

BEFORE THE FEDERAL SHARIAT COURT
(**Appellate Jurisdiction**)

PRESENT:

MR. JUSTICE ZAFAR PASHA CHAUDHRY
MR. JUSTICE S. A. RABBANI

Cr. Appeal No. 211/L/2004

Liaqat Ali son of Yousaf Caste, Rehmani, r/o Chak No.227/RB,
Karar Wala, Faisalabad.

APPELLANT

VERSUS

The State

RESPONDENT

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Counsel for appellant

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Mr. Ehtasham Qadir Shah,
Mr. Mansoor Ahmed Mian,
Advocates

Counsel for the State

...

Raja Akhter Nawaz
Advocate

FIR No. Dated
Police Station (District)

688/2000 05.08.2000
Saddar, (Faisalabad)

Date of impugned judgment

31.07.2002

Date of receipt of appeal

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12.07.2004

Date of hearing

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24.02.2005

Date of decision

04.03.2005

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JUDGMENT:-

ZAFAR PASHA CHAUDHRY, J. Liaqat Ali, a

convict under Section 302(b) PPC, sentenced to imprisonment for life with fine of Rs.50,000/- in default to suffer six months S.I. and also under Section 201 PPC, sentenced to seven years R.I. with a fine of Rs.5000/- in default six months S.I. has come in appeal through Jail Criminal Appeal No.211/L/2004. The impugned judgment dated 31.07.2002 has been passed by Rana Masood Akhtar, Additional Sessions Judge, Faisalabad. Initially, the appeal was filed before the Lahore High Court, Lahore but during the course of proceedings, Mr. Ihtesham Qadir Shah, Advocate for the appellant pointed out that the charge had been framed under Hudood Ordinance, therefore, the appeal would lie before the Federal Shariat Court. Accordingly, the appeal was filed by the convict from Jail before this court, Mr. Mansoor Ahmed Mian, Advocate was appointed to pursue the appeal at State expense. Subsequently, anyhow, the convict engaged Mr.

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Ihtisham Qadir Shah as his counsel and hired his services. The instant appeal has been argued by Mr. Ihtisham Qadir Shah, the private counsel as well as Mr. Mansoor Ahmed Mian, counsel at State expense.

The appeal was barred by 651 days. Vide interim order dated 07.09.2004, the delay was condoned and the appeal was admitted for regular hearing.

2. The criminal proceedings were initiated on a report made by Bashir Ahmad to Police Station Saddar, District Faisalabad. It was stated by Bashir Ahmad, father of Mst. Samina Bibi deceased aged 13/14 years, that on 28.07.2000 at 4.30 p.m. Mst. Samina Bibi went to the shop of Liaqat Ali, appellant to make some purchases. She did not return for quite some time, which raised suspicion, on which the complainant started her search. During her search, Shaukat Ali and Ghulam Hussain informed Bashir Ahmad, complainant that Liaqat Ali appellant was forcibly taking Mst. Samina to his house. The complainant inquired about Liaqat Ali

from his relations but no clue was given by any of the relations.

The complainant believed that Liaqat Ali appellant had killed his daughter Mst. Samina Bibi and thereafter had concealed her dead body. On his assertion, formal FIR was registered and investigation was carried out.

3. During course of investigation and after collecting relevant material, the appellant was arrested. The appellant disclosed that he criminally assaulted Mst. Samina Bibi, whereafter her condition became extremely serious. The appellant, to screen his guilt, throttled her to death. After committing murder he buried the dead body in his courtyard on 28.07.2000 so that the evidence may disappear. The appellant during custody led to the recovery of the dead body, which was recovered after digging the place of burial. The memo of recovery was attested by Muhammad Ilyas and Haji Muhammad Ismail PWs. The shalwar of the dead body was found beneath corpse after the same had been removed from her body.

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4. During investigation the appellant was found guilty and was challaned to the court under Section 302 PPC. The trial court i.e. Rana Masood Akhtar, Additional Sessions Judge framed charge under four heads i.e. under Section 11 of the Ordinance for kidnapping and enticing away the deceased, under Section 10 of the Ordinance for committing zina-bil-jabr with her, under Section 302 PPC for committing murder of Mst. Samina Bibi and fourthly under Section 201/34 PPC to conceal the evidence of murder. The appellant pleaded not guilty and claimed trial.

5. The trial was commenced, where prosecution examined fourteen witnesses in support of the charges. PW.1 Tabassim Shahnaz, Lady Constable and Muhammad Sharif, Head Constable are from police and are just formal. PW.3 Aurangzeb, Draftsman prepared the site-plan in duplicate Ex.PB and Ex.PB/1. He, on the instructions of police and pointation of witnesses, prepared the site plan. He stated that the ditch from where dead body was recovered measured 3 1/2 feet x 4 feet. At that time Shaukat Ali and

Ghulam Hussain PWs were present at the spot alongwith the complainant. PW.4 is Muhammad Shabir, who identified the dead body of Mst. Samina deceased alongwith Abdul Ghafoor at the time of Post Mortem Examination. PW.5 Ghulam Hussain is a witness of last scene. He stated that 8/9 days prior to the occurrence he was present in front of the shop of Liaqat Ali. He saw Liaqat Ali was dragging Mst. Samina Bibi inside. He disclosed the same to the father of Mst. Samina Bibi. This witness was cross-examined at quite some length and very searching questions were put to him. Although some oddities were brought on record yet the witness could not be retracted from his assertion that Mst. Samina Bibi had been seen in the company of the appellant and she had been taken by him inside his house. An attempt was also made to establish that at the time of occurrence the appellant was not present in his house and had left the same to attend the funeral ceremony of his father-in-law, who had expired

few days earlier. Nothing could be elicited to show as to why the witness would have deposed falsely against the appellant.

6. PW.6 Haji Ismail is an important witness because the recovery of dead body at the pointation of the appellant was affected from ditch inside the house of the appellant. The dead body was dug out after removing the earth therefrom. According to this witness, the appellant during interrogation disclosed that he took the deceased to his room. He committed zina with her as a result of which the victim became unconscious. The appellant in order to disappear the evidence throttled her neck, she was as such suffocated to death. He buried the dead body in his courtyard. He dug out the earth from the place of burial and thereafter recovered the dead body, which had been wrapped in a jute bag without shalwar on her.

During cross-examination the witness admitted that the complainant was his brother-in-law. He also admitted some other relationships. He disclosed that a number of people had gathered

around the house of the appellant when the recovery of dead body was being carried out by the appellant from his courtyard. Quite gruesome cross-examination was conducted but the witness could neither be falsified nor any damage could be caused to the prosecution version.

7. PW.7 is Bashir Ahmad complainant. He reiterated the statement already made by him in the report to the police. In the court, he admitted to have made a supplementary statement as well. An extremely lengthy cross-examination was carried out. Some variations or discrepancies in between his statement and statements of witnesses were attempted to be made. The complainant however stuck to his version. No material could be brought on the file to suggest that the complainant had any motive or reason to falsely implicate the appellant. There existed no previous enmity in between the complainant and the convict/appellant. A suggestion on behalf of defence that the house/haveli of the appellant did not have any gate or door and the

same was in fact an open place. These suggestions appeared to have been made just for the sake of cross-examination otherwise there does not exist any material or circumstance to justify these questions.

8. PW.8 Dr. Hamira Parveen conducted the post mortem examination of the dead body, which was identified before her by Shabbir Ahmad and Abdul Ghafoor. After examining the necessary vital organs, the remarks were made as under:-

“The body was putrefied and findings were suggestive of death due to head injury by blunt means, the final report of cause of death will be given after the reports of chemical examiner and bacteriologist.”

It would be necessary to point out here that both the reports of Chemical Examiner and that of the bacteriologist have been brought on record at Ex.PC and Ex.PM. According to the report of the Chemical Examiner no poison was detected in the viscera of the dead body and the swabs were not found to be stained with semen. Vide report of Bacteriologist Ex.PM, as a result of his histological examination from all the specimens, it was found that

soft tissues were totally aerosolized and cellular and nuclear details had been reduced to granules debris. No opinion, therefore, was expressed.

The doctor was suggested that the dead body had so badly putrefied and decomposed that the sex could not be determined. During examination in chief the doctor had already endorsed the inquest report Ex.PF and injury statement Ex.PG.

9. PW.9 Dr. Arfan Elahi vide his report Ex.PH declared the appellant to be potent and capable of sexual intercourse. PW.10 Asghar Ali is a formal witness, who recorded formal FIR Ex.PG/1. PW.11 Muhamamd Younis is also a formal witness, who deposited the parcels in Malkhan for onward transmission to the office of the Chemical Examiner. PW.12 Abdul Majeed is a witness, who according to him heard the conversation in between appellant Liaqat Ali and Mst. Balqees Bibi, who was alleged to be his accomplice. According to him Mst. Balqees had expressed her apprehension that she would be involved in the murder of Mst.

Samina Bibi but Liaqat ali appellant assured her that the matter will be resolved within 2/3 days. PW.13 Ghulam Farid, retired Sub-Inspector recorded supplementary statement of the complainant and obtained warrants for arrest of Mst. Balqees Bibi, the absconding co-accused of the appellant.

10. PW.14 Muhammad Arshad is the investigating officer, who carried out almost the entire investigation. According to him, he recorded the FIR. He interrogated Liaqat Ali, appellant who made a disclosure that he would lead to the recovery of the dead body of the deceased. On the pointation of the appellant the dead body was recovered from the courtyard of his house after digging earth with 'Kassi'. The shalwar of the deceased was lying near her corpse. The 'Kassi' Ex.P.3 was taken into possession. He got the post mortem examination conducted. As Mst. Samina Bibi had been found dead, therefore, the original FIR registered under Section 364 PPC was converted to under Section 302 PPC. He effected the necessary incriminating recoveries and in order to accomplish the

investigation, performed various functions. He got the site plane prepared in duplicate i.e. Ex.PB and Ex.PB/1 and recorded his notes in red on the same. He, like the previous witnesses, subjected to unusual lengthy cross-examination but neither any specific version which might have been taken nor any defence put forward by the accused during investigation was put to him. Nothing was suggested or brought on the record to belie or falsify the prosecution version. No material or any circumstance was brought on record or referred to, which may reflect that the police had implicated the appellant maliciously.

11. On close of the prosecution evidence, the appellant was examined under Section 342 Cr.P.C. He denied the allegations against him and also denied the recoveries. It was pleaded that the PWs were inter-related inter-se and by joining hands with the police implicated the appellant falsely.

12. In support of his plea the appellant examined DW.1 Muhammad Arif, who stated that the appellant was not present in

of Zina (Enforcement of Hudood) Ordinance, 1979 because sufficient evidence to warrant conviction beyond doubt in this regard was not available.

14. The prosecution evidence, as referred above in brief, revealed that the same comprises of three categories (i) evidence of last scene (ii) evidence of recovery of dead body from the courtyard of the appellant and the medical evidence as supporting material.

15. The evidence of last scene has been furnished by Ghulam Hussain alias Ghulama, PW.5. This witness saw deceased Mst. Samina Bib being taken into the house by Liaqat Ali appellant. This witness informed the father of the victim as well. This witness was subjected to a detailed and gruesome cross-examination but he could not be detracted from his statement. Ghulam Hussain has no enmity or any other grouse against the appellant to depose against him falsely. The statement of Ghulam Hussain is supported by Bashir Ahmad, PW.7, who was informed

his house from 26.07.2000 to 03.08.2000 in order to attend the funeral ceremony of his deceased father in law. This oral plea of a sort of alibi is not supported by any one record or credible evidence or material. The appellant's father in law had died a few days before murder of Mst. Samina Bibi. The appellant being a shopkeeper had to be present on his shop, which in fact was located in the 'Bethak' of his house. The appellant himself appeared as his own witness as permissible under Section 340(2) Cr.P.C. He, like DW.1, stated that he had left his house after receiving information of death of his father in law. The evidence is not at all believable or can convince any reasonable person. The whole statement, in fact, appears to be an attempt to create a sort of alibi but the same is totally belied by the material and evidence brought on the record.

13. The learned trial Judge, on conclusion of the trial, convicted the appellant under Section 302(b) as well as 201/34 PPC. The conviction was not recorded under Section 10 or 11 of the Offence

about Shaukat Ali and Ghulam Hussain that Liaqat Ali appellant had taken the deceased to his haveli. Bashir Ahmed, complainant, father of the victim is related to Liaqat Ali. His veracity cannot be doubted. The perusal of his statement inspires confidence and the same appears to be truthful. Liaqat Ali, appellant has not been able to show that why the complainant would have falsely implicated him in this case. After going through the statement of Ghulam Hussain coupled with the statement of Bashir Ahmad, it leaves no doubt that Mst. Samina Bibi deceased was last seen in the company of the appellant. He took her inside his haveli and thereafter, she was never seen alive. The witnesses had seen the appellant alongwith Mst. Samina Bibi just in front of his haveli, wherefrom she was forcibly taken into the courtyard of the haveli.

16. The next piece of evidence adduced by the prosecution comprises of extra judicial confession made by Liaqat Ali, appellant. Haji Ismail, PW.6 was present alongwith Muhammad Hayat at the place of occurrence. On interrogation, the appellant

disclosed that he had taken the deceased to his residential room, whereafter he committed zina with her, as a result of which she became unconscious. The appellant pressed his throat on account of which Mst. Samina Bibi lost her life due to suffocation. The appellant also confessed that after killing Mst. Samina Bibi, he buried her dead body in his courtyard in between the bathroom and the cage of pigeons. The evidence of this witness is supported by the statement of Abdul Majeed PW.12, who heard the conversation in between the appellant Liaqat Ali and his accomplice Mst. Balqees Bibi (absconder). The conversation related to covering up the matter i.e. of the murder of Mst. Samina Bibi. Although statement of Abdul Majeed does not directly point out the involvement of Liaqat Ali appellant but the same clearly suggests that Liaqat Ali appellant was fully concerned with the commission of the murder. It is true that the evidence of extra judicial confession has to be considered and assessed with care and caution but if the statement is supported by the subsequent

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events as disclosed by the accused then the same can be safely relied upon. In the present case both the said witnesses did not have any motive to falsely accuse or implicate the appellant, therefore, their assertion that Liaqat Ali confessed the guilt before them cannot be ignored. The statement made by PW.6 Haji Ismail rings to be true. The suspicion very squarely laid on the appellant because he had been seen by the witnesses taking Mst. Samina Bibi, deceased inside his house. In these circumstances, when credible suspicion was against him, his making confessional statement before the witnesses cannot be termed as unnatural or improbable. Only rule of care and caution has to be applied and if after weighing and judging the statement, the same appears to be truthful then the conviction can be passed on its strength.

17. The most important piece of incriminating evidence against the appellant is recovery of dead body from his house. Mst. Samina Bibi, deceased had been buried right inside the courtyard in between bathroom and the cage of pigeons. The dead body was

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recovered after digging out the earth on pointation of the appellant. The ditch was about 3 ½ x 4 feet. The recovery was made in the presence of Shaukat Ali and Ghulam Hussain. The place of recovery was pointed out by the appellant. The place of burial had been levelled after burying Mst. Samina Bibi therein. No one else could have detected that Mst. Samina Bibi had been buried in the courtyard unless the same was pointed out by Liaqat Ali, appellant. Admittedly, the house belongs to Liaqat Ali, appellant. Not only he was living in that house but also in his Bethak, a corner room, he had opened a shop. Mst. Samina Bibi, in fact, had come to the shop to make some purchases. On the day of occurrence, the appellant, who happened to be alone in house, took Mst. Samina Bibi inside his residential room and thereafter, committing rape with her, throttled her to death. In order to screen the evidence of murder, he buried the dead body in his courtyard. Although the burden of prove is always on the prosecution and it does not shift to the defence but if a dead body is recovered from

the house of a person, then the duty is cast on him to explain as to how the dead body was buried in the courtyard exclusively in his possession. No explanation worth the consideration has been brought on the file. Wavering and discrepant pleas were raised during the course of cross-examination and at the time of statement under Section 342 Cr.P.C.

18. It was argued by the learned counsel that on the day of occurrence, the appellant had left his house to attend funeral ceremony of his father in law but it has been admitted that he died a few days before the occurrence. The appellant being a shop keeper would not have stayed in the house of in-laws for a week or so as stated by him. Except the oral statement in this regard no concrete evidence has come on record even to indicate that the appellant was not present in his house and was away from his village. A feeble attempt was made to confess that the place of recovery is an open place and may be some one else would have thrown the dead body over there. The plea is not only absurd but

appears to be ridiculous as well. A scaled site plan Ex.PB has been placed on file and has been proved by its draftsman (PW.3).

According to the site plan, the house is surrounded from all sides by walls. The only ingress into the house is the door which abuts in the street. The place of recovery is right inside the courtyard.

The dead body was not lying on the ground rather the same had been buried in a ditch 3 ½ x 4 feet deep. The same has been leveled to camouflage the burial. The contentions raised that any one else would have buried the dead body, is absolutely unacceptable. To excavate the ditch and thereafter to bury the deceased would have some plenty of time. No one else could have done the same except the appellant. The recovery of dead body at the instance of the appellant from the courtyard of his house leaves no doubt to believe that he is the real culprit.

19. During course of arguments, learned counsel for the appellant raised contention that the dead body had been ~~double checked~~ and putrefied that could not be identified. The

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postmortem report is available on the file and has been proved by the doctor. The lady doctor was cross-examined at length but it was not admitted by the doctor that the dead body was unidentifiable. There is direct evidence of Muhammad Shabir Ahmad, PW.4. He identified the dead body before its postmortem examination. He stood the test of searching cross-examination. The witness correctly furnished all the details of the dead body as seen by him. No direct question was put to the witness that the dead body was not identifiable. The learned counsel has referred to the part of cross-examination where, the witness admitted that there was no mark of identification of the deceased but a person, who is a close relation, can identify the deceased for variety of reasons. In order to ascertain identification, it is not only the statement of identifier but there is a chain of facts, which leave no doubt to believe that the dead body was of Mst. Samina, deceased. It was dead body of a female of the same age, same feature and her shalwar, which she was wear at the time she was last seen, was

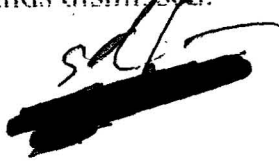

also recovered from the ditch. Mere fact that the dead body was decomposed or putrefied does not by itself lead to conclusion that it was unidentifiable. The learned counsel for the appellant, however, did not lay much emphasizes on this aspect of the case and tried to explain that recovery of dead body from appellant's house cannot be exclusively a result of his doing but the same could have been done by some one else as well. The argument does not have any force.

20. After going through the evidence and the accompanying material as brought on the record by the prosecution, there remains no doubt to believe that it was the appellant, who committed murder of Mst. Samina Bibi and thereafter, in order to get the evidence disappeared, buried her in a ditch. The learned trial Judge has rightly convicted the appellant under Section 302 (B) and under Section 201 read with Section 302 PPC. Conviction

was not recorded under Section 10(3) of the Ordinance because necessary data and material in support of this charge was not available, therefore, the appellant has rightly been extended the benefit of doubt viz-a-viz this offence. The appellant has not been awarded normal sentence of death but has been punished with alternate sentence of imprisonment for life. As such the appellant has been rather dealt with leniently, may be for the reason that there was no eye witness to the commission of murder. Be that as it may, the conviction of the appellant under both the charges under Section 302 (B) and 201 PPC is unexceptionable and the same is up held and maintained. The sentence of imprisonment of life with fine of Rs. 50,000/- and in default to suffer six months S.I. and under Section 201 read with Section 302 PPC for seven years with fine of Rs.5000/- and in default to suffer imprisonment of six months are fully justified. The conviction and sentence is as

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such upheld and maintained Benefit of Section 382-b Cr.P.C. as
already granted will remain intact. The appeal stands dismissed.





ZAFAR PASHA CHAUDHRY
JUDGE

S. A. RABBANI
JUDGE

Dated Lahore the
4th day of March, 2005.
M. Imran Bhatti/*




Approved for reporting.



ZAFAR PASHA CHAUDHRY
JUDGE