be inadequate or unjust. The compensation of Rs.2, 00, 000/- as awarded by the learned trial

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Judge is also quite reasonable. We are, therefore, not inclined to
increase or enhance the same. The Revision Petition No.39/I of
2002 for enhancement of sentence is therefore dismissed.



(DR.FIDA MUHAMMAD KHAN)
Judge

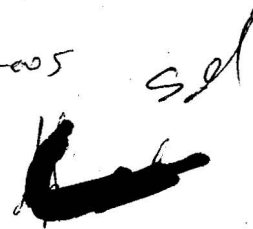


(ZAFAR PASHA CHAUDHRY)
Judge

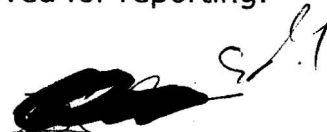


(SAEED-UR-REHMAN FARRUKH)
Judge

Announced at Islamabad on 27 October 2005



Approved for reporting.



Judge

M.Khalil/*