

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KAHN
MR. JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO.213/L OF 2006

Muhammad Arshad son of Mansha,
Caste Varbu, resident of Chak No.158/9-L,
Tehsil Chichawatni, District Sahiwal.

---Appellant

Versus

The State

---Respondent

CRIMINAL APPEAL NO.238/L OF 2006

Murtaza alias Murti son of Akbar,
Caste Haraj, resident of Chak No.158/9-L,
Tehsil Chichawatni, District Sahiwal.

---Appellant

Versus

The State

---Respondent

✓

Counsel for the appellant Muhammad Arshad	---	Mian Shah Abbas, Advocate
Counsel for appellant Murtaza alias Murti	---	Ch. Saleem Akhtar, Advocate
Counsel for the complainant	---	Mr. Muhammad Anwar Sipra, Advocate
Counsel for the State	---	Ch. Muhammad Ishaque D.P.G.
FIR No., date & Police Station	---	202/05 dated 10.07.2005 Ghaziabad, District Sahiwal
Date of Judgments of Trial Court	---	26.07.2006
Date of Institution of Appeals	---	07.08.2006 & 08.09.2006 respectively
Date of Hearing	---	25.07.2011
Date of Decision	---	25.07.2011

Cr. Appeal No.213/L of 2006
Cr. Appeal No.238/L of 2006

2

JUDGMENT:

Shahzado Shaikh, Judge: By this common Judgment, two connected criminal appeals bearing 1) Criminal Appeal No.213/L of 2006 moved by Muhammad Arshad, and 2) Criminal Appeal No.238/L of 2006 moved by Murtaza alias Murti, both against conviction and sentence, are being disposed of as they arise out of the same F.I.R No.202/2005, Police Station Ghaziabad, District Sahiwal. Since accused Muhammad Arshad was declared juvenile, he was tried separately under the Juvenile Justice System Ordinance, 2000. Both the accused were convicted and sentenced vide separate Judgments of same date i.e. 26.07.2006 delivered by learned Additional Sessions Judge, Chichawatni in Sessions Case No.26/ASJ-CCI of 2005, Sessions Trial No.14/ASJ-CCI of 2005 and Sessions Case No.9/ASJ-CCI of 2005, Sessions Trial No.13/ASJ-CCI of 2005.

Their conviction and sentence are as follows:-

Accused Muhammad Arshad:

Under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979. Life imprisonment each.

Under section 302 (b) of
the Pakistan Penal Code

Life imprisonment with fine
of Rs.50,000/- to be paid to
legal heirs of the deceased as
compensation, in default
whereof to further undergo 6
months' simple imprisonment

Accused Murtaza alias Murti:

Under section 10(4) of the
Offence of Zina
(Enforcement of Hudood)
Ordinance VII of 1979.

Life imprisonment each.

Under section 302 (b) of
the Pakistan Penal Code

Life imprisonment with fine
of Rs.50,000/- to be paid to
legal heirs of the deceased as
compensation, in default
whereof to further undergo 6
months' simple imprisonment

✓
All the sentences were ordered to run concurrently with benefit
of section 382-B of the Code of Criminal Procedure.

2. The distance between the place of occurrence and
the Police Station is 23 kilometers and the place of occurrence
is towards east from the Police Station. The occurrence took
place on 09.07.2005 at 11.00 a.m in the area of Chak
No.158/9L whereas it was reported on 10.07.2005 at about
12.00 noon. The complainant Muhammad Jahangeer PW-7 got
recorded his statement Ex.PB to Liaqat Ali, Sub Inspector, who
sent the same to the Police Station through Constable Abdul
Ghafoor on the basis of which F.I.R Ex.PB/1 was recorded.

3. Brief facts of the prosecution case as narrated in the statement of complainant Muhammad Jahangeer Ex.PB are that on 09.07.2005 at about 11.00 a.m, his wife Mst.Nooran Bibi prepared meal for him and sent the same to the complainant in the fields through his daughter Mst.Haleeman aged 8 years but the latter did not reach the destination. When the complainant came back to his house and asked his wife about the food, she told him that she had sent it through Mst.Haleeman Bibi. The complainant got perturbed and started search of Mst.Haleeman Bibi alongwith Muhammad Ismail and Zahid. Next day i.e. on 10.07.2005 at about 10.00 a.m, dead body of Mst.Haleeman Bibi was found lying in Killa No.7, square No.31 belonging to one Riaz. The complainant expressed a strong suspicion that accused Murtaza alias Murtee and Muhammad Arshad had murdered Mst.Haleeman Bibi after having raped her.

4. Police investigation ensued as a consequence of registration of the crime report. After conclusion of the

investigation, the local Police submitted in the Court a report under section 173 of the Code of Criminal Procedure requiring both the accused Muhammad Arshad and Murtaza alias Murti to face trial. Learned trial Court framed charges against both the accused separately on 20.12.2005, under sections 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and 302 read with 34 of the Pakistan Penal Code.

5. Prosecution, in addition to documentary evidence produced 12 witnesses at the trial in support of its case. The gist of the deposition of the prosecution witnesses is as follows:-

i) PW-1: Dr.Muhammad Saleem Akhtar, stated that on 14.07.2005 at 12:30 p.m, he medically examined accused Muhammad Arshad and found him fit to perform sexual intercourse.

ii) PW-2: Head Constable Muhammad Ans stated that on 10.07.2005 he received statement of complainant

Muhammad Jahangeer Ex.PB through Constable Abdul Ghafoor on the basis of which he recorded the F.I.R Ex.PB/1. On the same day he received two sealed parcels which he dispatched to the office of Chemical Examiner, Lahore on 20.07.2005 through Constable Muhammad Farooq.

iii) PW-3: Constable Manzoor Ahmad stated that on 10.07.2005, dead body of Mst.Haleeman Bibi was handed over to him by Liaqat Ali, Sub Inspector which he escorted to Tehsil Headquarters Hospital, Chichawati and delivered it intact to the Women Medical Officer for postmortem examination. The doctor handed over the last worn clothes of the deceased Shalwar P.1, shirt P.2 and Dopatta P.3 which he produced before the Investigating Officer which were taken into possession vide recovery memo Ex.PC.

iv) PW-4: Nazar Muhammad, Revenue Patwari stated that on 15.07.2005 he visited the place of occurrence and took rough notes on the pointation of Muhammad Jahangeer complainant and other PWs on the basis of which he prepared scaled site plans Ex.PD, Ex.PD/1 and Ex.PD/2 in the scale of one inch equal to 40 Karms. All the drawings, points and note on the site plans in black ink are in his hand and these were signed by him.

v) PW-5: Lady doctor Shabana Akhtar stated that on 10.07.2005 she conducted postmortem examination of dead body of Mst.Haleeman Bibi. At that time, the deceased was 8 years. This witness observed as under:-

EXTERNAL APPEARANCE

“Single brounished depressed 2½ cm with ligature mark on upper most part of neck at around the neck and missing just below right ear.

ON LOCAL VAGINAL EXAMINATION

Hymen was torn at different sites (angle). Single vaginal tear 2½ cm x ½ cm x muscle deep was

present extending to perineum. Vagina was full of clotted blood.”

In the opinion of this witness, death was due to asphyxia under ligature mark which was fatal and sufficient to cause death in ordinary course of nature. The time between death and postmortem was 24 to 36 hours.

vi) PW-6: Muhammad Farooq stated that on 20.07.2005 Muhammad Ans, Muharrir of the Police Station handed over to him two sealed parcels alongwith one sealed envelope and one sealed phial for onward transmission to the office of Chemical Examiner, Lahore. He deposited the same in the concerned office but the same were sent back under objection to the Police Station. After removal of objection he again deposited the same on 25.07.2005 in the said office intact.

vii) PW-7: Muhammad Jahangeer complainant of the case endorsed contents of the crime report.

viii) PW-8: Zahid Mehmood got recorded his statement on 14.02.2006 and stated that about 8 months back, Mst.Haleeman Bibi was murdered. He, Muhammad Ismaeel and complainant Muhammad Jhangeer had been searching for her but in vain. On the next day at about 10.00 a.m they found the dead body of Mst.Haleeman Bibi lying in a Charri crop of Killa No.7 of square No.31 belonging to one Riaz Hiraj. The dead body was strangulated with a *dopatta*. On the same day at about 4/5.00 p.m, he identified dead body of Mst.Haleeman Bibi before the doctor at the time of postmortem examination in Tehsil Headquarters Hospital, Chichawatni. About three days after the occurrence at 9/10.00 a.m, he was present in the house of Habib PW alongwith Munir Ahmad, Muhammad Ismail and Habib Ahmad when accused Muhammad Arshad and Murtaza

alias Murti came there and confessed that after committing rape with Mst.Haleeman Bibi she was strangulated to death by putting a Dopatta around her neck. They requested for a pardon from father of the deceased. He further stated that a Constable had produced Shalwar P.1, shirt P.2 and Dopatta P.3, the last worn clothes of Mst.Haleeman Bibi before the Investigating Officer which were taken into possession vide recovery memo Ex.PC duly attested by him.

ix) PW-9: Habib corroborated the statement of Zahid Mehmood PW-8 to the extent of confession allegedly made by the accused.

x) PW-10: Muhammad Jaafar stated that on 09.07.2005 he alongwith Saeed Ahmad was proceeding to Burewala town from his village. At 11:30 a.m, when they reached near Killa No.7 of square No.31 belonging

to one Riaz, they found Mst.Haleeman Bibi in the company of accused Muhammad Arshad and his co-accused Murtaza alias Murti under a Sheesham tree, and she was in possession of meals also. They went to the Adda near the tubewell of Sami Ullah from where they went to Burewala town for their personal work. After two days, they returned from Burewala to their village where they learnt that Mst.Haleeman Bibi deceased had been murdered by accused Muhammad Arshad and his co-accused Murtaza alias Murti after subjecting her to Zina-bil-Jabr. He made a statement to the Police in his village about having seen Mst.Haleeman Bibi alive in the company of the accused.

xi) PW-11: Saeed Ahmad corroborated statement of PW-10 Muhammad Jaafar.

xii) PW-12 Liaqat Ali, Sub Inspector, stated that on 10.07.2005, on receipt of information, he reached the place of occurrence where complainant Muhammad Jahangeer narrated all the details of the incident orally; which statement was reduced into writing by him. It was read over to him whereafter he signed the same (Ex.PB) in token of its correctness. He sent complaint Ex.PB to the Police Station for registration of formal F.I.R. He inspected the dead body of Mst.Haleeman Bibi, prepared injury statement Ex.PF and inquest report Ex.PG. He sent dead body of Mst.Haleeman Bibi for postmortem examination through Constable Manzoor Ahmad to Tehsil Headquarters Hospital, Chichawatni. He prepared rough site plan of the place of occurrence Ex.PJ. On the same day, after postmortem examination, Constable Manzoor Ahmad produced last worn clothes of the

deceased, Shalwar P.1, Kameez P.2, Dopatta P.3 before him which he took into possession vide recovery memo Ex.PC. The memos were dully attested. He recorded statements of witnesses under section 161 of the Code of Criminal Procedure. On 13.07.2005 he conducted raid and arrested accused Muhammad Arshad. On 14.07.2005 he got him medically examined to ascertain his sexual potency. His application for medical examination of accused Muhammad Arshad Ex.PK was also endorsed by the doctor on which the doctor issued MLR No.115/2005 Ex.PA. He summoned Patwari, who on his instructions, visited the place of occurrence and took rough notes on the pointation of PWs on 17.07.2005, on the basis of which he prepared scaled site plan Ex.PD and Ex.PD/1 in duplicate. All the red notes Ex.PD and Ex.PD/1 were in his hand and bear his signatures. He recorded statements

of Nazar Patwari under section 161 Code of Criminal Procedure. After investigation he found the accused guilty and submitted a report under section 173 of the Code of Criminal Procedure against them.

6. After closure of prosecution evidence, the accused facing trial were examined under section 342 of the Code of Criminal Procedure. They, inter-alia, pleaded innocence and claimed that they had been falsely involved due to enmity. In reply to the question "why this case against you and why the PWs have deposed against you?", appellant Muhammad Arshad stated as follows:-

"The PWs are closely related to each other and I have been involved in this case due to enmity with my maternal grand father Bahawal Haraj who had a dispute on the irrigation water. I am living with my maternal grand father and due to this reason I had so many times hot talks with the complainant party. Due to this reason I have been falsely and with malafide involved in this case. All the evidence produced in Court against me was created malafidely and the PWs had made so many improvements at the time of recording their evidence in trial with malafide intention and getting legal advice to fulfill the lacuna and to strengthen the prosecution case."

In reply to the question "why this case against you and why the PWs have deposed against you?", appellant Murtaza alias Murti stated as follows:-

"It is a false case. The PWs have deposed falsely on account of enmity and being related to complainant Jahangeer and enmity between one Ahmad Ali and Taj is admitted by the PWs. All the evidence produced in Court against me was created malafidely and the PWs had made so many improvements at the time of recording their evidence in trial. They deposed against me after getting legal advice to fulfill the lacuna and to strengthen the prosecution case."

7. The reasons that prevailed upon the learned trial

Court for recording the conviction, inter alia, were:-

- (i) the witness of last seen had no malice to falsely implicate the accused;
- (ii) witnesses belonged to the same locality and their presence in the locality cannot be doubted;
- (iii) no reason has been put forward as to why the witnesses of extra judicial confession should not be believed; and
- (iv) the circumstantial evidence is against the accused.

8. The learned trial Court awarded life imprisonment to Muhammad Arshad accused on both the counts because he was declared juvenile and that it was an unseen occurrence. Murtaza alias Murti accused was also awarded life imprisonment on both the counts as this was a case of unseen occurrence.

9. We have gone through the record of this case. The evidence available on record as well as statements of accused have been perused. Relevant portions of the impugned judgment have been scanned. We have also heard learned counsel for the appellants and the complainant as well as learned Additional Prosecutor General for the State.

10. During the course of arguments, Mian Shah Abbas, learned Counsel for appellant Muhammad Arshad in support of his contention formulated the following points:-

- i) That it is an un-witnessed occurrence as there is no eye witness of the alleged occurrence;
- ii) That there is no direct evidence in the case.
- iii) That the prosecution has failed to prove the motive against the appellant.
- iv) That the learned trial Court has convicted and sentenced the appellant on the basis of presumption, assumption, surmises and conjectures.
- v) That the oral as well as the documentary evidence is contradictory which casts serious doubts about the prosecution case, as such the benefit of doubt should have been given to the appellant.
- vi) That there are contradictions in the statements of PW.8 Zahid Mehmood and PW.9 Habib before whom the extra judicial confession was alleged to have been made by both the accused.
- vii) That last seen evidence produced by Muhammad Jaffar PW.10 and PW.11 Saeed Ahmed is also not reliable because they remained silent for 2/3 days after murder of Mst. Haleeman deceased.
- viii) That dead body was not recovered on the pointation of the accused.
- ix) That without grouping of semen, the offence of zina has not been connected with a particular accused.

x) That the important witness Mst. Nooran Mai, mother of the deceased was not produced before the trial Court.

xi) That Arshad appellant was minor at the time of occurrence.

xii) That the complainant and the witnesses are closely related inter-se.

xiii) That the appellants had not committed this offence but actually one Pervaiz who had murdered another girl by strangulation in similar manner after committing rape with her.

xiii) That maternal grandfather of Arshad accused namely Bahawal had a dispute over irrigation water with the complainant party.

11. Learned Counsel for appellant Murtaza alias Murti

has adopted the arguments of learned Counsel for appellant

Muhammad Arshad. Furthermore, he added as under:-

i) That there is no eye witness of the occurrence excepting the circumstantial evidence consisting of extra judicial confession and last seen evidence without corroboration from any independent witness, which is the weakest type of evidence and the conviction could not be

based upon such interested and inimical prosecution evidence and conviction cannot be based on such evidence.

ii) That the appellant is innocent and he has been falsely implicated by the complainant due to enmity.

iii) That the case was registered after due deliberation and consultation.

iv) That witnesses of extra judicial confession i.e. PW.8 Zahid Mehmood and PW.9 Habib are closely related to the complainant and they had enmity and political rivalry with the accused.

v) That PW.10 Muhammad Jaffar and PW.11 Muhammad Saeed were chance witnesses and they were inimical towards the appellant.

12. On the other hand Mr. Muhammad Anwar Sipra, learned Counsel for the complainant stated as under:-

i) This is a case of lust and murder of Mst. Haleeman deceased was committed by the accused in order to conceal their crime of rape.

ii) That the best evidence is available on the record is in the shape of extra judicial confession as well as the last

seen evidence, which is sufficient in nature to connect the accused with the crime.

iii) That there was no reason to substitute the accused.

iv) That there is no such contradictions in the statements of the prosecution witnesses which could cause dent in the prosecution evidence.

v) That in the presence of ocular evidence there is no need of semen grouping.

13. Ch. Muhammad Ishaq, Deputy Prosecutor General

✓
appearing for the State has made the following submissions for consideration of the Court:-

i) That the appellants were nominated in the FIR.

ii) The plea taken by the appellants that the offence was committed by one Pervaiz, who after committing rape murdered Mst. Haleeman Bibi has no value in the eye of law as no evidence was produced on record in this regard.

iii) Although it is an unseen occurrence but the prosecution has proved its case through circumstantial

evidence, extra judicial confession and last seen evidence.

iv) That the complainant gave full ocular account regarding the offence committed by the accused and the same was corroborated by the other witnesses.

v) That the prosecution has proved its case beyond any shadow of doubt.

vi) That the learned trial Court has rightly convicted and sentenced the appellant under Section 10(4) Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and Section 302-(b) of the Pakistan Penal Code. Therefore, the Judgment of the learned trial Court is liable to be upheld.

14. We have considered the arguments of the learned Counsel for the parties and also perused the record with their assistance.

15. According to the prosecution case, minor girl Haleeman Bibi left her house on 09.07.2005 to give food to his father Muhammad Jahangeer complainant, in the field, and

when she did not return home, the complainant started her search and ultimately on 10.07.2005 he found her dead body lying in the *Charri* crop of one Muhammad Riaz situated in Killa No.7, square No.31 on 10.07.2005. Then he lodged FIR at Police Station Ghazi Abbad on the same day wherein he suspected Muhammad Arshad and Murtaza alias Murti as accused who had murdered Mst. Haleeman Bibi after committing rape with her. The complainant was not an eye witness of the occurrence however Muhammad Jaffar and Saeed Ahmed had lastly seen Mst. Haleeman Bibi in the company of accused Muhammad Arshad and Murtaza alias Murti on 09.07.2005 while sitting under a *Sheesham* tree, at the place of occurrence, i.e., situated in Killa No.7, square No.31. Both these witnesses appeared before the trial Court as PW.10 and PW.11 respectively and they gave details about last seen evidence. They were cross-examined at length but their

statements were not shattered. Further more Zahid Mehmood PW.8 and Habib PW.9 stated in their statements that accused Muhammad Arshad and Murtaza alias Murti came to them in the house of Habib PW where Munir Ahmad and Muhammad Ismail were also present. The accused made confession before them that they committed zina-bil-jabr with Mst. Haleeman Bibi one after the other and thereafter they strangulated her to death with her Dopatta around her neck.

✓
16. Lady Doctor Shabana Akhtar had conducted post mortem examination of the dead body of Mst. Haleeman Bibi on 10.07.2005 and she opined that the death was due to asphyxia under ligature mark which was fatal and sufficient to cause death in ordinary course of nature. The lady doctor, after observing report of Chemical Examiner, also opined that rape was committed with Mst. Haleeman Bibi.

17. Although the occurrence was unseen but the statement of the complainant alongwith last seen evidence, extra judicial confession and medical evidence connected the accused persons with the commission of offence. There were minor technical contradictions in the statements of the witnesses but these contradictions are not sufficient to disprove the prosecution version.

18. The plea of the appellant regarding relation of the prosecution witnesses with the complainant has no weight because they are the natural witnesses as they alongwith the complainant made efforts regarding search of Mst. Haleeman Bibi. The witnesses who gave details about extra judicial confession i.e. Zahid Mehmood PW.8 and Habib PW.9 are also natural witnesses and the accused made confession before them under the impression that they being relatives of the

complainant, were in a position to get them pardon from the complainant.

19. There is adequate undisputed evidence on the record to prove that the minor Mst. Haleeman Bibi was murdered after commission of zina with her. Oral evidence coupled with the medical evidence and the report of the Chemical Examiner leave no doubt about the fact of murder of Mst. Haleeman and commission of zina with her. Although there is no direct evidence against the appellant but the evidence through extra judicial confession and last seen evidence have been believed by the trial Court for corroboration with other evidence available on record.

20. The prosecution produced the ocular account, last seen evidence and extra judicial confession in chain with each other and no link has been broken at any stage. Furthermore the

accused in their statements under section 342 of the Code of Criminal Procedure had taken stereo-style stance of enmity. However Prosecution did not plead enmity, and there is no proof of enmity between the parties available on the record. In fact, such a plea of defence itself, goes against them to add a motive of revenge to that of lust, claimed by the Prosecution against the Appellants. The accused neither recorded their statements on oath under section 340(2) of the Code of Criminal Procedure nor they produced any evidence in their defence in order to prove enmity of the order and nature so that the complainant party could be believed to have substituted the real culprits of murder and rape of their minor daughter.

21. Although PW.8 Zahid Mehmood and PW.9 Habib before whom extra judicial confession was made by both the accused, were not active enough and vigilant to react immediately to the offender confessing their guilt, which

sometimes so happens because of illiteracy, unawareness of legal requirements and weakness of social responsibility. But these important witnesses have remained unshaken during their in-chief and cross examination.

22. The last seen evidence produced by Muhammad Jaafar PW.10 and PW.11 Saeed Ahmed is also natural in the sense that from the site it is clear that the place where the victim was last seen by them is located between the village and the field or work place of the father of the victim where she was taking meal for him. These witnesses passed through the place so close to the way leading to the point of transport they wanted to take for their journey to Burewala Town, that they could very closely witness the whispering postures of the accused, while the victim was in their company. They informed the complainant about the victim seen last by them as soon as they returned to the village after 2 days and came to know about the

gruesome occurrence. The defence could not bring any evidence in support of their claim if these witnesses were present in the village, or any body had seen them there.

23. The accused live in the neighborhood, in the small village, where the gruesome occurrence had taken place, announcement was made, and burial had taken place where village in-mates participated, The defence raised a question in cross examination about whether Muhammad Jaafar PW.10 and PW.11 Saeed Ahmed participated in the burial/funeral ceremony, which was denied that they were not seen there (as they were not in the village and had gone to Burewala Town).

This very same question arises whether the accused in the neighbourhood participated or came forward with any gesture of condolence with the grieved family (the complainant family).

The answer in the negative, socially isolates the guilty

conscience or even singles out the guilty from normally expected human behavior.

24. The exact spot, i.e., Killa No.7, Square No.31 belonging to one Riaz, at which the victim was last seen is located between the village and the field where father of the victim was working, and it is on the way, through which the victim was passing. On a query the learned counsel for the appellants clarified that the appellants/accused worked on that field (Killa No.7, Square No.31 belonging to one Riaz,). It is the place from where the dead body was recovered. This fully connects the accused with the crime, and the plea of the learned counsel for the appellants that dead body was not recovered on the pointation of the accused, holds no ground. It was in fact the recovery of the dead body from the field of work of the accused where the victim was last seen with them that led to the arrest, trial and conviction.

25. So far plea of the learned counsel for appellants that grouping and matching of semen was not done, it was clarified that the appellants had also not even demanded it in their defence. Furthermore, in view of clear ocular evidence corroborated by medical, Chemical Examiner's report and circumstantial evidence, non-grouping does not leave any deficiency in the evidence, as it is not the compulsory component without which the evidence may not be admissible, in the circumstances.

26. Production of Mst. Nooran Mai, mother of the deceased was not considered necessary in the chain, because even without her the chain was not affected.

27. The upshot of the above discussion is that we are of the firm view that the prosecution has fully proved its case against the appellants beyond any shadow of doubt. The learned Counsel appearing for the appellants have not been able to

create any dent in the prosecution evidence. The learned trial Court has rightly convicted and sentenced the appellants under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and Section 302 (b) of the Pakistan Penal Code. However the learned trial Court has already given lesser punishment of life imprisonment to both the appellants under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 for the reason that the occurrence was unseen and Muhammad Arshad appellant was juvenile at the time of occurrence.

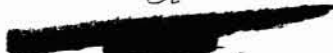
28. In this view of the matter, we uphold the conviction and sentence awarded to the appellants by the learned trial Court. Both the impugned judgments dated 26.07.2006 delivered in Sessions Case No.26/ASJ-CCI of 2005, Sessions Trial No.14/ASJ-CCI of 2005 and Sessions Case No.9/ASJ-CCI of 2005, Sessions Trial No.13/ASJ-CCI of 2005


Cr. Appeal No.213/L. of 2006
Cr. Appeal No.238/L. of 2006

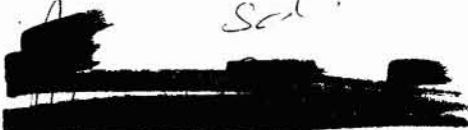
32

are upheld and both the appeals i.e. Cr. Appeal No.213/L/2006
and Cr. Appeal No.238/L/2006 are dismissed.

29. The above are the reasons of our short order
passed on 25.07.2011 in the open Court.



Justice Shahzado Shaikh


Justice Allama Dr. Fida Muhammad Khan


Justice Rizwan Ali Dodani

Dated, Lahore the
29-07-2011
M. Imran Bhatti/*

Fit for reporting.


Justice Shahzado Shaikh