

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH AHMAD FAROOQ**

CRIMINAL APPEAL NO.199/I OF 2007

Muhammad Iqbal son of Ahmad Bakhsh,
R/o Mohallah Muhammadi, Near UBL, Multan Road,
Abdul Hakim, Tehsil Kabirwala, District Khanewal.

Appellant

Versus

1. The State.
2. Shahid alias Munna,
3. Mst. Sajida alias Gogi
Both son and daughter of Muhammad Ameer, residents of Muhammadi
Mohallah, Abdul Hakim, Tehsil Kabirwala, District Khanewal.
4. Haitam Ali son of Manak, resident of Mouza Khan, Doultana Chack
Kabirwala, Tehsil Kabirwala, present Railway Gate Keeper Abdul
Hakeem.

.... Respondents

Counsel for appellant	....	Mr. Muhammad Yousaf Zia, Advocate
Counsel for respondents	....	Mr. Muhammad Shoaib Abbasi, Advocate
Counsel for State	....	Dr. Muhammad Anwar Gondal Additional Prosecutor General
FIR, Date and Police Station	....	04, dt: 4.1.2004 Abdul Hakeem, Khanewal Complaint case
Date of Judgment of trial court	....	26.04.2007
Date of Institution	26.06.2007
Date of hearing	29.01.2013
Date of decision	21.03.2013

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JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- Muhammad

Iqbal/appellant after grant of special leave to appeal under section 417(2) of the Code of Criminal Procedure has filed this criminal appeal against the judgment dated 26.04.2007 delivered by learned Additional Sessions Judge, Kabirwala District Khanewal whereby respondents Shahid alias Munna, Mst. Sajida alias Gogi and Haitam Ali were acquitted from the charges under sections 302/34 and 201 of PPC as well as sections 16 and 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance).

2. This appeal arises out of a private complaint, (Ex.PB) moved on 08.01.2004 by Muhammad Iqbal complainant (PW.1) against four accused persons including the proclaimed offender Muhammad Saajid son of Talib Hussain, with regard to an incident covered by the mischief of sections 10(3)/16 of the said Ordinance, as well as sections 302/34 and 201 PPC of the Pakistan Penal Code. The incident allegedly occurred during the

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night between 10/11 November, 2001. The period between incident and moving the learned trial court by way of private complaint is 26 months.

3. Brief facts of the prosecution case are that initially on 11.11.2001 Muhammad Iqbal complainant in the presence of Haji Bashir Ahmed, Manzoor Ahmed and Thiraj Nazim Abdul Hakeem, made a statement before Mazhar Nawaz SI (CW.7) informing him about the unnatural death of his daughter. That statement was reduced by him into writing and recorded in the appropriate register as Rupt No.5 of even date. The Rupt was duly signed by Muhammad Iqbal complainant. Investigation by police into the cause of reported death was initiated thereafter. Inquest Report (Ex.PA) was prepared and dead body, duly escorted by Aalam Sher (PW.8) was sent for Postmortem Examination and report in respect thereof was obtained by the police.

4. The facts narrated in the said Rupt were that Mst. Ghazala Iqbal, daughter of Muhammad Iqbal, complainant, (aged about 18/19 years) student of 3rd years in Government Post Graduate College for Women, Satellite Town Rawalpindi, who had come to Abdul Hakim on

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account of death of her maternal grand father, was found missing from her bed at 11.00 p.m. during the night between 10/11-11.2001. Search was carried out. It was suspected that she might have gone to accused Shahid alias Munna and Sajid Arain but in the morning at about 9.00.a.m, the complainant was informed that his daughter had committed suicide having been over-run by train at gate No.16/C Abdul Hakim. The complainant suspected that both the afore mentioned persons after subjecting her to illicit sex must have turned her out of the house,whereafter she committed suicide out of shame.

5. The local police, as a consequence of the information received about the unnatural death of Mst. Ghazal Iqbal under suspicious circumstances, initiated investigation into the matter. Mazhar Nawaz ASI reached the place where the dead body was lying near the rail tack. Inquest report was prepared. Dead body was taken to THQ Hospital Kabirwala by PW.8 Aalam Sher Constable for Post Mortem, after the arrival of police at the spot. Post Mortem was conducted the same day at 4.30 p.m. by PW.9



Dr. Mehmooda Hamid, who observed following 11 injuries on the dead body. Her opinion is also being reproduced:-

EXTERNAL EXAMINATION

On external examination I found the following injuries on the dead body:-

1. A lacerated wound 5 cm x 1.5 cm muscle deep on the left side of face mideal to left ear.
2. A lacerated wound 3 cm x 3 cm size on the back of left ear lobule.
3. A skin abrasion 6 cm x 3 cm on the left side of face below injury No.1.
4. Skin abrasion 8 cm x 4 cm on the right side of face, start from cheek and extend upto the right side of chin.
5. A skin abrasion 2 cm x 1 cm in size on the right side of nose.
6. A diffuse swelling 5 cm x 5 cm on the back of skull (occipitan region)
7. A skin abrasion 10 cm x 5 cm on the back at left side.
8. Fracture of 8, 9, 10 ribs felt posterior by hand on left side. (rubbing or crackling sensation felt).
9. Multiple abrasion on the abdomen was seen.
10. Multiple abrasion on the front of left and left foot.
11. Multiple abrasion on the right foot and multiple abrasion on the back of both hands was seen.

INTERNAL EXAMINATION.

Scalp, skull and vertebrae

Head moveable on neck, there was dis-location or fracture of first, second cervical vertbebrae was confirmed by



feeling and nothing crackling sound, heart and felt on moving head.

THORAX.

Externally fractures of left 8,9, 10 ribs were confirmed on opening thorax walls by feeling. Walls, Ribs and cartilages.

Thorax cavity contained blood mostly on left side.

Pleurax, Larynx, Trachea, Right Lung, were found walls NA Ditonium, Mouth

Left Lung was injured, and ruptured. On examination blood came out from lung.

Paricardium and heart.

Right chamber contained blood and left chamber was empty.

ABDOMEN

Walls, Paritorium mouth, pharynx and oesophagus, diaphragm were NAD.

STOMACH AND ITS CONTENTS.

NAD. Contained liquid food material. Small intestine contained digested food while large intestine was empty containing air.

Liver, Spleen, kidney were NAD and bladder was full.

Vaginal Examination.

No stain or bleeding was seen on shalwar or on her vulva.

Hymen was torn.

Three vaginal swabs were taken and sealed in a bottle and handed over to the police for semen detection.

Uterus was antiverted, normal size on opening abdomen.

Muscles, Bones and Joints were NAD.

OPINION.

After complete external and internal post mortem examination all the injuries were found ante mortem. There was dislocation or fracture of first and second cervical vertebrae Head freely mobile. Fracture of left 8, 9

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and 10 ribs. Rupture of left lung, death occurred immediately through natural process due to neurogenic shock and excessive bleeding. The time which elapsed between injuries and death was immediate and between death and post-mortem 18 to 20 hours."

The dead body was handed over to the complainant after the post mortem. Sealed Phial received by Pw.8 from the Lady Doctor were deposited by Pw.8 in the Malkhana. Mazhar Nawaz ASI recorded statements of witnesses. He joined into the investigation accused Shahid, who was on pre-arrest bail. Abdul Karim Inspector, SHO (CW5) had also undertaken investigation. He submitted discharge report in respect of accused Shahid alias Munna and Mst. Sajida alias Gogi in the Court besides getting the proceedings under section 87-88 Cr. P.C. conducted against absconding accused Saajid.

6. The complainant then filed a direct complaint, (Ex.PB), before the Illaqa Magistrate on 08.01.2004 because the police had found only Saajid accused guilty of offence of illicit sex. However an altogether different story regarding the murder of his daughter Mst. Ghazala Iqbal was introduced in the private complaint by complainant Muhammad Iqbal.



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7. Learned trial court initiated proceeding as a result of the private complaint lodged in his court. After recording preliminary evidence of five witnesses including the evidence of the complainant, the learned trial court summoned accused/respondents. On 02.10.2004 charge against three accused was framed under sections 16, 10(3) of the said Ordinance, as well as section 302/34 and section 201 of Pakistan Penal Code. The accused did not plead guilty and claimed trial. Muhammad Sajid accused had been declared proclaimed offender.

8. The prosecution produced nine prosecution witnesses at the trial. Eight court witnesses were also examined. The gist of their deposition is given as under:-

- * Muhammad Iqbal, complainant appeared as P.W.1. He endorsed the facts recorded in the complaint (Ex.PB) filed by him before the Illaqa Magistrate on 08.01.2004.
- * Mst. Shehzadan Begum as P.W.2 stated that she alongwith Mst. Daulat Bibi Razia Bibi and Taslim Bibi visited the place of occurrence at Railway Gate Abdul Hakim and saw the dead body of Mst. Ghazala Iqbal. She is also a witness of extra-judicial confession of Mst. Sajada alias Gogi accused.

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- * P.W.3 Mst. Daulat Bibi deposed that she alongwith Mst. Shehzadan Begum and other ladies went to the spot and saw the dead body of Mst.Ghazala Iqbal. She is another witness of extra-judicial confession of the accused Mst. Sajada alias Gogi.
- * Muhammad Amjad appearing as PW 4 stated that some three years and five month back he had seen the Shahid accused carrying a dead body on his shoulder while Saajid and his sister Sajida alias Gogi were accompanying him. On his inquiry the accused disclosed that they had a guest from Jhang who was being taken to doctor for treatment.
- * Mukhtar Hussain P.W.5 stated that on 10.11.2001 at 8.30.p.m. he alongwith Muhammad Saeed saw Mst. Sajida alias Gogi in the company of Mst.Ghazala Iqbal entering the house of the latter.
- * Muhammad Arif appeared as P.W.6. He stated that one Bashir (since dead) had told him that he had seen the accused carrying a girl who was wearing a black colour chadar with white dots on it. This witness also claims to be a witness of extra-judicial confession of the male accused.
- * Draz Ahmad, Railway Guard, Shorkot Cantt. appeared at the trial as P.W.7 to state that on 11.11.2001 the train left Abdul Hakim for Darkhana Railway Staion at 8.12 a.m. During this

At

journey the train did not meet with any accident, nor it was stopped nor any accident was recorded.

* Aalam Sher Constable appeared as P.W.8 and stated that he escorted the dead body of Mst. Ghazala Iqbal for post-mortem which was conducted in Tehsil Headquarter Hospital Kabirwala. After post-mortem the witness received police papers, post-mortem report, sealed phial, last worn clothes of the deceased as well as the dead body. The corpse and last worn clothes were handed over to the complainant. The other articles i.e, police papers, post-mortem report and sealed phial were deposited with the Moharrir of police station.

* Lady Dr. Mehmooda Hamid appeared as P.W.9 and stated that on 11.11.2001 she conducted post-mortem examination on the dead body of Mst. Ghazala Iqbal. On external appearance she found that blood was oozing from the right ear from inner side. Clotted blood was seen in the left ear. Mud and blood was also present on the shirt of the deceased. On external examination the lady doctor found 11wounds of the category of lacerations, swellings and abrasions of different measurements. She had also undertaken vaginal examination. She made a detailed statement and verified the post-mortem report.

9. The learned trial court examined eight court witnesses. The



gist of their deposition is as under:-

- * Sarfraz Constable, C.W.1, stated that on 19.11.2001 Muhammad Anwar Moharrar of Police Station, Abdul Hakim handed over to him one sealed phial for onward transmission to the Office of Chemical Examiner Multan which was deposited intact on the same date.
- * Shahid Javed, Head Moharrir, C.W.2, stated that on 15.5.2002 a fire broke out in the Malkhana and all the articles were burnt. In this respect he produced Rupt No.13 dated 15.5.2002 (Ex.CW-2/1). Copy was compared with the original record.
- * Muhammad Anwar, ASI C.W.3, stated that on 14.01.2002 after receiving Rupt No.5 dated 11.11.2001, recorded on the statement of complainant Muhammad Iqbal and sent by Muhammad Nawaz, S.I, he formally registered FIR. (Ex. CW-3/A).
- * Muhammad Usman, Inspector/SHO who had partly investigated the case appeared as C.W.4. He had recorded statements of witnesses and arrested Shahid alias Munna accused on 04.02.2002. Thereafter the investigation was transferred to the District Superintendent Police, Headquarter.
- * Abdul Karim, Inspector appeared at the trial as C.W.5. He stated that on 26.11.2002 he received the file of this case and pursuant to the recommendations made therein, he submitted discharge report in respect of accused Shahid alias Munna and Mst. Sajida alias Gogi before the court besides getting the



proceedings under section 87/88 of the Code of Criminal Procedure conducted against the absconding accused Sajid.

* Abdul Sattar, C.W.6 is another chance witness who allegedly saw accused Shahid, Mst. Saajda alias Gogi and an unknown person on 11.11.2001 after crossing the Ravi bridge. The witness also stated that the three persons standing there looked worried.

* Mazhar Nawaz, S.I. appeared as C.Ws 7 and deposed that on 04.01.2002 he received file of this case. He recorded supplementary statement of complainant and two witnesses namely Muhammad Amjad and Bashir Ahmed.

* Rab Nawaz D.S.P. Headquarter Multan appeared at the trial as CW8. He was entrusted with the investigation of this case on 08.05.2002. He obtained query from the lady Doctor in view of the post-mortem report. He recorded the statement of two witnesses and gave his "final report" on 03.09.2002 exonerating two accused i.e. Shahid alias Munna and Mst. Sajida alias Gogi respondents. He had fixed liability upon accused Shahid, the proclaimed offender.

10. After closure of the evidence of the prosecution, the learned trial court then proceeded to record statements of accused Shahid alias

Munna, Mst. Sajida alias Gogi and Haitam Ali under section 342 of the

Code Criminal Procedure. The appellant/Accused Shahid in answer to question No.9, "why this case against you and why the P.Ws have deposed against you?" stated as follows:-

" I am innocent. I have no concern with the alleged occurrence. There were two shops owned by one Allah Ditta Kumhar near my house as well as near the house of complainant. The complainant wanted to purchase those shops but my elder brother Allah Ditta Javaid purchased the above mentioned shops at higher price than that of the complainant prior to this occurrence. Since then my family had not visiting terms with the family of complainant. P.Ws are closely related to the complainant party and are inimical towards me. They are interested witnesses. Due to that grudge I have been falsely implicated in this case".

Accused Haitam Ali answered to the same question as under:-

"I was a Railway employee. On 11.11.2001 I was on duty at Gate No.C 16 situated at Sidhnai Canal Railway Cross. I am the eye witness of the commission of suicide committed by Mst. Ghazala deceased on 11.11.2001 at about 8.00 a.m. In this regard my statement under section 161 Cr.P.C. was recorded by various Investigating Officers during the investigation of above mentioned occurrence. The complainant forced me to give affidavit in his favour against the real facts against the accused party but I refused to do so and due to that grudge the complainant has falsely implicated me in this private complaint".

Haitam Ali accused also made a statement on oath under section 340(2) of the Code of Criminal Procedure. He appeared as DW 1 and made statement in the following words:-

“On 11.11.2001, I was performing my duty as gate man at Gate No.C-16 near railway station Abdul Hakim. After offering Fajar prayer, I was reciting Holy Quran when I saw a girl going towards Ravi Bridge beside railway track. After about 1½ house I again notices that the same girl was coming back. Two persons namely Afzal and Chiragh were coming ahead of her. I was on the western side of the railway gate, when the aforesaid three persons including the said girl reached near Eastern gate, the train Dhamaka Express was coming from Abdul Hakim side and moving towards Shorkot and was given clearance signal. At that time Umar Hayat and Imran were also standing beside me. The girl was standing inside the railway gate. The aforesaid Imran asked her to stay back since the train was coming on which the girl moved outside the gate. When the train reached near the gate the said girl again came inside the gate and tried to be run over by the train. When the train passed I saw that she was lying near the railway track. When we approached the said girl, I found that she was lying dead after hitting the train. I asked the aforesaid Afzal to lodge report with the Station Master. When the police arrived at the spot, I narrated the above facts in my statement. I have also been joining the investigation of this case at later stage. The complainant had been approaching me and insisting upon to deviate from my statement, to which I did not agree for which reason now I have been cited as an accused in this direct complaint case”.



In answer to question, "why this case against you and why the PWs and CWs have deposed against you?", Mst. Sajida alias Gogi made statement answered in the following words:-

"I rely upon the answer given by my co-accused Shahid alias Munna. I am his real sister"

11. The learned trial court thereafter heard the arguments of the contending parties in the light of evidence brought on record of this case. After assessing the entire evidence the learned trial court came to the conclusion that "the prosecution evidence in no way can be termed as trustworthy, confidence inspiring or emanating from unimpeachable source". The learned trial court also found that the case depended entirely upon circumstantial evidence and in order to bring home guilt of the accused the chain of the events must not be unbroken. Consequently all the accused except Saajid, the absconding accused, were acquitted of all the charges. Hence the present appeal against acquittal filed by the complainant to challenge the judgment whereby the three respondents have been acquitted.



12. We have heard the learned counsel for the parties and perused the record with their assistance. Learned counsel for the appellant placing reliance on judgments reported as 1998 SCMR 2669, 2000 PCr.LJ 320, 2007 SCMR 778, 1972 SCMR 672 and contended that:-

- * the entire case is based on circumstantial evidence;
- * the postmortem report favours the complainant as according to the evidence no train accident took place and it was a murder and not suicide case;
- * no blood was recovered by the Investigating Officer from the place of occurrence. According to the nature of wounds and lacerations on the face of the victim, did not support the claim that she was hit by the moving train as in that case the skull would have been smashed;
- * the chaddar on the dead body of the deceased belonged to Mst. Sajida alias Gogi respondent/accused;
- * the accused Sajid who is proclaimed offender in this case is said to be relative of respondents;
- * the complainant reported the matter to police on very day of incident on the basis of which Rupt was lodged;
- * the medical report also endorses commission of zina with the deceased/victim;



- * respondent/accused Sajida alias Gogi made her extra judicial confession regarding commission of zina-bil-jabr and subsequent murder of Mst. Ghazala Iqbal, before PW.2 and PW.3; and
- * the learned trial court has not appreciated the evidence properly and the impugned judgment is based on surmises and conjectures and suffers from misreading and non-reading of the evidence.

Learned counsel for the respondents contended that:-

- * Placing reliance on Judgments reported as 2008 SCMR 1103, 2003 SCMR 868, 2006 YLR 3147 and 2004 SD 392 double presumption of innocence is attached to acquittal of respondents by trial court;
- * there was inordinate delay in lodging the FIR and the complainant;
- * the chaddar was not stained with blood and the same was neither sent to the Chemical Examiner nor was produced at the time of evidence
- * extra judicial confession of Mst. Sajida alias Gogi is a weak piece of evidence which cannot be made basis for conviction;
- * there are many contradictions and doubts in the prosecution case and the benefit must be extended to the respondents/accused:



- * the respondents/accused have been falsely implicated by the complainant and there was no incriminating evidence on record to connect them with the commission of offence;

Learned Additional Prosecutor General for State supported the impugned judgment and argued that the judgment is based on valid reasons and the learned trial court has rightly acquitted the accused/respondents in this case.

13. We have gone through the file. The evidence, oral and documentary, brought on record by the prosecution and the deposition of court witnesses as well as the statement of accused and the statements of defence witnesses have been perused. Relevant portions of the impugned judgment have been scanned. Arguments advanced on behalf of the contending parties were noted for consideration.

14. After recording the contentions raised by the learned counsel for the appellant we observed that the following points emerge for consideration in this appeal.

a) In an appeal against acquittal usually the courts are reluctant to interfere in the impugned judgment unless it can be shown that the impugned judgment is perverse or based upon non-reading/misreading

of evidence available on record to an extent that it has caused miscarriage of justice.

b) The legal position as regards the acceptability of an extra judicial confession is that “ A three fold proof is required to make the extra-judicial confession the basis of conviction. First; that in fact it was made; secondly, that it was voluntarily made and, thirdly; it was truly made.” This reference is from the case of Muhammad Kamran versus State reported as 2003 SCMR 1070 at page 1072.

c) That conviction is ordinarily based upon substantive or direct evidence and not on any other type of evidence howsoever convincing it may be. Reference Muhammad Noor versus Member 1, Board of Revenue, Baluchistan and others 1991 SCMR 643.

d) In order, however, to claim conviction in a case depending upon circumstantial evidence, the prosecution must establish four basic requirement:-

- i. The circumstances from which the conclusions are drawn should be fully established.
- ii. All the facts must be consistent with the hypothesis.
- iii. The circumstances should be of a conclusive nature.
- iv. The circumstances should, to a moral sanctity, actually exclude every hypothesis, but the one proposed to be proved. Muhabbat vs. State 1990 PCr.LJ 73.

These principles were also enunciated in the case of State of UP vs. Dr. Ravindra Prakash Miltal AIR 1992 Supreme Court 2045. The record of the case must show that a chain of events has been interwoven in such a way that its assessment would lead to inescapable conclusion that accused committed the offence. The evidence has of course to be of high quality. It

should inspire confidence in the mind of judge because direct evidence is not before him.

e) Fundamental principle of universal application in cases depending upon circumstantial evidence is that in order to justify the inference of guilt, the incriminating fact must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Wazir Muhammad and another vs. The State 2005 SCMR 277 at page 278.

f) It is not necessary to look for many circumstances in order to grant benefit of doubt to an accused. A single circumstance creating a reasonable doubt would entitle the accused to claim benefit of doubt.

g) Grant of benefit of doubt is more than a mere principle of law. It is a rule of prudence which cannot be ignored because it is deemed to be his right.

15. Reverting to the facts of this case we wanted to ascertain whether any material fact was overlooked or not considered by the learned trial court or some factor alien to the facts proved on record was made the basis of acquittal. We discovered two significant points: a/ that the complainant and accused were neighbours and the former visited the house of latter at 1.00 a.m. and searched it to ascertain whether the deceased Ghazala Iqbal was in the house of the accused and he found all the three

accused present in their house and b/ according to the deposition of C.W.8 Rab Nawaz, DSP, Headquarter, who had partly undertaken investigation and recorded statement of witnesses, stated in his examination-in-chief as follows:-

“That Mst. Ghazala deceased was neither abducted nor murdered by any one rather she had gone with absconding accused Saajid son of Talib of her own free accord; that she was subjected to Zina by the aforesaid Saajid who was guilty in this case; that thereafter, the aforesaid accused did not keep the promise made with her on which Mst. Ghazala Iqbal deceased committed suicide by colliding with train out of remorse. I did not find any incriminating evidence against accused Shahid and Mst. Saajida during my investigation.”

In response to certain questions posed during his cross-examination as to whether the deceased was in the company of the accused at the crucial time, CW8 while, referring to the first version of Mst. Saajida alias Gogi, stated as under:-

“That she was wife of Muhammad Yaqub and was residing with her brothers, that she was sleeping at her house on the night of occurrence; Shahid alias Munna her brother was also sleeping; *Iqbal's wife came in the night and told*

that Ghazala was missing; she told her that she had not *come to their house, she got the entire house searched by getting the doors opened including the bath room.*”(Emphasis added)

16. The prosecution case depends entirely upon circumstantial evidence as there is no direct evidence either of rape or the murder. The prosecution has made an effort to connect the following six events to bring charges home to the accused.

A. Mukhtar Hussain, PW.5, alongwith Muhammad Saeed is alleged to have seen Mst. Sajida accused and Ghazala Iqbal deceased going into the house of the former on 10.11.2001 at about 8.00 p.m. which fact was *admittedly disclosed by this witness to the complainant 3 days after the occurrence.* Muhammad Saeed, the other witness of the *last seen*, is stated to be living in Saudi Arabia “*now a days*”. The prosecution through this witness wants to establish that deceased Mst. Ghazala Iqbal, while alive, was seen entering the house of accused a few hours before her murder and almost three hours before the time when she was shown as missing from her own house.

B. PW.4 Muhammad Amjad deposed at the trial that about three years and five months back he came out of his house at 5.30 a.m. “and saw accused Shahid alongwith his sister Sajida alias Gogi and Sajid and accused Shahid was carrying a dead body on his shoulder. Bashir s/o Pathana was also with me. On my inquiry they disclosed to me that they

had guest from Jhang and they were carrying her to the Doctor for her treatment. I informed about this fact to Muhammad Iqbal complainant. Afore mentioned Bashir s/o Pathana had died". The prosecution, through this witness seeks to establish the exit of dead body of Ghazala Iqbal from the house where she had entered the previous evening while she was alive.

C. PW.2 Mst. Shehzadan Begum and PW.3 Mst. Daulat Bibi were produced to prove that the black chadder with white dots in which the dead body was found wrapped lying near the railway track, in fact belonged to accused Sajida alias Gogi. The prosecution has thereby introduced the third link by way of chaddar to show that dead body was in fact taken out of the house of accused after being wrapped in a chaddar which belonged to the accused. Obviously the purpose is to show that after the murder the dead body was wrapped by the accused for disposal purpose in a chaddar readily available in the house. This black chaddar with white dots has been put in the mouth of other witnesses.

D. The two female witnesses i.e, PW.2 and PW.3 have also alleged that on the next day both of them went to the house of accused and confronted her with the fact that the chaddar covering the dead body belonged to her whereafter she confessed her guilt and said that Shahid and Saajid had committed rape after she had brought Ghazala Iqbal in the house. On the insistence of the victim to report the matter she was done to death and thrown "on the ground from the Chowbara." This part of extra-judicial confession relates to Sajida alias Gogi accused. The second part of the extra judicial confession of the two male accused comes out of the statement of PW.6 Muhammad Arif. He stated that on 12.11.2001 he had

heard from one Bashir, now dead, that on hearing some noise he came out of his house in the street at 5.00 a.m. and saw Sajid accused carrying a girl on his shoulders alongwith Shahid and Sajida accused. On enquiry the accused stated that the girl was their guest from Jhang and she was not feeling well and they were taking her to the Doctor. This witness further stated that the girl *being carried was wearing a black chaddar with white dots*. Muhammad Arif PW6 proceeded to depose further as under:-

“On the same day i.e. 12.11.2001 Iqbal complainant came to my house at about 1.00 p.m. and asked me that he suspected that accused had committed the murder of his daughter therefore I should inquire from the accused regarding this occurrence. I alongwith Bashir (since dead) went to the house of accused where I met Abdul Majeed a relative of the accused who confessed before me and Bashir aforesaid that accused have committed the mistake and I should make efforts to arrange a compromise with the complainant. In the meanwhile Sajid accused (P.O) also came there and I alongwith Bashir took him in the street and I inquired from him as to whether they have committed murder of Ghazala Iqbal firstly he denied and thereafter when Bashir PW stated that he had seen them a taking away the girl with them to Doctor. At this I warned Saajid accused to tell the truth, Saajid accused then confessed that he and Shahid accused had committed Zina bil Jabr with Mst.



Ghazala She made noise and we gave him blow to keep her unconscious thereafter we thought that we should commit her murder and we did so. After this we sent back Sajid and Shahid had came to us. We inquired from Shahid, firstly he also denied and thereafter he confessed his guilt in the same words as stated by the accused Sajid and confessed committing the murder of Ghazala Iqbal and requested me that I should make efforts to have a compromise with the complainant. I told these facts to the complainant of this case Iqbal and also disclosed it to the police.”

This witness is son-in-law of the complainant.

E. Abdul Sattar, CW.6, has been introduced to establish that on 11.11.2001 he saw accused Shahid and Mst. Sajida alias Gogi along with an unknowns person after crossing Ravi bridge and “they looked worried”. After about two hours this witness learnt that a dead body was lying near the Railway crossing. This witness is also made to state that the chaddar “earlier observed by Mst. Saajida alias Gogi, was covering the dead body.” This witness not only shows the presence of the accused at the place of occurrence at the crucial time but he also wants the court to believe that the chaddar covering the corpse belonged to Mst. Sajida accused.

F. The complainant in paragraph 11 of the complaint proceeded to allege further that respondent Haitum Ali, gate keeper deputed at the level crossing at the crucial time, had wrongly

medical evidence the issue of rape cannot be seriously canvassed for consideration by the learned counsel for the appellant. The learned counsel however concedes that the links between the handing over of swabs and the final report of the Chemical Examiner are not established. The prosecution has thus failed to prove the charge against the respondents under 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

18. We now proceed to examine the charge under section 16 of the said Ordinance i.e. "enticing or taking away or detaining with criminal intent a woman." The only evidence is that of last seen coming from the mouth of PW5 Mukhtar Hussain, a relative of the complainant. He stated that he saw Mst. Sajida accused alongwith Ghazala Iqbal going to the house of former on 10.11.2001 at 8/8.30 p.m. The witness claims having seen them in the street when "there was no electric bulb in the street". We can assume that in the month of November at 8/8.30 p.m. it would be certainly dark in the street if there is no light. But there is direct evidence of complainant himself that he went to the adjoining house of the accused at about 1.00 at night and found all the accused present but his daughter was



This witness does not say any thing beyond it. Neither this witness states the source from where the parcel had come nor does the constable who received the contaminated swabs from the doctor came forward to establish the link of handing over-taking over of the parcel. There is no evidence even of Doctor, PW.9 that she handed it over to Sarfarz Constable or Aalam Sher Constable. The latter however does say that he received post mortem report and phial from the Doctor. Constable does not say that he produced it before the Investigating Officer who took its possession vide Memo so and so on such and such date and the Investigating Officer also does not say that after receiving it from a certain person on a certain date he got it deposited with such and such Head Constable Moharrir for its safe custody in the Malkhana and that Head Constable also does not appear at the trial to state that he had in fact received the envelope and it was kept in safe custody by him. PW.8 simply stated that he deposited the parcel in the Malkhana. The missing links do not portend well. In this view of the matter the positive report of the Chemical Examiner loses significance.

The net result is that in the absence of direct or strong corroborative

introduced the version that Ghazala Iqbal had committed suicide by colliding with train. He is therefore accused of being guilty under section 201 of the Pakistan Penal Code. This was another improvement made by the complainant.

17. In so far as the position of the positive report of Chemical Examiner Ex.PJ is concerned it has been considered as corroborative evidence and never as conclusive proof of guilt of a particular person. Moreover it is also noteworthy that three vaginal swabs, allegedly dispatched by WMO, THQ Hospital, Kabirwala on 11 November, 2001, were received by the Chemical Examiner Office on 19 November, 2001 through Muhammad Sarfraz 189/C in the form of one envelope. Muhammad Sarfraz constable appeared at the trial as CW.1. He stated that on 19.11.2001 the Muharrir Muhammad Anwar gave him a sealed parcel for onward transmission to the office of Chemical Examiner. Muharrir Muhammad Anwar appeared as CW.3 to state that:

“On 19.11.2001 I handed over a sealed parcel *which was already present in the Malkhana to Sarfraz Constable for its onward transmission to the office of Forensic Science Laboratory.*” (Emphasis added)



circumstantial evidence consisting of a few links which were formally disclosed by way of a complaint 26 months after the incident though the complainant alleged that he had come to know all these thing within three days of the incident. This complaint was lodged about 14 months after the discharge report was signed by Abdul Karim S.H.O. CW.5 regarding two accused.

20. The complainant did not make a supplementary statement before police about the various chains of the circumstantial evidence. The FIR in this case was ultimately lodged on 04.01.2002 after the receipt of report of the Chemical Examiner whereas the incident had taken place during the night between 10/11 November 2001 at 11.00 p.m. The complainant had all the time to deliberate, consult and prepare a convincing story at the risk of being dubbed as an Improvement which has totally changed the complexion of the story. During this period he nowhere expressed dissatisfaction with the higher authorities about the initial investigation by police. The text of the crime report, dated 04.01.2002, is spread over just seven lines. No reference whatsoever has been made to the

not there. The search for the missing girl continued till next morning. The complainant and accused are neighbours. Only a wall separates the two houses. The allegation of PW.5 that he saw the deceased enter the house of Mst. Sajida accused in the street when it was dark is not convincing particularly when the father of the deceased himself admits having seen the accused present in their own house at 1.00 (middle of night) while his daughter was not there. The principle in the last seen is that during the intervening period i.e. the time of last seen and time of death, every circumstance should be inconsistent with the innocence of the accused. There is no motive alleged or proved. Motive can be an important factor in circumstantial evidence *Arun Kumar Banerjee and another vs. The State AIR 1962 Calcutta 504. Itley vs. State of Uttar Pradesh AIR 1955 Supreme Court 807 (810)*. The conclusion therefore is that the prosecution has also failed to prove charge under section 16 of the said Ordinance.

19. The other charge against the respondents was of Qatl-i-Amd of Mst. Ghazala Iqbal punishable under section 302/34 of the Pakistan Penal Code. The prosecution in order to prove this charge has adduced



the clues of murder within three days of the occurrence. This ominous silence for such a long time cannot be viewed without suspicion.

ii. That the evidence of the last seen alive advanced through Mukhtar Hussain Pw.5 will be treated with caution because this witness is a chance witness, related to the complainant who claims to have seen the deceased along with accused late in the evening in a street which had no source of light. This witness in his examination in Chief mentioned the name of Muhammad Saeed as the person who was with him at the crucial time when he is supposedly saw the deceased alive but in his cross-examination he stated that he had forgotten the name of his companion. He does not claim that it was his want to pass through this very street every evening after closing his shop on each working day. He never appeared before the police to depose to this fact of having seen the deceased alive on 10.11.2001 at 8.30 p.m. in the company of accused.

iii. The author of the story of the complainant does not give any explanation as to why a/ the dead body was kept during in the house of the accused during the darkness of night when evil thrives unchecked and was taken out of the house only in early morning and that too in a position that it was being carried on the shoulder of accused for a distance of 4 kilometers in rural area where the vigilant populace is up and about. The inhabitants are either returning from mosque, or going out in the fields for cultivation purposes or for that matter a large number of the residents of localities leave their homes to answer the call of nature. Either the accused had herculean strength to carry and move with dead weight of the corpse of a grown up lady for a considerable distance without being challenged by a

persons must have seen this abnormal thing that a wounded dead body was being lifted by a male carrier alongwith another male and a female accused.

But the police investigation did not show any such abnormal thing. This part of the story that the corpse of an injured and bleeding young female was carried on shoulder in the morning for a considerable distance without being challenged does not appeal to reason.

22. The upshot of above discussion is that the prosecution has to stand on its legs inevitably and in cases of circumstantial evidence the task of the prosecution becomes all the more onerous. The benefit of doubt is extended only to the accused and not the complainant. Despite the effort to introduce six links to establish a coherent picture in this case the author of the chronicle however failed to close the following loopholes:-

i. That the complainant had admittedly got recorded a seven line Rupt on 11.11.2001 and till 08.01.2004 i.e, the date of filing private complaint a period of 26 months had elapsed during which he did not bother to disclose these detailed facts in a supplementary statement to the Crime Branch Multan which was also supervising this investigation. According to the deposition of the complainant himself *he had obtained*

circumstantial evidence available to the complainant either in a supplementary statement or any application before any court or Senior Police Officer. It is therefore clear that it is a case of improvement on six substantial points with the result that the very nature of the initial version stood altered at the time of initiating the complaint before the trial court. The period between recording of FIR i.e. 04.01.2002 and deposition before the learned trial court on 02.05.2005 is three years and four months. This is the time during which improvements and connecting chains crept in the story. The crime report consisted of seven lines whereas the evidence of the complainant including cross-examination at the trial runs into eight pages.

21. The lady doctor PW.9 in her statement disclosed that at the time of postmortem, "blood was seen to come from the right ear from inner side." If the eleven injuries found on the dead body had been caused by the accused at their residence during the night from where the dead body was allegedly carried on shoulder by accused upto the railway line, a distance of 4 kilometers from the place of murder, then the clothes of the accused should have been stained with blood or other secretion and a lot many

single independent person. It was as if he was wearing a magic cap to make him invisible. It is indeed fantastic, strange and a puzzling scene that a dead body was being carried on the shoulder for a long distance and no one objected to it. Moreover the practice of women folk accompanying a dead body is alien to our culture. Furthermore complainant admitted that River Ravi was at the distance of 200/250 yards from the place where the dead body was found. It is also in evidence of DW.1, Haitam Ali accused, that "in between the Railway Station and gate 16/C there is Fazal Shah minor and Sidhnai canal. Both the aforesaid had running water. There is also a Railway police post between gate C-16 and Railway Ravi Bridge, which means no criminal carrying incriminating material on his shoulder would risk walking past the police post in such a perilous condition. In this view of the matter it is not possible to believe firstly that dead weight of a corpse can be carried for four kilometers in the morning through Abadi without being seen and objected to and secondly that this dead weight was not thrown in some deserted corner during the long distance that the accused traversed on foot. It was also not thrown in either of two canals including a huge Sidhnai Canal on their way. Why should it be carried a little further to be placed in open near a level crossing to enable people to start enquiring immediately about the un-natural death of a young girl with injuries all around?

iv. Extra judicial confession is weak type of evidence and has to be taken with extreme care. The prosecution has not made any effort to establish any motive in this case. The reason and in fact the compelling reason why the female accused should confess before two female witnesses

and the male accused should be found confessing before male witnesses has not been explained by the prosecution either. Another important point lacking in the prosecution evidence is the status of the two female and other male witnesses of extra judicial confession. Why should all the accused repose confidence in these witnesses who did not wield authority or influence with the complainant? These witnesses before whom the confessions were made were also not shown as persons who would be obliged to provide a helping hand to the accused in case of confession. There is no evidence to corroborate the contents of the extra-judicial confession. It means that direct, or indirect testimony on the factum of Qatl-e-Amd is lacking. In such a situation the element of extra-judicial confession is of no avail to the prosecution.

v. The prosecution made an attempt also to show that the black chader with white dots covering the dead body belonged to the female accused. The prosecution has over strained itself by making all its witnesses speak about black chader with white dots. Mst. Shehzadan Begum, PW.2 has gone to the extent of stating as under:-

“The chader in which the dead body was wrapped may be about 2½ meters. I had seen accused Sajida purchasing this chader. At the time of purchasing chader I alongwith family members of Sajida were present. She purchased the chader from women seller. That women who sold the chader had not appeared as a witness in this case. She had purchased the chader 4 years back. She had purchased it on credit. I do not know its price. Aforesaid lady seller was having 3 chaders out of which 2 were purchased by the family of accused Sajida. I cannot say that the chader purchased

by the accused is of common pattern and available in the market.”

PW.3 Mst. Daulat Bibi however admitted that “it is correct that Chader lying on the dead body may be available in the Bazar.” It is therefore clear that there was nothing memorable with that particular chaddar for the witnesses to remember it.

23. A slight doubt was expressed whether in an appeal against acquittal the appellate court can legally re-assess the evidence on record and come to a conclusion different or opposed to the conclusion of not guilty. In order to put it beyond doubt it may be stated that appeal against an acquittal judgment has been specifically provided under section 417 of the Code of Criminal Procedure. It has been further clarified in section 418 of the Code that an appeal may lie on a matter of fact as well as a matter of law. The doubt expressed at the bar is that the appellate court must first come to the conclusion that the impugned judgment is perverse before it proceeds to reverse the order of acquittal. It is possible to establish perversity only if the evidence is revisited by the appellate court and if it is found that the reasons advanced to sustain an acquittal were artificial or ridiculous it can certainly come to an independent and a different conclusion. In so doing the appellate court will certainly keep in mind the fact that an acquittal is indicative of the fact that the presumption of innocence of accused has been judicially accepted, and due weight has,

therefore, to be given to the findings of the lower court which had the initial advantage of observing the demeanor of witnesses whose evidence was recorded within its view and the established principle of appreciation of evidence have not been violated. Reference may be made to the case of *Atley vs. State of Uttar Pradesh* AIR 1955 SC 807 at pages 809-810.

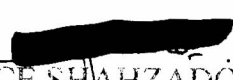
24. In this view of the matter when in the absence of direct evidence, there are doubts on more than one material points as well we are not persuaded to interfere in the impugned judgment. Consequently we dismiss the instant appeal No. 199/I of 2007.

25. It may, however, be pertinent to point out that case against accused Sajid proclaimed offender stands on a different footing and is distinguishable. The discussion hereinabove is not applicable in his case and, therefore, whenever it is taken up on his arrest, it shall be dealt with on its own merits, in accordance with law.

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JUSTICE DR. FIDA MUHAMMAD KHAN

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JUSTICE SHAHZAD SHEIKH

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JUSTICE SHEIKH AHMAD FAROOQ

Announced in Open Court
at Islamabad on 21-3-2013
Mujeeb-ur-Rehman

Fit for repairing.
M. Anwar