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**IN THE FEDERAL SHARIAT COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present

Mr. Justice Haziquil Khairi Chief Justice  
Mr. Justice Dr. Fida Muhammad Khan  
Mr. Justice Salahuddin Mirza.

CRIMINAL APPEAL NO. 287/L OF 2004

Tahir Sarwar alias Shahab ..... Appellant.  
*Versus*  
The State ..... Respondent.

CRIMINAL APPEAL NO. 291/L OF 2004

Saif-ur-Rehman ..... Appellant.  
*Versus*  
The State ..... Respondent.

CRIMINAL APPEAL NO. 300/L OF 2004

Usman Khalid ..... Appellant.  
*Versus*  
The State ..... Respondent.

CRIMINAL REVISION NO. 110/L OF 2004

Ghulam Mustafa ..... Petitioner  
*Versus*  
1. Usman Khalid  
2. Saif-ur-Rehman  
3. The State ..... Respondent.

Cr.A.No 287/L, 291/L, 300/L of 2004  
Cr. A. No.331/L of 2004  
Cr. Revision No.110/L of 2004

CRIMINAL APPEAL NO. 331/L OF 2004

Ghulam Mustafa ----- Appellant.  
*Versus*  
Hafeez-ur-Rehman Yasir ----- Respondent.

CRIMINAL MURDER REFERENCE NO.02/L OF 2005

The State ----- Appellant.  
*Versus*  
Tahir Sarwar ----- Respondent.

**For Appellants** Dr. Babar Awan, Mr. Khalid Mian,  
Sardar Muhammad Latif Khan  
Khoso, Mr. Sheikh Khizar Hayat,  
Mr. Shahid Nawaz Langarjal, and  
Mr. Nasiruddin Advocates.

**For Complainant/Petitioner** Mr. Muhammad Taqi Khan,  
Advocate.

**For State** Mr. Muhammad Sharif Janjua,  
Advocate.

**No. & Date of FIR, Police Station.** FIR NO.462 dated 11.9.2002 P.S.  
A.Division.

**Date of Order of trial Court.** 06.09.2004

**Date of institution** 13.9.2004, 16.9.2004, 23.9.2004,  
23.9.2004, 25.10.2004, 26.4.2005.

**Date of hearing** 8.6.2007

**Date of decision** 27.7.2007

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**JUDGMENT.**

**HAZIQUL KHAIRI, CHIEF JUSTICE:-** The charge against accused persons namely Tahir Sarwar alias Shahab, Usman Khalid, Saif-ur-Rehman, Khalid Ahmed, Muhammad Afzal-ur-Rehman, Muhammad Javed and Muhammad Haffz-ur-Rehman Yasir was framed under sections 11 Offence of Zina (Enforcement of Hudood) Ordinance 1979 and 302/34, 302/109 and 201/34, PPC by the learned Sessions Judge Sheikhupura who convicted and sentenced Tahir Sarwar alias Shahab, Usman Khalid and Saif-ur-Rehman as under:

**1. TAHIR SARWAR ALIAS SHAHAB:**

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"He is convicted u/s 302(b) read with Section 34, PPC and sentenced to death with compensation of Rs.100,000/- (One Lac Rupees only) payable to the legal heirs of deceased u/s 544-A Cr.P.C. In case of default he would further undergo S.I. for 6 months.

**2. USMAN KHALID.**

"He is convicted u/s 302(b) read with Sec. 34 PPC and sentenced to life imprisonment with compensation of Rs.100,000/- (one Lac Rupees only) payable to the legal heirs of deceased u/s 544-A Cr.P.C. In case of default he would further undergo SI for 6 months. He is given benefit of Section 382 (h) Cr.P.C.

**3. SAIF-UR-REHMAN.**

"He is also convicted u/s 302 (b) read with section 34 PPC and sentenced to life imprisonment with compensation of Rs.100,000/- (One Lac Rupees only) payable to the legal heirs of deceased u/s 544-A Cr.P.C. In case of default, he would further undergo S.I. for 6 months. He is also given benefit of Section 382 (b) Cr.P.C.

Accused Khalid Rahman, Muhammad Afzal-ur-Rehman, Muhammad Javed and Muhammad Hafiz-ur-Rehman were not found guilty.

2. The said convicts have preferred appeals against the impugned judgment dated 6.9.2004. bearing Criminal Appeals No.300/L of 2004 filed by Usman Khalid, Criminal Appeal No.291/L of 2004 by Saif-ur-Rehman and Criminal Appeal NO.287/L of 2004 by Tahir Sarwar alias Shahab whereas the State filed Criminal Murder Reference No.2/L of 2005 against appellant Tahir Sarwar alias Shahab and the complainant had filed Criminal Revision No.110/L of 2004 for enhancement of sentence and Criminal Appeal No.331/L of 2004 for conviction of acquitted accused Hafeez-ur-Rehman Yasir.

3. The prosecution case as borne out from the impugned judgment is that one Azmatullah SI reported that on 11.9.2002 the complainant

Ghulam Mustfa recorded a statement before him that his daughter Mst. Ambreen aged about 16 years was a student of 2<sup>nd</sup> year in Government College for Women Sheikhupura and on 09.09.2002 she left for the College but did not come back. While he was looking for her, PWs Aamer Ashraf s/o Muhammad Ashraf and Javed Iqbal s/o Muhammad Latif informed him on the road that Khalid Ahmed son of Siraj Din and one Saleem (also known as Muhammad Afzal-ur-Rehman) had abducted his daughter in a car and went towards the City side. The complainant alleged that both the accused with common intention had abducted his daughter Mst. Ambreen for the purpose of zina. He, therefore, requested for her recovery from them.

4. The case was registered. During the investigation Khalid Ahmed accused was arrested and other suspects Muhammad Saeed etc were joined in the investigation. It was revealed that Mst. Ambreen had illicit relations with appellant Tahir Sarwar alias Shahab who was arrested on 29.4.2003. After getting his physical remand a request was made by the police for sending him into the judicial lock up, however, on the request of the complainant Mustafa in writing he was discharged by the learned Magistrate.

5. Appellants were charged under section 11 Offence of Zina (enforcement of Hudood) Ordinance, 1979 and Sections 302/34, 303/109 and 201/34, PPC. They denied the charges hence their trial.

6. The case was re-opened on 14.4.2004 on the directions of Supreme Court, when the I.G. Punjab, constituted an investigation Team consisting of DIG (Investigation) Punjab, Ch. Munir Ahmed, SP (Investigation) Punjab, Tariq Abass Qureshi SP (Investigation) Sheikhupura and Parvez Qandhari DSP (Investigation), Punjab. During the re-investigation by the said team, PW.17 Ghulam Mustafa complainant and PW.18 Javed Iqbal appeared before the police and stated that on 22.5.2004 at 5.00 p.m. while they were present in their house appellants Tahir Sarwar alias Shahab and Usman Khalid came to meet them and were taken to the Dinning room where one by one both of them made extra-judicial confession of murder of Mst. Ambreen stating that on 09.09.2002 they had taken Mst. Ambreen to Lahore where they stayed in Dream Hotel near Railway Station Lahore for a night. Next day on 10.9.2002 appellant Tahir Sarwar summoned appellant Saif-ur-Rehman and in his car they went to house of Hafiz-ur-Rehman Yasir accused situated in the Housing Colony, Sheikhupura where they murdered Mst. Ambreen by administering poison to her. Her dead body was thrown into the Q.B. Link canal near Bhikhi as Mst. Ambreen had become pregnant

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and family members of appellant Tahir Sarwar were not agreeable for his marriage with her. Both confessed that they had committed major sin and requested for their apology. In view of the said extra-judicial confession the police arrested appellants Tahir Sarwar, Usman Khalid on 27/28.5.2004 and also appellant Saif-ur-Rehman who was also implicated in the murder of Mst. Ambreen by them.

7. The appellants or any one of them led the police party to Dream Hotel Lahore, to the house of Hafiz-ur-Rehman Yasir in Housing Colony Sheikhpura and to Q.B. Link Canal. During investigation recoveries of Golden Ornaments, bed sheets, Love letters and mattress, hotel record, poisonous material etc were made by the police.

8. The appellants denied the charges against them and demanded trial in which as may as 27 prosecution witnesses were produced before the trial Court.

9. P.W. 17 Ghulam Mustfa, father of the deceased Ambreen and complainant in his deposition had further stated that on 11.9.2002, two days after her abduction, he came to know that his daughter was handed over by Muhammad Afzal (who was also known as Saleem) to his nephew appellant Tahir Sarwar. Afterwards Ghulam Sarwar and Javed, the two brothers of Afzal alias Saleem accused, came to him and told him that

they knew the whereabouts of his daughter and offered to pay him Rs.10.00.000/- and also to take the hand of his daughter in marriage with appellant Tahir Sarwar provided he withdrew the case against him. He accordingly exonerated appellant Tahir Sarwar of the crime and he was discharged. However they did not keep up their compromise and his daughter was not returned as agreed. On 25.8.2003, Ghulam Sarwar, Javed and three unknown persons had physically tortured him and PW-18 Javed. However after re-opening of the case, appellants Tahir Sarwar and appellant Usman Khalid came to his house on 22.5.2004 and made confession of their guilt which in his words is as follows:

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"On 22.5.2004 myself, my relative Javed and other family members were conversing with each other while sitting in our house. Tahir Sarwar accused and Usman accused came there. Tahir Sarwar accused stated to me that he wanted to tell me something separately. Myself and Javed had taken Tahir Sarwar to Dinning Room of our house. He stated before us that on 09.09.2002 he alongwith Usman accused had abducted Mst. Ambreen and taken her to Dream Hotel, Lahore. He stated before us that in the Hotel Ambreen informed him that she was pregnant because of his inter-course and she wanted to marry him. Tahir Sarwar also stated before us that on 10.09.2002 she had summoned Saif-ur-Rehman accused along with his car. He also stated before us that Mst. Ambreen was brought to house of Yasir accused situated in Housing Colony Sheikhpura in the aforesaid car by Tahir Sarwar, Usman and Saif-ur-Rehman accused. He also stated that in the aforesaid house she was administered a poison and murdered by them. He also stated that they had thrown away the dead body in the Canal. He apologized after making the aforesaid statement.



Thereafter Tahir Sarwar left the room and Usman accused came to us. He stated before us that he alongwith Tahir Sarwar and Said-ur-Rehman accused had administered poison and murdered Mst. Ambreen and her dead body was thrown away in the Canal. He also corroborated the statement made before us by Tahir Sarwar accused. We became infuriated but accused persons ran away. I stated the aforesaid facts to the police on the night”

10. It was admitted by PW.17 Ghulam Mustfa that after passage of 1-1/2 year of Registration of case under section 506, PPC appellants Tahir Sarwar and Usman Khalid made the confession. He made no effort to hold them up when besides PW 18 Javed, a number of other persons were also present in the house. He also did not call telephone No.15 for police assistance. There was police post within the Housing colony Sheikhpura so also at Chow Peer Babar Shah where traffic flows around the clock. A police station is also located on the roadside between village Bhikhi and Bridge of Bhikhi canal. No one from public was associated either at the house of Yasir in Housing Colony Sheikhpura or at the Bhikhi Canal or at the time of recoveries.

11. Similar confession was made by appellants Tahir Sarwar and Usman Khalid in terms of form, contents and substance before PW.18 Javed Iqbal, the maternal uncle of Mst. Ambreen in the house of PW.17. In cross-examination he stated that he did not utter any words during the conversation with them nor did he inform the police on telephone to

arrest them nor they made any attempt to apprehend any of them them.

He however recorded his statement before police after the confession of the appellants at 8.00 p.m. at the P.S. (confronted with Ex.D.K. where there is no mention of the time and police station). He stated before the police that they had taken appellant Tahir Sarwar to the Dinning room. (Confronted with Ex. D.K. there is no mention of the word Dinning). He stated before the police that appellant Tahir Sarwar also stated that Mst. Ambreen was taken to Housing Colony by him and Saif-ur-Rehman accused. (Confronted with Ex.D.K. where it is not so recorded). Similarly he stated before police that they had thrown her dead body into the canal at the Bridge on Faisalabad Road. (Confronted with Exh. D.K. there is no mention of words "Bridge on Faisalabad Road"). He admitted that no person from the adjoining area of the Bridge was joined with the investigation of this case. He further stated that the Faisalabad Sheikhpura Road is very busy road and the transport at all times ply over there around the clock. House of Yasir accused is situated within area of P.S. Sadar Sheikhpura. He had not taken any police official from P.S. Saddar when he visited the house of Yasir. Nobody from the surrounding area of P.S. A/DIV canal Department or Rest House was associated with the investigation. In his presence a sample of the poison (seem-ulfer) was obtained from the shop of PW.5.

Tahir Rafiq and kept in a sealed parcel. Being an eyewitness to the abduction of Mst. Ambreen outside the college, he stated that after the occurrence on 9.9.2002 he had chased Muhammad Khalid and Afzal (Saleem) along with PW. Aamir Ashraf (husband of his sister) firstly on foot and then hired a Rickshaw. However on their failure to do so they did not go to Police Station but informed Ghulam Mustfa, complainant on the road. According to him Afzal is uncle of Tahir Sarwar and is also known as Saleem.

12. P.W.19 Aamer Ashraf in his testimony had stated that he was a witness to abduction of Mst. Ambreen and informed Ghulam Mustfa the father PW.17. He chased the abductors of Mst. Ambreen but failed to catch them. He was residing with the complainant Ghulam Mustfa for the last 11/12 years and made statement before the police on 11.9.2002 on the third day of abduction. He admitted that his mother is real sister of Mst. Mussrat PW.16 mother of deceased Ambreen. He neither had residence nor any business nor any concern near the place of occurrence.

13. P.W.20 Jamshed Ali Khan was a class fellow of appellant Tahir Sarwar from class 3<sup>rd</sup> to 7<sup>th</sup> and also studied with him in Fazl-e-Haq College Mardan and worked in the hostel of the College together. On 7.9.2002 on the invitation of appellant Tahir Sarwar he along with his

friend Bilal proceeded from Peshawar to Lahore where he had booked room No.141 in Dream Hotel for them. On 8.9.2002 the appellant Tahir Sarwar and Usman went to Sheikhpura but the next day appellant Tahir Sarwar came back to the hotel along with Mst. Ambreen. He booked another room No.144 in the hotel where he along with Mst. Ambreen stayed. On 10.9.2002 at about 10.30 a.m. appellant Saif -ur-Rehman who is a friend of appellant Tahir Sarwar came there with his car and all of them proceeded to Sheikhpura in the car. On the way all stopped at Shahdara where Mst. Ambreen went inside a PCO and made a call. Afterwards they again proceeded towards Sheikhpura and took him and Bilal to the house of Tahir where they stayed till the next day. In his cross-examination he stated that some members of his family were in police service, judiciary and some were members of Parliament. Waqar Khan ASP, is his relation who during investigation of this case was posted at Sheikhpura. Inspector Bhatti had approached him for joining with the investigation of the case and had given him details of the case. He had made a statement before the police that appellant Tahir Sarwar had booked one room for him and his friend on 8.9.2002 (Confronted with Exh.DD. Booking by Tahir Sarwar is not mentioned). Again it was stated that the 2<sup>nd</sup> room of the hotel was booked by appellant Tahir Sarwar (Confronted with Exh.DD, the name of Tahir Sarwar is not there). Similarly he deposed that he had stated before the police that appellant

Tahir Sarwar informed him that he would come back after leaving others in a house of a friend (Confronted with Exh.DD . The house of his friend is not mentioned).

14. PW.5 Babar Rafiq (Pansar) stated that on 27.5.2004 police came to him. There was no one from public with them. They demanded sample Seem-ulfar which he handed over to them. He was declared a hostile witness. He admitted in cross-examination to D.A. that appellant Saif-ur-Rehman is the son of his wife's sister.

15. PW.6 Muhammad Ramzan a Taxi owner denied that no one had hired his car/taxi used in the case whereupon he was declared hostile by the prosecution as he had resiled from his statement before police. In cross-examination to D.A. he denied that two years back a Toyota Corolla 2-D Registration No.9739/LOU was in his use. He voluntarily stated that he had been driving car for the past 5/6 months only. He denied that on 29.5.2004 appellant Saif-ur-Rehman came to his Dera in police custody and stated that he had taken the aforesaid car from him on 10.9.2002. He voluntarily stated that one SI and two constables came to him at Taxi Stand and directed him to come to the police station along with the car on 29.5.2004. He also denied that on the pointation of appellant Saif-ur-Rehman the police had taken the possession of the said

car from his custody from the Taxi Stand. Similarly it was also incorrect that memo of recovery of car Exh. P.G. was signed by him. He also denied that he made any application for Supardgi of the aforesaid car or filed any application or recorded his statement U/S 164, Cr.P.C. He however admitted that Exh. P.H. bears his signature, which was obtained on blank papers.

16. PW.10 Farhan deposed that he is owner of PCO outside Dream Hotel Lahore. He did not know who had made a call from his PCO on 9.9.2002. He admitted that on 28.6.2004 the police had brought appellant Tahir Sarwar and Usman Khalid to his PCO and showed him the telephone bill of his PCO, which was identified by him. Except the said bill; police had not shown him anything else. He was also declared hostile witness as he had resiled from his previous statement. During cross-examination he stated voluntarily that the appellants were not known to him prior to 28.6.2004. He also did not remember if some girl was with them. He expressed his ignorance if the girl whose photograph (Exh. P.M.), was with the accused persons. He denied that any identification parade was made in this case.

17. PW.14 Muhammad Imtiaz stated that he had installed PCO near Darbar Allah Hu. Sheikhpura Road Shadhra Lahore in 2001. He did not

identify any of the accused present in the Court who made call from his PCO. He voluntarily stated that a lady was working at his PCO whereas he was busy in his scrap business at Misri shah, Lahore. He was also declared hostile as he had resiled from his previous statement. He denied that on 28.5.2004 police had brought Saifpur-Rehman accused to him at the said PCO and that in his presence he pointed out that on 10.9.2002 he along with appellants Tahar Sarwar, Usman Khalid and Mst. Ambreen had come there for a telephone call. He also denied that Mst. Ambreen had had conversation with her mother on telephone No.04931-610764. He denied having attested memo Exh. P.C. or Exh. P.R.

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18. PW.15 Ijaz Masih the Manager of Dream Hotel near Railway Station Lahore deposed that on 8.9.2002 one Jamshed came to the hotel and booked Room No.141. The next day viz 9.9.2002 at 10:00 a.m. appellants Tahir Sarwar and Usman Khalid came to the hotel and booked Room No.144. On 10.9.2002 at about 11:00 p.m. the said persons vacated both the rooms. There was a girl with them who resembled with the photograph Exh.P.M. but she was not wearing any spectacles. Thereafter about 1-3/4 months back police came to the hotel and asked for the Hotel record of September 2002. Again the police came the same day accompanied by appellant Saif-ur-Rahman and took possession of

original hotel record and got his signature on 2/3 papers vide memo Exh.P.5. However, receipt of Exh P.5/7 did not bear his signature nor it was signed by the accused in his presence. On 2.6.2004 the police along with appellants Tahir Sarwar and Khalil visited the hotel. In cross-examination he stated that as a Manager of the Hotel he does not directly deal with the customers. The office record was written and signed by Khuram Shahzad. Salamat and Madam Nazia (not produced), Night Sheet, were neither signed by customer nor signed or stamped by Excise Department. Except Jamshed no other person is mentioned in hotel record.

19. PW. 16 Mst. Musarrat Bibi is the mother of deceased Mst. Ambreen. She stated that on 9.9.2002 her daughter Mst. Ambreen was abducted. She was told on telephone by her that she was with Saleem and they were going abroad and getting married. On the next day Saleem told her from Lahore Airport that he and Ambreem were getting married and were going abroad. At the time of abduction, she was wearing gold locket with chain, gold earrings, another gold chain and one ring. She had put on black clothes. She identified ring P.2 and a pair of earrings P.3/1-2 as belongings to her daughter. She also identified locket with chain P.4 and one separate chain P.5 vide memo Exh.P.W.



PW Javed Iqbal is her brother. The telephone call for her came in the house her neighbour of Sheikh Abdul Wadood in the evening time. She admitted that the ornaments present in the Court were of common pattern available in the market. She also stated before the I.O. that she identified the shoe of her daughter.

20. The prosecution had examined 4 police officers namely PW.21 Iftikhar Hussain S.I., PW.22 Abdul Rasheed S.I. PW.23 Muhammad Arshad Inspector, incharge investigation, Saddar Sheikhpura. PW.24 Muhammad Anwar S.I. Crime Branch Lahore who individually and jointly carried out the investigation of the case.

21. PW.21 had arrested appellant Saif-ur-Rehman and Hafiz-ur-Rehman on 29.5.2000 and on their disclosure recorded statement of Eijaz Masih owner and Manager of Dream Hotel from where the record of the hotel was taken into possession. Recovery of See-ulfar (poison) was also made at the instance of appellant Saif-ur-Rehman so also he led the police officer to the house No.X-162 Housing Colony Sheikhpura and to the place at bridge Bhikhi of Q.B. Link canal where dead body of Mst. Ambreen was thrown. to car P-1 Taxi Stand Sheikhpura.

22. PW.22 Abdul Rasheed S.I. had arrested appellant Usman Khalid on 29.5.2004 who led him to the house of murder and to the shop of Tahir

Rafiq Pansari PW.5 He made recoveries of ornaments. He admitted that he neither recorded any case dated 25.5.2004 nor 27.5.2005 nor his statement under section 161, Cr.P.C. was recorded in the case. He had not written case number on the mattress and chadar He had not reported his arrival and departure in the case diary. Similarly he had not given information at Nolakha P.S. about his arrival and departure from the said police station.

23. PW.23 Muhammad Arshad Inspector, Incharge Investigation, Sadar, Sheikhpura took into possession the record of the hotel, prepared memo, recorded statement of Eijaz Masih and Ifitikhar Hussain S.I. Appellant Tahar Sarwar led him to the house in Sheikhpura owned by the father of Yasin accused to bridge of Bhikhi Canal and to the place from where the dead body of Mst. Ambrin was thrown in to the canal. He recovered pair of Kantey and one finger ring from his room at Shami Road Sheikhpura and shoe of Mst. Ambreen from the canal. He also took him to taxi stand but the car could not be recovered. The names of appellants Tahir Sarwar and Usman Khalid were not mentioned in the night sheets of the hotel record. He also did not incorporate these proceedings in the Roznamcha diary of P.S. Bhikhi. He had also not

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reported at P.S. Nolakha Lahore while going to Dream Hotel and after returning from there.

24. PW.24 Muhammad Anwar S.I. Crime Branch Panjab, Lahore stated that on 05.05.2004, he joined the investigation team of this case. This case remained under investigation from 11.9.2002 till 04.05.2004. There is no mention of the name of any girl in memo Exh. PBB. He had read out letter Exh.P.AA at the time of its taking into possession. The said letter did not contain date, month and year.

25. P.W.25 Iftikhar Hussain Cheema, Civil Judge/Magistrate 1st Class, Sheikhpura stated that till 24.5.2004 there was no incriminating material against the appellants. He did not endorse on Exh.PW.25/1-9 and is not sure whether the appellant Tahir Sarwar himself had written on it or not. He cannot say if the letter Exh.P.AA was on the file at that time. The specimen of handwriting was not sealed in his presence. He had not appended any certificate on document Exh.P.W.25/10-18. The specimen signatures aforesaid were not sealed in his presence.

26. PW.26 Muhammad Bashir Qureshi, Examiner of questioned documents Forensic Science Laboratory Lahore stated that he was of the opinion that the writings on letter Ex.P.AA bore identical characteristic with the corresponding specimen writings of Muhammad Tahir alias

Shahab on sheets Ex.PW. 25/1-9. He was of the opinion that the disputed English signature on Exh. P.5/7 bore identical characteristic with present sets of specimen/routine signatures on Exh.PW.25/10-18. Exh.PW. 26/Mark-1-3, P-14 and P-15. The letter contained no date, month and year. Letter Exh.P. AA did not contain signatures of anybody. He had not given reasons in support of his opinion on Exh.P.W. 26/1.

27. According to the District Attorney, PW Wajeeb-ul-Hassan, SI was won over by the accused persons. Ten police officers were given up by him as unnecessary whereas PW.5 Babar Rafique (Pansari); PW.6. Muhammad Ramzan owner of Taxi/Car and PW.10 Farhan (owner of PCO) were declared as hostile witnesses during the proceedings by the prosecution. The complainant also gave up PWs Muhammad Yaseen, Muhammad Zafar and Muhammad Saleem as they were won over by the accused persons.

28. The appellants were examined by the learned trial Judge U/S 342 Cr.P.C. and they denied the allegations. However, appellant Tahir Sarwar and Usman Khalid undertook to adduce evidence in their defence but they failed to do so.

29. The prosecution case revolves around circumstantial evidence coupled with extra-judicial confession of appellants Tahir Sarwar and

Usman Khalid. The story of the prosecution starts with love letters exchanged between Tahir Sarwar alias Shahab and deceased Ambreen which were brought on record by prosecution and not questioned by the defence. This love affair turned into illegal sexual relationship with the result that the deceased Ambreen got pregnant which aggravated the situation and brought forth tense relationship between them as the deceased wanted to get married to appellant Tahir which was declined or evaded by him. It may be noted that these letters were not signed by the appellant Tahir Sarwar in his name or acknowledged by the deceased nor there was any date thereon.

30. The first stage of the case begins with the abduction of Mst. Ambreen. As per F.I.R. recorded by the complainant Ghulam Mustfa and deposition of PW.18 and 19, Mst. Ambreen was not abducted by appellant Tahir Sarwar but by his real maternal uncle Muhammad Afzal-ur-Rehman known as Saleem and one Muhammad Khalil for purpose of Zina. However in the drop scene of the episode either Mst. Ambreen was murdered and her dead body was thrown into the canal or she remained alive and left the country as stated by her on telephone to her mother Mst. Mussrat Bibi PW-16 from Lahore Airport.

31. For fairly long period the case was lying dormant but was activated and reinvestigated on the orders of Supreme Court of Pakistan. During investigation it transpired on the basis of extra-judicial confession made by appellants Tahir Sarwar and Usman Khalid that Mst. Ambreen under a pre-planned scheme had been murdered by the appellants and others. What appeared to be a conspiracy according to prosecution, began when PW.20 Jamshed Ali a class fellow of appellant Tahir Sarwar was asked to come down all the way from Peshwar to Lahore and was made to stay along with one Bilal (not produced) in room No.141 of Dream Hotel where the deceased was also brought in by the appellant Tahir on 9.9.2002. They stayed together in another room No.144 and the next day viz 10.9.2002, appellant Saif-ur-Rehman a friend of appellant Tahir Sarwar came there and in his car all of them proceeded to Sheikhpura. Either at PCO outside the hotel belonging to PW.10 Farhan or PCO at Shadra 10/12 Kilomter from the Hotel, Mst. Ambreen made her first call to her mother at the residence of her neighbour PW.9 Sheikh Abdul Wadood. In his cross-examination PW.20 Jamshed Ali admitted that he did not know about the case till his relation ASP Waqar Khan (date not mentioned) connected with the investigation told him about the case. According to PW.15 Ejaz Masih Manager of Dream Hotel the booking of room No.141 was made by one

Jamshed (not produced) whereas room No.144 was booked at the request of Tahar Sarwar. He also stated that appellant Tahir Sarwar had stayed for a night in room No.144 with a girl who looked like Mst. Ambreen when confronted with her photograph. Others who supported stay of these persons in Dream Hotel Lahore are PW.21 Iftikhar, S.I. and P.W.22 Abdul Rasheed S.I. In the intervening period between the date of abduction viz 9.9.2002 and the date of Supreme Court order of 14.4.2004 negotiation for settlement as aforesaid were going on between the abductors, brothers and the complainant.

32. The next stage set out is when the appellant Tahir Sarwar and Mst. Ambreen along with others left Dream Hotel Lahore and proceeded to Sheikhpura. PW-20 and his friend were left on the way while others stayed in the house of accused Yasir in Sheikhpura.

33. The third stage is the house of murder in Sheikhpura where poison was administered to Mst. Ambreen and the last and final stage was the throwing away her dead body into the canal at Bhikhi Bridge. However the version of PW.16 Mussarat Bibi mother of Mst. Ambreen does not fit in to the theory advanced by the prosecution as according to her on 10.9.2002 she received another call from Mst. Ambreen telling her that she would be going abroad and get married to Saleem.

34. It may be mentioned here that the dead body of the deceased Ambreen was not recovered and whether she is still alive or not is not ascertainable. Nowhere in the entire record of the case the time when the dead body was thrown into the canal has been mentioned nor whether it was day or night. The car in which her dead body was carried was not produced. According to PW.22, he prepared note and map of house of Yasir accused Ex.P.A. in which there is a statement signed by appellant Saif-ur-Rehman that Mst. Ambreen was poisoned and strangulated by appellant Tahir Sarwar. The element of strangulation was introduced into the case, which creates further doubt to the prosecution story.

35. Thus the evidence of the case contains two further versions, one is that the victim was last seen with the appellants in a house at the Housing Colony Sheikhpura and the other is that she was last heard of in the company of her abductor Muhammad Afzal as per her telephone call to her mother on 10.9.2004 from the Lahore Airport.

36. At the outset learned counsel for the appellants Dr. Babar Awan and Mr. Abdul Latif Khoso urged before us that the case was re-opened after about 1 year and 8 months on the order of the Supreme Court of Pakistan and the subsequent statement made by the complainant



containing fresh accusation can at best be treated as a supplementary statement which evidently is an afterthought for which there is also no plausible explanation. Even otherwise it has no evidentiary value. In support of his contention they placed reliance on the case of *KHALID JAVED v. STATE (2003 5 C M R 1419)* in which it was held:

"Any statement or further statement of the first informant recorded during the investigation by the police would neither be equated with F.I.R. nor read as part of the same and the value of the supplementary statement therefore will be determined keeping in view the principles enunciated by the superior Courts in this behalf."

It was further held:

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} "Delay in recording supplementary statement of the informant giving different version after lodging the F.I.R. would be an important factor which is likely to give rise to an inference that second version contained in the supplementary statement was introduced by the prosecution after deliberation and if it is so the same will adversely affect the prosecution case."

37. The subsequent statement of the complainant Ghulam Mustfa PW.17 was not free from suspicion. The cumulative effect of withdrawal of the case by the complainant PW.17 against appellant Tahir Sarwar, negotiation for compromise, physical torture to him and the element of delay have indeed adversely affected the prosecution case.

38. Next it was submitted that it was a case of circumstantial evidence which is a weak piece of evidence as held in the case of

*MUHAMMAD ASLAM VS MUHAMMAD ZAFAR AND 2 OTHERS (PLD 1992 SC*

1) wherein the learned Judges of the Supreme Court had held:

"It is well settled that no accused can be held guilty on the basis of circumstantial evidence unless the facts proved are incompatible with his innocence and are incapable of explanation upon any reasonable hypothesis than that of guilt."

39. In the case of *CH. BARKAT ALI VS MAJOR KARAM ELAHI ZIA (1992 SCMR 1047)* it was held that "proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused--- No link in the chain should be broken and circumstances should be such as could not be explained away on any hypothesis other than the guilt of the accused." Other related cases were *ALI KHAN VS THE STATE (1999 S C M R 955)*, *MUHAMMAD ARSHAD VS. THE STATE (1992 S C M R 1187)*, *ARSHAD REHMAN VS THE STATE & 2 OTHERS (2005 P CR. L J 39)*

40. What is thus evident is that the chain of events has broken at several places. Most of the independent witnesses have turned hostile while others do not inspire confidence. Their statements are either contradictory or vague or reflect their ignorance of the prosecution case. Even the two PCO owners one at Lahore PW.10 Farhan and the

other at Shadra PW.14 Muhammad Imtiaz are not sure if any call was made by the deceased from there. According to PW.25 Iftikhar Hussain Magistrate there was no incriminating material against appellant till 24.5.2004. It is also not understandable that if the appellant Tahir Sarwar wanted to murder Mst. Ambreen what was the necessity of reserving two rooms in a hotel and then inviting all his friends to Lahore then to Sheikhpura to a house for the purpose of executing a 16 year girl by administering poison to her. This could have been done by any one secretly anywhere without involving any one. There is no explanation as to why PW.20 Jamshed was called from Peshawar to Lahore as he had no role to play but as per his own admission Inspector Bhatti approached and gave details of the case. What appears to be unnatural and unbelievable is the theory that the deceased was taken into a car from a busy residential area to Bridge of Bhikhi canal where there is heavy flow of traffic round the clock yet the appellants were able to reach there with the dead body not apprehensive that some one on the way would see them. At the canal also they were able to take out the dead body and successfully threw it into the canal where the offices of various agencies were located and functioning. There is not a word whether it was a day time or night. In fact no time is given anywhere.

The make of the car in which the dead body was taken has neither been mentioned nor produced. We fully agree with them.

41. All the three police officers PW.21 Iftikhar Hussain S.I., PW.22 Abdul Rasheed S.I. and PW.23 Muhammad Arshad Inspector, the Incharge Investigation, were led by the appellants to the Hotel, the house, PCOs, the shop Taxi Stand and Bridge and recoveries were made in their presence. There is no explanation by the prosecution as to why no one from public was involved in their investigation and particularly in regard to recoveries made by them which violates the provisions of section 103, Cr.P.C. as it states that before making a search the officer or other person should call upon two or more respectable inhabitants of the locality in which the place to be searched is situated to attend and witness the search and may issue an order in writing to them or any of them so to do. Learned counsel for the appellants placed reliance on PLD 1997 SC 408 and 1999 P. Cr. LJ 1546.

42. Next we came across the confession of appellants Tahir Sarwar and Usman Khalid on which rests the edifice of prosecution case. But it crumbled down as Dr. Babar Awan learned counsel has rightly submitted. According to him the confession made by the two appellants before PW.17, father of Mst. Ambreen, and PW.18 her maternal uncle, do not

deserve to be looked into as there is clear violation of the provisions of Section 342, Cr.P.C. which envisage that a Court is required to put such question to an accused person which are necessary to explain evidence against him. In the present case not a single question was put to any of the said two appellants as to whether they had made such confession before PW.17 and 18. This was the most vital question failure whereof will nullify the entire proceedings against the appellants. In support of his contention he placed reliance on *MUHAMMAD SIDDIQ & ANOTHER Vs. THE STATE (1974 P.Cr.LJ 118)* in which it was held that "extra-judicial confession is weakest form of evidence. Such confession not put to accused during examination under section 342, Cr.P.C. cannot be used against him." The other case relied upon by him was *MUHAMMAD SANAFAR ALI Vs. THE STATE (1969 SCMR 468)*.

43. We have gone through the entire examination of appellants 1 & 2 under section 342, Cr.P.C. and find not a single question put to them in regard to the extra-judicial confession made by them and therefore we fully agree with the learned counsel for appellants that in the eyes of law the confession does not fulfil the mandatory requirements contained under section 342, Cr.P.C. and hence it cannot be taken into consideration by us at all.

44. It may be added here that no credibility can be attached to an extra-judicial confession made by an accused to the father and uncle of the victim not related to him with whom he had also developed enmity subsequent to the crime. Further there was delay of one year and eight months after F.I.R. and the contents of the confession appear to be least truthful rather made up and unbelievable.

45. Since no credibility can be attached to the said two confessions made by appellants 1 & 2, hence implicating appellant No.3 co-accused is of no legal effect.

46. As a result all the three appeals No.300/L of 2004, 291/L of 2004 and 287/L of 2004 filed by the appellants are accepted and the conviction and sentences are set aside. The Criminal appeal No.331/L of 2004 and Criminal Revision No.110/L of 2004 filed by the complainant and the Murder Reference No.02/L of 2005 are dismissed. The Jail authorities are directed to release the appellants forthwith if not required in any other case.



JUSTICE HAZIQUL KHAIRI  
CHIEF JUSTICE



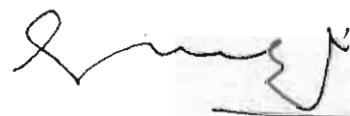
JUSTICE DR. FIDA MUHAMMAD KHAN

*Announced today*

*12/11/07*  
*27/7/07*

*Approved for reporting*

*12/11/07*  
*27/7/07*



JUSTICE SAL AHUDDIN MIRZA.