IN THE FEDERAL SHARIAT COURT

( Appellate Jurisdiction )

(24)

PRESENT:

HON:MR.JUSTICE ABDUL WAHEED SIDDIQUI

Criminal Appeal No.219/I of 1996.

| | | |
|---|---|---|
| 1. Muhammad Qasim s/o Dost Muhammad caste Awan<br>2. Muhammad Farooq s/o Jagar Khan caste Musalli<br>Both residents of Jasial, P.S. Saddar Talagang, District Chakwal. | ..... | Appellants |
| | Versus | |
| The State | ..... | Respondent |
| Counsel for appellant | ..... | Mr.Altaf Ellahi Sheikh |
| Counsel for State | ..... | Ch.Muhammad Ibrahim |
| FIR No. dated and Police Station | ..... | 102 dated 7-8-1995 P.S. Saddar, Talagang |
| Date of judgment of the Trial Court | ..... | 16-11-1996 |
| Date of Institution | ..... | 8-12-1996 |
| Date of hearing | ..... | 11-02-1997 |
| Date of Decision | ..... | 17-03-1997 |

JUDGMENT:

ABDUL WAHEED SIDDIQUI, J-: Muhammad Qasim and Muhammad Farooq, appellants, were convicted under article 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to undergo R.I. for 4 years each and also awarded 30 stripes each by the Court of Additional Sessions Judge, Talagang vide judgment dated 16-11-1996 which has been impugned .

2. The case of prosecution, in brief, is that Mst.Nasreen Begum (PW-1) filed a written complaint at Police Station Saddar Talagang District Chakwal stating therein that on 25-7-1995 she had gone from her village Jasial for Salam to the Khanqah of Bava Mian Rode at Kot Sarang and she was accompanied by Rajal Khatoon widow of Allah Ditta. While returning, when she reached at a barren place near Jasial around 1200 hours she was confronted with Ghulam Qasim (appellant No.1) possessing a churri and Muhammad Farooq (appelalnt No.2) possessing a pistol. The pistol was pointed at the head of accompanying lady Rajah Khatoon by appellant No.2 and the complainant was made to fall on the ground. Her shalwar was opened and then she was raped by appellant No.1. Appellant No.2 also committed the same offence with her. The complainant remained crying, till Mohammad Nazar Awan resident of Jasial got attracted towards the place of incident as he was grazing his cattle in the vicinity. On seeing him, both the appellants ran away towards the

jungle. She sent intimation about the incident to her husband to Qusoor where he is employed in Rangers' police and remained waiting for his coming but he could not come due to some compelling circumstances and then she had come to police station accompanied by her disabled father whose leg is broken due to some accident and had come on his besakhis from Chakwal.

The complainant was registered on 7-8-1995 as FIR No. 102 Police Station Saddar Talagang.

Both the appellants were arrested, challaned and were charged by the trial Court under article 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 to which they did not plead guilty.

3. Prosecution examined 8 PWs, both the appellants made their statements under section 342 Cr.P.C., declined to be examined on oath and did not produce any defence.

4. I have heard both the counsel for appellants as well as State. The learned counsel for the appellants has contented that there is a delay of 15 days in lodging a written complaint for which no plausible explanation is coming a forward; that the deposition of Lady Doctor Munira Jalil (PW-5) who examined the victim vis-a-vis the report of the chemical examiner (Exh.PH) does not support the allegations of rape; that there is no recovery from the appellants; that clothes of victim were not produced; that there are substantial

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contradictions among the depositions of PWs; that inspite of instructions of the lady Doctor who examined the victim per Exh.PF, no serological grouping was made; that occurrence has been alleged to have taken place at mid-day in a clear day light very close to the main road which does not confirm with the natural conduct of normal mortals; that the animus between the parties is evident from the record; that people normally visit shrines on Thurdays and Fridays, whereas the day of such visit by the victim was Tuesday; that there are contradictions of space and time among the depositions of PWs; that such evidence which could be and is not produced because had it been produced would have been unfavourable to the prosecution who with-held it and in this connection reliance was placed on illustration (g) of Article 129 of Qanun-e-Shahadat Order 1984; that case law was cited, inter alia, 1995 PCrLJ 157, 1995 PCr LJ 1084, PLD 1988 FSC 119, 1996 PCr LJ 1575, 1984 PCr LJ 3198, 1985 PCr LJ 2826, PLD 1983 FSC 192, 1986 PCr LJ 397; that the age differences between the appellants and victim lady do warrant a note of caution concerning natural conduct of homo sapiens in this regard. Counsel for State on the other hand stated at Bar that delay in reporting rape cases was a normal and natural affair in the social set-up of Pakistan. He further contended that the contradictions were not substantial to reach the roots and basic structure of the story of prosecution; that the medical evidence favoured the story narrated by the victim; that any person could visit shrines any day and time in our country; that the enemity was

trifling and not of such nature to stake the honour and reputation of a married lady and the case law cited was distinguishable from the present case; that difference of age between the victim and the appellants does not carry any meaning for a rapist who has lost respect for the moral values.

5. So far as the contention of delay of 15 days in reporting this case is concerned, the explanation coming forward is that during the days of occurrence the husband of the victim Mst.Nasreen Begum (PW-1) was posted at Qasoor in Rangers Force and she conveyed information to him, remained waiting for his return and when due to exigencies of service he could not come, she called her disabled father with broken legs from Chakwal who accompained her to the Police Station for report. During cross, she has deposed, "I informed my husband through one of my relative namely Sabir who had himself gone to inform my husband.I had informed him at 1-30 P.M. on the same day who returned after three days. I informed my father at Chakwal after 5/6 days of occurrence. I informed my father through Safeer one of my relative. I did not go to Police Station without the permission of my husband. " No suggestion has been made to her about the presence of any adult male near relative on the day of occurrence or for the coming two weeks. The only occular witness of the real occurrence of rape namely Rajan Bebe (PW-2) has replied about this aspect during cross, "Sabir and Safeer who are quite grown up are relatives of Nasreen Begum. They are nephews of Ghulam Haider husband of Nasreen Begum."

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This explanation has been found plausible by the learned trial Court in the following words of the judgment in its para No. II, "It has come in evidence, that she lives alone in her house and her husband is employed in Ranger police. It was, but, natural for her to wait her husband because in our part of the country the ladies always hesitate to visit the police station alone even to lodge the report. The victim, therefore, had to wait for her husband and when he did not turn up to the village the next option with her to go to her father, so, she came to the police station alongwith her father and reported the matter." The learned trial Court has referred to the hesitation for lodging reports of rape in our part of the country. But in fact it is a universal phenomenon. In advanced countries like United States of America, psychiatrists of the stature of Mary Ann Mazur of Washigton University and scdelle Katz are dealing with this subject in the following words:-

> " The majority of rape victim decided not to report at all. Instead of penalising the victim who delays in reporting the case, she should be rewarded with kindness and consideration for her difficult decision to help society apprehend a criminal, even at some sacrifice to her own well-being .....
>
> Whereas most crimes permit complaints years later without undermining credibility, for rape the statute

of limitation is 30 days in Colorado, three months in connecticut, six months in New Hampshire, 12 months in Massachusetts and 18 month in Iowa." (Understanding the rape victim- A synthesis of Research finding page 191 published in 1979 by John Wiley & Sons, Inc. New York.

In view of this universal phenomenon, in cases of rape delay in reporting might be stretched upto months provided a plausible natural explanation for such a delay has been placed on the record. In the present case begining from the very complaint itself(Ex. P.A) the delay has been plausibly explained.

So far as the case law on point of delay is concerned every case cited is distinct from the present one. Citation PLD 1983 FSC 192 is a DB judgment of this Court. It is a case in which occurrence was alleged to have taken place on 20-11-1981 at degarwela but the report was made on the following day at 330 P.M. This delay of twenty four hours plus minus was considered an inordinate delay for which explanation was not accepted as a plausible one by this Court in view of the particular circumstances of that case. Soon after the occurrence the father and the brother of the victim and other witnesses had reached the spot, and the police station was not faraway, yet the explanation for delay was that negotitions for compromise were going on. My honourable brother Judges of this Court remarked, " How can we expect a father

or a brother whose daughter or sister has been violated and disgraced to agree to compromise the matter with a person who had committed such a heinous crime."(Page 194, para 4 of the judgment). Another citation on point of delay is 1995 P.Cr.LJ 1048 which pertains to a judgment of a DB of this court. In this judgment a delay of eight days in recording the statement of victim by the investigation officer was considered enough to give benefit of doubt under the circumstances that the victim was a solitary evidence of rape by abductors from whom she was recovered on 15-7-1988, but her statement which was considered to be most crucial on which entire case of prosecution depended was recorded by I.O. on 23-7-1988. This delay of 8 days had no explanation. The case in hand is ,prima facie,distinguishable from the one cited.

6. PLD 1993 FSC 192 has also been cited by the counsel of the appellant on another score as well. In the present case L.H.C.No.241 of police station Saddar, Talagang,Muhammad Afzal,(PW-7),has admitted during cross that he had escorted the lady victim to Civil Hospital Talagang on 7-8-1995. On the same day he had taken her to DHO Hospital Chakwal. The lady doctor examined her and they had to return towards Talagang, but due to non-availability of conveyance at that time they remained waiting at Adda Lari (Bus stop)Chakwal for the whole night. Shan Illahi S.I/S.H.O. Police Station Nila (PW-8) has deposed that on 7-8-1995 he was posted as ASI at

Police Station Saddar Talagang when the victim lady presented written application Exh.P.A.He sent her through Mohammad Afzal C/241 for medical examintion but was informed by him that lady doctor was not available at Talagang hospital and that a proper docat for the examination of the prosecutrix at Chakwal was provided to him. The counsel for appellant has vehemently argued that since the victim lady,admittedly, was for the whole night with P.C.Mohammad Afzal (PW-7), therefore the chemical examiner's report that the swabs were stained with semen castes strong doubts specially when these swabs were taken on 8.8.1995 by the examining lady doctor Munira Jalil (PW-5) and the occurrence had taken place 15 days earlier. In other words the doubt is shown in the character of both the victim lady and the police constable Muhammad Afzal(PW-7). Before I discuss this aspect of the case, the case law on which reliance has been placed by the Bar needs elucidation. In the cited case law, the victim had remained with Muhammad Yousuf A.S.I from 3.30 P.M. of 21-11-1981 till she was medically examined the next day at 4.50 P.M. It was deposed by Muhammad Yousuf ASI in that case, that he took the victim to police staetion Sukheke and on the following day took her to Civil Hospital, Gujranwala for medical examination. This was denied by Ijaz Hussain who was posted as Moharrir at Police Sta tion Sukheke at that time . He had admitted that Mohammad yousuf A.S.I had not returned to the police station on 21-11-1981 and 22-11-1981 but returned on 23-11-1981. This contradiction casted doubts about the bona fide of the Police Officer

keeping the girl for about two days. The benefit of doubt in the attending circumstances was given to the appellant in the said case. (PLD 1983 FSC 192). The present case is distinguishable in view of the fact that PW-7 and PW-8 are not contradicting, but rather corr-oborating, each other. The circumstance of the victim lady's being at Bus stand Chakwal for whole night with the escorting police constable and being constrained by sufficient cause to do so is neither denied nor contradicted by any body reposes confidence. The sugges-tion that it castes doubt is repelled on this account. Now I take up another limb of this aspect of the case. No doubt the victim was examined 15 days after the occurrence and chemical report was positive, but this question was appropriately replied by lady doctor Munira Jalil (PW-5) during cross upon her. She deposed, "In case of a married woman if gang raped ..... alive spermatazoa can be detected from the vagina uptill 72- hours, however, the dead sperm of the same may be detected upto the next menstruation." No suggestion was made to her as to whether positive report of chemical examiner referred to alive sperms or dead ones. Consequently, it amounts to conjecture simplicitor to doubt the character and chestity of the victim lady and escorting constable of Police.

7. So far as the contention that Lady Doctor Munira Jalil (PW-5) did not find any mark of external violence on the body of victim indicates that she had not struggled against rape and it was

an act of Zina by consent and for this reliance has been placed on 1986 P Cr.LJ 397 is rejected on the ground that in the present case the married victim was overwhelmed by two armed young persons and was under a direct threat of murder or injury to body and , therefore, resistence was not expected from her whereas in the cited case the prosecutrix, claiming to be virgin, was found to be a girl of easy virtues through medical and other evidence and that neither she was under threat of any kind by the only accused found in state of cohibition with her nor was he unknown to her earlier. Hence non-presence of marks of violence was indicating the Offence of Zina with consent. For holding this view I am supported by 1990 SCMR 886 in which their lordships have held:

" ـــ جرم زنا ـــ مغویہ کے جسم پر تشدد کے نشان کی عدم موجودگی ـــ اثر ـ ملزم کا یہ موقف کہ بمطابق طبی رپورٹ ، مغویہ کے جسم پر تشدد کا کوئی نشان نہیں اس بنا پر ناقابل التفات ، کہ ایک نو عمر کمزور تیرہ سالہ بچی ایک طاقتور جوان اور درندہ صفت انسان سے کیونکر ہاتھا پائی کر سکتی ہے ـ اس لئے یہ قدرتی امر ہے کہ جب ملزم نے اسے دبوچا ہو گا تو بے بسی کا مظاہرہ کرنے کے علاوہ کچھ نہ کر سکتی ہو گی ـ لیکن لیڈی ڈاکٹر نے اسکی اندام نہانی کے بارے میں جو لکھا اس سے اس کا جرم بغیر کسی ادنی شک کے ثابت ہو جاتا ہے ـ نیز کیمیکل ایگزامینر نے مغویہ کے پارچات کو منی سے آلودہ قرار دیا ہے ـ اس بنا پر ملزم کے موقف میں کوئی وزن نہیں اور اس کے خلاف جرم ثابت ہے ـ

8. The learned counsel for appellant has also assailed the impugned judgment on the point of erroneous results obtained by the Lady Doctor (PW-5) from the Report of chemical examiner Exh.PH. According to the deposition of PW-5, the victim lady was menstruating at the time of examination. Swabs taken under such condition must have shown blood in the Report of chemical examiner, but it is not so in the

Report Exh.PH. This contention is patently wrong because firstly, no such suggestion was made to the lady doctor to clarify the position and secondly that in her examination in chief she has clarified herself the matter in the following words: "Three vaginal swabs were taken and sealed into a parcel for semen detection by the Office of Chemical Examiner" (underlines supplied). So the Report detected that the swabs were stained with semen.

9. It has also been contended that enemity is evident from the record and this creates doubt, the benefit of which must be given to the appellant. Reliance has been placed on 1995 P.Cr.LJ 157 and PLD 1988 FSC ,119. The animus to which reference has been made at Bar has been said to be transpiring form the cross on prosecutrix Nasreen begum (PW-1). She has deposed ,"Before this occurrence, the accused had thrown stones in my court yard whereupon I reprimanded them. They did so just out of joke." Rajan Bibi (PW-2) has deposed during cross,"Prior to this occurrence the accused had thrown stoned in the house of the victim on which the victim threatened them that she will take the revenge." This cannot be termed as an enough raison d'etre for a married middle aged-woman to involve her own respect, reputation and create a permanent scar on her own face in a society like the one which exists in Pakistan. 1995 PCr.LJ 157, is totally misconceived as in the said case the prosecutrix was a lady of 70/75 years and the accused was father-in-law of one of her sons. It was established that the old lady's son had developed some differences with

his wife ,daughter of the accused. This fact was adduced by her son through an affidavit in which it was sworn in that the accused had not committed the offence for which he was charged by his mother, the prosecutrix. The enemity, being raison d'etre for the complaint, was also established by the attending circumstances of the fact that the injuries found on her body were suffered on the left eye, ferearm rightside, right cheek and left scapular region but there was found no injury near or around the vagina of the complainant. The report of the Chemical Analyst was also in the negative. The complaint had also an inherent weakness of an unexplained inordinate delay. This way that case is distinguishable in toto from the one present before me. Case cited as PLD 1988 FSC 119 is again distinguishable as in the said case, medical report was negative whereas election dispute between the parties was proved through the record.

10. Now I take up the point of difference of age and natural conduct of human beings. The age of the victim lady, according to her own deposition as PW-1 appears to be 30-35 years. According to Lady Doctor Munira Jalil (PW-5) who examined her, the age is 30 years. According to statement of appellant Muhammad Qasim recorded u/s 342 Cr.P.C, his age is 18 years, and appellant Muhammad Farooq disclosed his age to be 17/18 years in his statement u/s 342 Cr.P.C. According to Dr.Muhammad Aftab, ( PW-3 ) who examined both the appellants and gave positive report about their virility, the age of both of them was

18 years. How can I believe the contention of the learned counsel for the appellants that it is not in the natural course of things that humans of 18 years of age cannot indulge into the act of rape with a lady of 30 years when in the same society and in the dimensions of global space and time homo sapiens have engrossed themselves into crimes like gang rapes with elderly ladies and nubile virgins,rapes with infants and dead bodies, sexual offences against the order of nature like homosexuality,sodomy,lesbianism,gommorah,bestiality. For a rapist, age and gender, species and genus has no significance at all. The only motive he has with which he is highly spirited at the time of the commission of crime is the satisfaction of his lust. On this account this contention is rejected.

11. The case which has been cited as 1984 P Cr.LJ 3198 is on different footing in as much as that my learned brother Mr.J.B. N.Kazi of this Court (as he then was) had given benefit of doubt in the circumstances, inter alia, that the evidence of victim was not supported by medical evidence and Chemical Examiner found no semen on swabs sent to him. It is not so in the case in hand. Another judgment delivered by the same judge of this Court has been cited as 1985 P Cr.LJ 2826 for the extention of the benefit of doubt. But I cannot extend this benefit in the present case as in the said judgment medical evidence was contradicated by the occular evidence, the inordinate delay in sending sealed parcels to the Chemical Examiner

was not properly explained, according to the report of Chemical Examiner the shalwar of victim was stained with blood but according to Lady Doctor it was not so stained, there was manipulation of sample and shalwar sent and hymen was found intact. Features of distinction between the two cases are clear.

12. It has been vehemently alleged by the defence that there are substantial contradictions among the depositions of PWs and that of space and time. The contradictions which have been pointed out are as under:

i. That according to Nasreen Begum (PW-1), Rajan Bibi (PW-2) is distantly related to her and is wife of one of her cousins, according to Rajan Bibi (PW-2) Nasreen (PW-1) is wife of her brother.

ii. That PW-1 has deposed that she informed her husband through one of her relations namely Sabir, but according to PW-2 Nasreen (PW-1) went to her husband for informing about the occurrence.

iii. That PW-1 deposed that one Budho Lungra met the two accompanying ladies 25 minutes after the occurrence whereas PW-2 deposed that on their way back to home no body met them.

iv. That PW-1 has deposed that Nazar PW came when Farooq accused was committing Zina with her, but PW-2 has deposed that when Nazar PW came to the spot the accused had accomplished their mischief by that time.

v. That according to PW-2, PW-1 informed her father on the second day and on the second day the father of the victim came, and they reported the matter to the Police but PW-1 had deposed that she informed her father at Chakwal after 5/6 days of occurrence through Safeer, one of her relative.

So far as contradiction No.(i) is concerned, it is no contradiciton as PW-1 has shown her relationship with the husband of PW-2 to be her cousin wheras PW-2 has shown her relationship with the spouse of PW-1 to be her brother and then it is intact on the point of admission by both the deponents that they are relative

and it does not uproot the foundations of the version of prosecution. So far as alleged contradiction No.(ii) is concerned, it is about the mode of information to the husband of the victim lady. It does not affect main story of rape. No. (iii) concerns casual meeting with one Budhoo Langra who is neither a witness nor was he intimated about the story. No.(iv) is related with a person who has not been taken up as a witness to verify as to whether he had seen Farooq's mischief or not. No.(v) is related with a matter which has already been clarified earlier that PW-1 (the victim) has correctly stated that she informed her father later and when her father come both of them went to police station for report.

All these discrepancies or so-called contradictions are not of that type which call for disbelief into otherwise a confidence inspiring story of the prosecution. Even otherwise the witnesses are not supposed to go on repeating all details of an occurrence about which they depose months and years later. In case they do, they are considered to be tutored and fed ones repeating exact details like parrots or tape-recorders. Unless a contradiction or discrepancy do not disrupt the main features of a case, it is ignored as a natural conduct of normal human memories.

13. The contention that the occurrence being at mid-day very close to main road is not inspiring confidence has its locus-standi on the following part of deposition of Shan Ellahi ( PW-8 ), the Investigation Officer.

"The place of occurrence is at about four paces to the main road. There were reed present at the spot

but these were not of the nature which could obstruct the PWs from witnessing the occurrence."

This doubt in occurrence has been satisfactorily explained by the victim (PW-1) and the only deposing occular witness Rajan Bibi (PW-2). Both the ladies have stated during their examination-in-chief that the place of occurrence was a deserted one meaning there by that at that time there was no traffic, and not meaning there by that it was a haunted place and that none used to come there. Had it been so, their presence and the presence of Nazar at the spot would have become doubtful. Anyhow, no such question was posed to them by defence to clarify as to what they meant by the word "deserted place." Again the word "deserted place" had enough explanation in the recorded fact that the mazar of baba Rode Shah was usually visited on Thursdays & Fridays whereas it was Tuesday. Consequently a judicial notice can be taken of the fact that on odd days it was not a road or place trodded by many persons and naturally giving an impression of a deserted place. The victim lady has deposed further, Rajan was north at Road at that time..... place of occurrence is surrounded by "Saroots" (Reeds). In case the hue and cry of the two ladies at the spot near the road during mid-day had not attracted any one but Nazar stands explained and need not further elucidation.

14. The learned counsel for appellant has also relied on illustration ( g ) of Article 129 of the Qanun-e-Shahadat Order, 1984 in the presence of the fact that evidence of Nazar, Budho Langra, Sabir, Safeer and father and husband of the prosecutrix could be produced but is

not produced. Consequently the trial Court may have presumed that if these witnesses had been produced they must have been unfavourable to the prosecution. The relevant portion of Article 129 of the Qanun-e-Shahadat Order, 1984 reads:

> "129. Court may presume existence of certain facts- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The Court may presume-
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> (a) . . . . .
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> (b) . . . . .
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> (c) . . . . .
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> (d) . . . . .
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> (e) . . . . .
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> (f) . . . . .
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> (g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who with-holds it.
>
> (h) . . . . .
>
> (i) . . . . .
>
> But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:
>
> as to illustration (a) . . . . .
>
> " (b) . . . . .

" (c) . . . . .

" (d) . . . . .

" (e) . .. . .

" (f) . . . . .

" (g) A man refuse to produce a document which would bear on a contract of small importance on which he is used, but which might injure the feelings and reputation of the family:

as to illistration (h) . . . . .

" (i) . . . . .

The word evidence as used in illustration (g) supra has been defined in Article (2) (c) of the Qanun-e-Shahadat Order 1984 as under:

" evidence includes ---

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

(ii) all documents produced for the inspection of the Court; such documents are called documentary evidence.

Now it is clear that Budho Langra, Sabir, Safeer, father and husband of the prosecutrix were not associated with the investigation from the very begining. They are not appearing as witnesses in column No.6 of the challan. The defence also did not move any such application before the authorities or the trial Court to join them as witnesses or call them as Court witnesses. They could have been produced as Defence Witnesses if at all they were going to be favourable to the appellants. Now the decisions which are rendered on high probability principle are so rendered provided the material was available, in the circumstances, before the forum concerned or it was noticed in the orders concerned. Here, in the circumstances of the present case, no material was available, say, in the shape of statements u/s 161 Cr.P.C before the trial Court so far as Budho Langra, Sabir, Safeer and father and husband of the prosecutrix are concerned. Hence no question

of permission of the Court to make their statements arises. The Court could have required them to make their statements in relation to matters of facts under enquiry as Court witnesses but neither the Court was asked by the appellant to do so nor any need was there to do so suo moto as none of them was an eye witness and had they been summoned, they would have proved heresay witnesses. The case of Muhammad Nazar s/o Moula Bakhsh is different. He has been shown as an eye witness by the prosecutrix in her complaint (Exh.PA). However he has been given up by the prosecution vide application dated 27-8-1996. The trial Court has not used its discretionary power of presuming that had this prosecution witness been produced his evidence would have gone unfavourable to the prosecution withholding it. It has rightly done so, because, presuming that this P.W. was won over by the appellant, the maximum effect would have been that of the declaration of his hostility and then cross by the prosecution which was not going to disturb the silent substantial features of the complaint in the presence of his statement u/s 161 Cr.P.C. On the contrary the proposition made by defence is back -firing on it in view of the fact that the appellants had failed to appear in their defence nor did they produce any Defence Witnesses with a consequence that such evidence as withheld is adversly reflecting on the defence pleaded by the appellants. In holding this view I am supported by 1993 MLD 955 and 1990 MLD 276. For these reasons I am afraid the learned counsel for appellants has misconceived the scheme and proper interpretation of illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984.

15. Finally I take the contention that inspite of instructions of Dr.Muneera Jalil (PW-5) per Exh.PF, no report for serological grouping seems to have been made to assist in formation of the final opinion of the medical officer having examined the complainant. The Report of Chemical Examiner (Exh.PH) is positive about the swabs being stained with semen therefore there is no doubt in the final opinion. This contention is rejected firstly on the ground that no such suggestion was make to Lady Doctor Munira Jalil (PW-5), secondly on the ground that the reports of serologist are essentioal in character, inter alia, in the cases of disputed paternity and rape by one person but many persons are suspected. In the present case such a report would have further corroborated such a story of prose-cution which is otherwise established beyond any reasonable doubt through the evidence on the record.

For the reasons discussed above the impugned judgment is upheld and the appeal is dismissed.

( Abdul Waheed Siddiqui )
Judge

Announced today, 17th March, 1997 in open Court
Fit for reporting.

( Abdul Waheed Siddiqui )
Judge

Zain/*