

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

**PRESENT**

**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE**  
**MR. JUSTICE SHAHZADO SHAIKH**  
**MR. JUSTICE RIZWAN ALI DODANI**

**CRIMINAL APPEAL NO.65/L OF 2009. L.W**

Allah Ditta s/o Muhammad Ismail Khan, Caste Gujjar ... Appellant  
R/o H.No.19, St.No.5, Madina Colony, Muslim Abad  
Police Station Ghaziabad, Lahore.

Versus

The State .... Respondent

**CRIMINAL APPEAL No.72/L OF 2009 L.W.**

Sarfraz s/o Rasheed Khan, Caste Rajput ... Appellant  
R/o H.No.30, Gali No.39-A, Muslim Abad  
Police Station Ghaziabad, Lahore.

Versus

The State ... Respondent

**Murder Reference No.3/L of 2010**

The State Vs. Sarfraz s/o Rasheed Khan

Counsel for the appellants ... Ch: Ghulam Murtaza Khan, Advocate for the  
appellant Allah Ditta in Cr.A.No.65/L/2009 and  
Mr. Zafar Mahmood Chaudhry, Advocate for  
appellant Sarfraz in Cr.A.No.72/L/2009.

Counsel for the complainant Rana Zia Abdul Rehman, Advocate

Counsel for the State ... Mian Muhammad Awais Mazhar for State

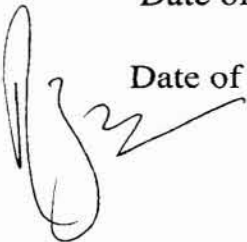
Case FIR No. date & ... No.961/06 dated 11.12.2006 P.S Harbanspura, Lahore.

Date of judgment of the ... 23.10.2008  
trial Court.

Dates of Institution of ... 19.06.2009 and 16.07.2009  
appeals

Date of hearing ... 21.11.2011

Date of decision ... 23.11.2011



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**JUDGMENT:**

**Justice Rizwan Ali Dodani, J:-** Appellant Allah Ditta filed Criminal Appeal No.65/L of 2009 and appellant Sarfraz filed Criminal Appeal No.72/L of 2009 against the judgment dated 23.10.2008, delivered by learned Additional Sessions Judge, Lahore whereby both the appellants Allah Ditta and Sarfraz were convicted and sentenced as under:-

**Accused Sarfraz:**

**Conviction**

Under section 302  
of the Pakistan  
Penal Code

Under Section 377  
of the Pakistan  
Penal Code

**Sentence Awarded**

Death.

10 years rigorous imprisonment  
with fine of Rs.50,000/-, in  
default whereof to further  
undergo one year simple  
imprisonment.

**Accused Allah Ditta:**

**Conviction**

Under section 302  
of the Pakistan  
Penal Code

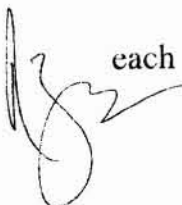
Under Section 377  
of the Pakistan  
Penal Code

**Sentence Awarded**

Life imprisonment.

10 years rigorous imprisonment  
with fine of Rs.50,000/-, in  
default whereof to further  
undergo one year simple  
imprisonment.

Both the appellants/convicts were also ordered to pay Rs.1,00,000/-  
each as compensation to the legal heirs of the deceased, in default



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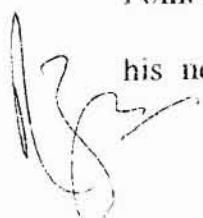
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whereof to further undergo 6 months simple imprisonment each. The sentences awarded to appellant/convict Allah Ditta were ordered to run concurrently. Benefit of Section 382-B of the Code of Criminal Procedure was extended to both the appellants.

The learned trial Court has also sent Murder reference for confirmation of death sentence awarded to Sarfraz appellant, which was registered as Murder Reference No.3/L/2010.

All the above-mentioned three matters are being disposed of by this single judgment as the same arise out of the common judgment and crime report.

2. Brief facts of the prosecution case as narrated in the statement of complainant Muhammad Khan PW-1 are that he had sent his younger son Ammad aged 10 years to his sister Mst.Shehnaz Bano at Muslim Abad, Lahore for getting education. On 11.12.2006, he came to Lahore to see his son but he was not present in the house. On query, he came to know that his son was missing from the house since long. He, his brother in law Khurram Shehzad and maternal cousin Arshad Mehmood were also present in the house of his sister. All of them went out in search of Amad, son of the complainant. His relative Khalid Maqbool met them at Aziz culvert and told them that he saw Ammad going to Canal Point Scheme alongwith Sarfraz and Allah Ditta accused. Sarfraz is his nephew whereas Allah Ditta is friend of said Sarfraz. The

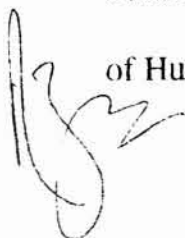


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complainant and the witnesses went to Canal Point Scheme where they heard some cries from an under construction house No.174. The light was on in the house. They entered in the house by pushing the gate and saw that Ammad was lying in naked condition and his hands were tied. Accused Allah Ditta had caught hold of the victim Ammad whereas Sarfraz accused was cutting the neck of Ammad with a Churri. The complainant and the witnesses tried to apprehend the accused but they while waving Churri made their escape good from the spot. His son succumbed to the injuries at the spot. The complainant asserted that the victim Ammad had been murdered by Sarfraz and Aallah Ditta accused after committing sodomy with him. in order to conceal their immoral act. The complainant, Khurram Shehzad and Arshad Mehmood witnessed the occurrence.

3. 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 Sarfraz and Allah Ditta to face trial. Thereafter charge was framed against both the accused vide Charge Sheet dated 28.06.2007 under sections 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, 377, 302 and 34 of the Pakistan



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Penal Code, to which both the accused pleaded not guilty and claimed trial.

4. Prosecution, in addition to documentary evidence produced 14 witnesses at the trial in support of its case. The gist of the deposition of the prosecution witnesses is as follows:-

i) PW-1: Muhammad Khan is complainant of the case. He endorsed the contents of the crime report.

ii) PW-2: Dr.Hamid Bashir Haider conducted potency test of accused Sarfraz Ahmad and Allah Ditta and found them fit to perform sexual intercourse.

iii) PW-3: Khurram Abbas S.I is an author of the FIR, Ex.PA/1.

iv) PW-4: Constable Saifullah is a formal witness of recovery of blood stained crush (Bajri) P.1, Pyjama P.2 and weapon of offence "Churri" at the pointation of accused Allah Ditta.

v) PW-5: Jafar Ali Shah S.I recorded complaint Ex.PA and its Police proceedings Ex.PA/2 on 11.12.2006 and sent the same to the Police Station for registration of the FIR.

vi) PW-6: Muhammad Jamil Moharrar of the Police Station received a sealed parcel containing crush from Sardar Ali S.I and kept the same in the Malkhana in safe custody and subsequently handed over the said parcel to Farmaish Ali

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Constable for onward transmission to the office of Chemical Examiner.

vii) PW-7: Khurram Shehzad is the witness who accompanied with the complainant to the place of occurrence. He corroborated the version of the complainant as contained in the FIR.

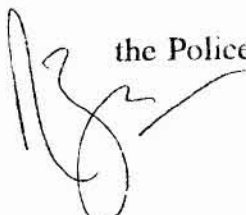
viii) PW-8: Khalid Maqbool is a Waj Takkar witness. He saw the deceased Muhammad Ammad lastly in the company of the accused before his death at Aziz culvert. He informed this fact to the complainant when the latter alongwith witnesses Arshad Mehmood and Khurram Shehzad was in search of the victim Ammad.

ix) PW.9 Dr. Nadeem Ahmad conducted autopsy of the deceased Muhammad Ammad and, inter-alia, observed the following main injuries:-

*"An incised wound 16 x 2.5 c.m on front of neck, 7 cm from chin, 5 cm from above supra sternal notch, 8 cm from right ear, 2 cm from left ear."*

The doctor opined that the above stated injuries were caused by sharp edged weapon and were ante mortem in nature.

x) PW-10 Tahir Maqbool is a witness of arrival of police at the place of occurrence soon after the occurrence where the Police conducted initial proceedings in his presence. He




is also a witness of recovery of last worn clothes of deceased, handed over by the doctor to the I.O and handing over the dead body of deceased to the complainant, blood stained crush (*Bajri*) and weapon of offence "*Churri*" P.7 at the pointation of accused Allah Ditta and "*Rope P.8*, his clothes i.e. *Qameez P.11*, *Shalwar P.12 both blood stained*" at the pointation of accused Sarfraz.

xi) PW-11: Constable Farmaish Ali alongwith Constable Saifullah and Sardar S.I escorted the dead body of deceased Ammad to Mayo Hospital, Lahore. After post mortem examination this witness received last worn clothes of the deceased. He is also witness of recovery of the clothes worn by both the accused at the time of occurrence.

xii) PW-12: Muhammad Akram Inspector recorded statements of two PWs/Constable Muhammad Jamil and Farmaish Ali regarding the parcels.

xiii) PW-13 Sardar Ali S.I conducted investigation of the case. He went to the place of occurrence; drafted injury statement of the deceased; prepared his inquest report; inspected and prepared site plan the place of occurrence; took into possession blood stained Bajri from the place of occurrence; recorded statement of PWs; took into possession the last worn clothes of the deceased. He also arrested both





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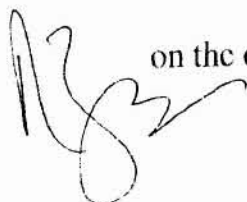
the accused on 12.12.2006; recovered weapon of offence "Churri" and clothes worn by the accused at the time of occurrence on the plantation of accused.

xiv) PW-14 Hameed ud Din Chishti, Draftsman visited the place of occurrence and prepared scaled site plan.

5. After closure of prosecution evidence, the accused facing trial were examined under section 342 of the Code of Criminal Procedure. They, inter-alia, pleaded their innocence and claimed that they had been falsely involved due to enmity. Accused Sarfraz asserted that he was implicated in this case due to dispute over land with the complainant. Accused Allah Ditta asserted that he was neighbour of accused Sarfraz and he was implicated due to friendship with accused Sarfraz.

6. The accused also produced Defence witnesses under section 340(2) Cr.P.C, Muhammad Siddique as DW-1, Muhammad Rasheed as DW-2, Maqsood Ahmad DW-3, Altaf Hussain DW-4 and Nazir Hussain as DW-5; the gist of their deposition is as follows:-

- i) DW-1 Muhammad Siddique stated that he was reading newspaper at his shop whereby he came to know about the murder of Ammad. No body informed him about the occurrence. PW Muhammad Khalid did not visit his shop on the day of occurrence. PW Khalid is his friend.

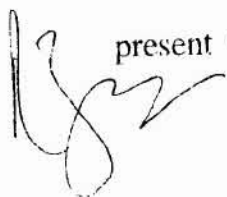




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- ii) DW-2 Muhammad Rasheed stated that on 12.12.2006, he was present at Muslim Abad Railway Station. Muhammad Ashfaq and Muhammad Amin were also present with him. They came to know that Muhammad Khan father of the deceased had to come to the house of his sister Mst.Shehnaz Bibi. Mst.Shehnaz Bibi made a telephonic call to Muhammad Khan who told that he was coming soon. He met with Muhammad Khan and offered condolence on the murder of his son. Thereafter Muhammad Khan went to the house of his sister Mst.Shehnaz Bibi. They stayed at the Railway Station for some time and thereafter they went to their houses.
- iii) DW-3 Maqsood Ahmad stated that on 11.12.2006 he came to his house at 8:00 p.m from his shop and he came to know that Ahmad had been murdered. He asked Rasheed Khan father of accused Sarfraz as to whether the parents of the deceased had been informed about the occurrence. They replied that Mst.Shehnaz Bibi sister of Muhammad Khan had informed him about the occurrence on telephone. Muhammad Khan came to Muslim Abad, Lahore at about 3:00 a.m (night). Muhammad Amin, Ashfaq, Rasheed and other Mohallahdars were also present with him and they met with Muhammad Khan.



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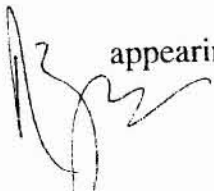
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They stayed there for about 30/40 minutes and then went away.

iv) DW-4 Altaf Hussain stated that on 11.12.2006 at 8:00 p.m, he heard noise of weeping from the house of Muhammad Khan complainant. Some other persons and women were also present in his house. Abdul Ghafoor, Baniamin, Nazir Hussain and Ghulam Nabi were also present in the house of Muhammad Khan. They offered condolence to Muhammad Khan about murder of his son. Thereafter, he, Nazir Hussain, Abdul Ghafoor and Baniamin went to Bus Stand Samunderi on a Rickshaw from the house of Muhammad Khan situated at 139-GB Tehsil Samundri District Faisalabad. Muhammad Khan boarded on the bus and they came back to their house.

v) DW-5 Nazir Hussain stated that about 1 $\frac{3}{4}$  years at Isha time, he heard noise of weeping from the house of Muhammad Khan complainant. He came to know that son of Muhammad Khan had been murdered. Muhammad Khan and his 2/3 brothers went to Lahore and this witness came to his house.

7. We have heard learned Counsel for the appellants, learned Counsel for the complainant and the learned D.P.G appearing for the State.



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8. Mr. Zafar Mahmood Ch., learned Counsel for appellant Sarfraz, while arguing the case, raised the following points in support of his contentions:-

- i) The occurrence took place on 11.12.2006 at 5.30 p.m. at Lahore, FIR was lodged by complainant Muhammad Khan on the same day at 7.35 p.m. whereas it is established from the statement of Maqsood Ahmed DW.3 that the complainant reached Lahore from Sumandari on 12.12.2006 at 3.00 a.m. (night).
- ii) The prosecution witnesses were interested witnesses and are related inter-se.
- iii) No recovery was effected from Sarfraz appellant except a piece of rope which was recovered after seven days of the occurrence.
- iv) The alleged weapon of offence i.e. Churri was recovered from Allah Ditta accused which was not blood stained and the same was not sent to the Forensic Science Laboratory for analysis.
- v) This case was falsely fabricated against Sarfraz appellant due to enmity as land measuring 4 acres, 14 cattle, Haveli and a tractor of his father was in possession of the complainant, paternal uncle (Taya) of Sarfraz appellant. Sarfaraz appellant forced his father to get back the same



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upon which the complainant bore grudge. It is an unseen occurrence and the complainant has falsely implicated Sarfraz appellant in order to usurp the above said belongings of the father of Sarfraz appellant.

vi) The learned trial Court has not considered the statements of the DWs and delivered the judgment on the basis of the statements of the PWs.

vii) No one had seen the occurrence of sodomy with the deceased by the appellants.

viii) The prosecution story regarding murder of Ammad deceased by Sarfraz appellant is not plausible because when the complainant and PWs saw Sarfraz accused plying Churri on the neck of Ammad deceased, they did not raise any alarm to save Ammad and they did not apprehend the accused at the spot nor they made any effort to chase them.

ix) The dead body of Ammad deceased was brought to the hospital on 12.12.2006 at 1.00 p.m. while the postmortem examination was conducted at 6.00 p.m. and this belated postmortem also causes dents in the genuineness of the postmortem.

9. Ch. Ghulam Murtaza Khan, learned Counsel for appellant Allah Ditta has adopted the arguments raised by the

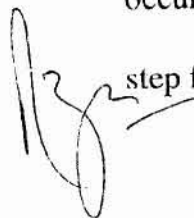


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learned Counsel for appellant Sarfraz and in addition made the following submissions:

- i) The FIR was lodged with deliberation and consultation.
- ii) Allah Ditta appellant was involved in this case being neighbor of Sarfraz appellant.
- iii) The role attributed to Allah Ditta appellant that he had caught hold of Ammad deceased is not plausible because when according to the prosecution hands of Ammad deceased were tied with a rope there was no need for Allah Ditta to hold the deceased.
- iv) No role regarding murder of Ammad deceased was attributed to Allah Ditta appellant and the recovery of Churri on the pointation of Allah Ditta appellant is a planted one.
- v) The presence of the complainant at the place of occurrence is doubtful because the occurrence took place at 5.30 p.m. on 11.12.2006 and the dead body was brought to the hospital for postmortem by the police officials at 1.00 P.M. on 12.12.2006 where Khalid Maqbool and Tahir Maqbool had identified the dead body. This shows that the complainant was not present at the hospital because on this fateful occurrence of murder of his son why the complainant did not step forward to identify the dead body of his own son.



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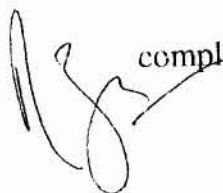
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- vi) The prosecution witness had stated against Allah Ditta appellant in order to substantiate his role.
- vii) Recovery of Churri from Allah Ditta was planted one and the prosecution had not attributed any role to Allah Ditta appellant that he was armed with Churri. Furthermore the Churri was neither blood stained nor the same was sent to the Forensic Science Laboratory for analysis.
- viii) It is an unseen occurrence and no independent witness was produced by the prosecution to prove its case while the complainant cited his close relatives as prosecution witnesses in order to substantiate his case.
- ix) There are many contradictions and improvements in the statements of the PWs.

10. On the other hand Mian Muhammad Awais Mazhar, DPG appearing for the State has stated as under:

- i) FIR was promptly lodged.
- ii) Both the accused were nominated in the FIR.
- iii) The deceased was a minor.
- iv) The accused failed to prove any enmity with the complainant and prosecution witnesses.
- v) Accused Sarfraz is real nephew of the complainant.

The mere fact that there was a dispute between the complainant and father of Sarfraz appellant regarding land,



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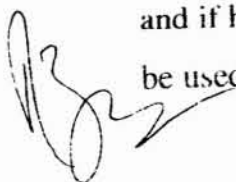
cattle and Haveli etc. is not sufficient to disbelieve the stance of prosecution witnesses as no one could substitute real culprits when his real son was murdered.

vi) The deposition of the PWs, recoveries effected on the pointation of the appellants and postmortem report are sufficient to connect the appellants with the crime.

vii) There is no defect in the impugned judgment and the learned trial Court has rightly convicted and sentenced the appellant.

11. Rana Zia Abdul Rehman, Advocate for complainant adopted the arguments advanced by the learned DPG appearing for the State and referred the statements of the accused recorded by the learned trial Court after framing of the charge on 28.06.2007 and stated that both the accused had confessed their guilt before the learned trial Court and in reply to question "Do you plead guilty to the charge?" Sarfraz appellant stated as under:-

"Yes I plead guilty. The victim Muhammad Ammad was my real cousin. I had taken him for commission of act of sodomy and after committing the act of sodomy I had murdered him on which I repent." However, on this the accused was made aware that he is not bound to make a confessional statement and if he makes such statement, the same can be used against him as well in the trial which





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may entail his conviction for the above said offence charged against him. He was given one hour time to reconsider his decision to record confessional statement. That after one hour time he retracted from his confessional statement.

Similarly in reply to above-mentioned question Allah Ditta appellant stated as under:-

“I had accompanied with the accused Sarfraz who had taken the victim Muhammad Ammad and had committed the act of sodomy with him and thereafter he had murdered him but I was not aware about the design of the co-accused Sarfraz.” On this the accused was made aware that he is not bound to make a confessional statement and if he makes such statement, the same can be used against him as well in the trial which may entail his conviction for the offences with which he is charged. He was given one hour time to re-consider his decision to record confessional statement. That after one hour time he also retracted from his confessional statement.

The learned Counsel for the complainant has further stated that the learned trial Court has rightly convicted the appellants and they deserve no leniency.

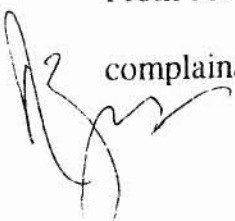


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12. We have heard the learned Counsel for the parties and perused the record with their assistance.

13. No doubt it is a brutal murder of a minor aged about 10 years. This case rests upon the evidence of eye witnesses, chance witness, recoveries and medical evidence. The prosecution produced eye witness account in the shape of Muhammad Khan complainant PW.1 and his brother in law Khurram Shahzad PW.7. The complainant stated in his statement that he came to the house of his sister Mst. Shahnaz Bano at Lahore from his house situated at Chak No.141/GB, Tehsil Sumandari, District Faisalabad to see his son. Thus, at that time, the complainant claims that he was not aware about murder of his son whereas Altaf Hussain DW.4 and Nazir Hussain DW.5 stated that on 11.12.2006 at 8.00 p.m. they heard noise of weeping from the house of Muhammad Khan complainant, on the murder of Ammad, son of the complainant. They alongwith Abdul Ghafoor, Baniamin and Ghulam Nabi offered condolence to Muhammad Khan about murder of his son. Thereafter they alongwith Abdul Ghafoor and Baniamin went to bus stand Samundari on a rickshaw and got boarded Muhammad Khan on a bus. Both these DWs were cross-examined at length but no specific suggestion was put to them in refutation of this fact. From the statements of the DW.4 & DW.5 it is established that the complainant was not an eye-witness of the occurrence. He came to

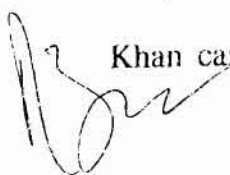


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know about murder of his son at his residence situated at Sumandari, District Faisalabad. He introduced his brother-in-law Khurram Shahzad and cousin Arshad Mehmood as eye-witnesses in the FIR and in order to establish their presence at the place of occurrence he set forth in the FIR that he by making calls told them to see him in the house of his sister Mst. Shahnaz Bibi. However the complainant in his cross-examination stated that "I cannot tell telephone number of PW Khurram Shehzad and Arshad PW. I had made telephonic call one day before to PWs Khurram Shehzad and Arshad to meet me in the house of my sister at Tajpura, Lahore. I made telephonic call from my house. I do not remember my telephone number." However, if the prosecution version is put in juxtaposition with the defence version, the defence version seems to be more plausible. This may be further clear if all the versions of the DWs are placed together:

DW-2 Muhammad Rasheed stated that on 12.12.2006, when he was present at Muslim Abad Railway Station, Muhammad Ashfaq and Muhammad Amin were also present with him, and they came to know that Mst. Shehnaz Bibi made a telephonic call to Muhammad Khan who told her that he was coming soon. DW-3 Maqsood Ahmad stated that on 11.12.2006 Muhammad Khan came to Muslim Abad, Lahore at about 3:00 a.m

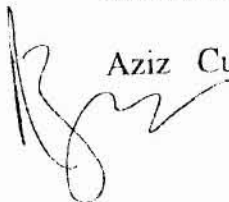


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(night). Muhammad Amin, Ashfaq, Rasheed and other Mohallahdars were also present with him and they met with Muhammad Khan. DW-4 Altaf Hussain stated that on 11.12.2006 at 8:00 p.m. he heard noise of weeping from the house of Muhammad Khan complainant. Some other persons and women were also present in his house. Abdul Ghafoor, Baniamin, Nazir Hussain and Ghulam Nabi were also present in the house of Muhammad Khan. They offered condolence to Muhammad Khan about murder of his son. Thereafter, he, Nazir Hussain, Abdul Ghafoor and Baniamin went to Bus Stand Samunderi on a Rickshaw from the house of Muhammad Khan situated at 139-GB Tehsil Samundri District Faisalabad. Muhammad Khan boarded the bus. Similarly, DW-5 Nazir Hussain also stated that at Isha time, he heard noise of weeping from the house of Muhammad Khan complainant. He came to know that son of Muhammad Khan had been murdered. Muhammad Khan and his 2/3 brothers went to Lahore.

14. The complainant also stated in the FIR that when he alongwith Khurram Shahzad and Arshad Mehmood was searching for his son Ammad, his cousin Khalid Maqbool PW.8 met them at Aziz Culvert who informed them that Muhammad Ammad



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alongwith accused Sarfraz and Allah Ditta was going in Canal Point Scheme. In this way the complainant made effort to plant chance (*wajtakker*) witness in order to strengthen his case. The presence of Khurram Shahzad PW.7 at the place of occurrence is doubtful because he stated in his cross-examination that he was working in a factory, Kh.Nasir-ud-Din, Factory Area, Kot Lakhpat, Lahore and he was on leave on the day of occurrence but he did not file any leave application.

15. The police recovered a piece of rope on the pointation of accused Sarfraz vide recovery memo Ex.PK. However Dr. Nadeem Ahmad PW.9, who conducted postmortem examination on the dead body of Ammad deceased, stated that hands of the dead body were tied and a rope was present around neck. The recovery of piece of rope, recovered on the pointation of Sarfraz accused is of no value for the prosecution as the same was not sent to the expert for matching the same with the rope used in the crime. It does not appeal and fit into the prosecution story that the accused while fleeing from the scene of occurrence after the complainant alongwith the witnesses entered the room of gruesome occurrence, actually took any piece of rope with them and why.

16. Similarly Churri, recovered by the police on the pointtion of Allah Ditta accused vide recovery memo Ex.PF, was not blood stained and the same was not sent to the Forensic Science

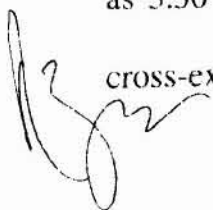


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Laboratory for analysis. In this way, the prosecution failed to establish that the Churri, recovered from Allah Ditta accused was the same which was used in the murder of the deceased. Furthermore no role was attributed to Allah Ditta accused that he was armed with any Churri or he was the one who applied it on the victim, whereas the allegation leveled by the prosecution is that Sarfraz accused was plying Churri on the neck of the deceased.

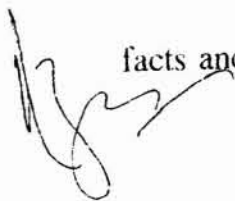
17. Dr. Nadeem Ahmed PW.9 conducted autopsy on the dead body of Ammad deceased and observed an incised wound 16 x 25 cm on front of neck, 7 cm. from chin, 5 cm from above supra sterna notch, 8 cm from right ear, 2 cm from left ear and according to him the injury was caused by sharp edge weapon. It does not appear to be believable that the accused even after arrival of three healthy persons (Muhammad Khan complainant, Khurram Shahzad & Arshad Mehmood) could take so much time to inflict so much wounds with one Churri and yet escape from the room. Therefore, it is not certain that the appellants are the real culprits who had committed murder of Ammad deceased because there are many contradictions and improvements in the statements of the complainant PW.1, Khurram Shahzad PW.7 and Khalid Maqbool PW.8. Time of occurrence was mentioned in the FIR on 11.12.2006 as 5.30 p.m. whereas Muhammad Khan complainant stated in his cross-examination that he heard cries of his son at about 7.00 p.m.



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The complainant stated in his examination-in-chief that he left Khurram Shahzad and Arshad Mehmood at the place of occurrence and he himself went to report the matter to the police whereas in his cross-examination he stated that Arshad Mehmood was with him when he met with police at Canal bridge. Furthermore Jaffar Ali SI PW.5 stated in his cross-examination that Khuram Shahzad, Arshad, the complainant, Khalid Maqbool and police officials including drivers were present when he recorded statement of the complainant. These contradictions and the evidence of DWs which remained unshattered on material particulars are sufficient to create doubts in the prosecution evidence. The presence of complainant at the place of occurrence is also not proved from the record as according to Altaf Hussain DW.4 and DW.5 Nazir Hussain they offered condolence with Muhammad Khan complainant regarding murder of his son in Chak No. 139/GB, Tehsil Sumandari, District Faisalabad, on 11.12.2006 at 8.00 p.m. which shows that the complainant had earlier come to know about the murder of his son. Accused Sarfraz took up the plea of enmity with the complainant because the complainant was in possession of his father's land, cattle and Haveli etc., and when he forced his father to get back the same from the complainant, he bore grudge. The plea of enmity, raised by accused Sarfraz has although no force yet in the light of facts and circumstances of the case the possibility cannot be ruled





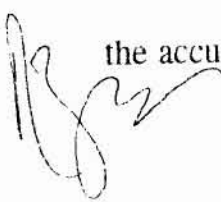
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out when the complainant found no clue about the real culprits he falsely implicated his own nephew Sarfraz accused, due to enmity and in order to usurp the properties belonging to his father.

18. The doctor also observed that the anus was dilated. No tear was seen in anus or rectum. The swabs were taken from the anus and were sent to the Chemical Examiner for detection of semen and vide report of the Chemical Examiner Ex.PR the swabs were found stained with semen. However no witness stated in their statements that they had seen the accused committing sodomy with Ammad deceased. That in such a heinous crime the prosecution did not take pain to send swabs for grouping, nor was any application moved by the prosecution in this regard. There is no evidence available on the record that any body had seen the accused committing sodomy with the deceased and in the absence of report of grouping/matching it is not possible to link the accused with the offence of sodomy.

19. The point raised by the learned Counsel for the complainant that both the appellants, after framing of charge against them, made confessional statement in reply to question "Do you plead guilty to the charge?" is of no value as both the appellants again appeared before the trial Court and while reconsidering their decision pleaded innocence. The statements of the accused earlier recorded regarding their pleading guilty are not



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appropriate and proper and do not amount to confessional statements.

20. Prosecution has not brought any convincing and plausible reason to believe why DWs would depose to contradict the prosecution story.

21. The occurrence took place on 11.12.2006 at 5.30 p.m. at Lahore, FIR was lodged by complainant Muhammad Khan on the same day at 7.35 p.m. whereas it is established from the statement of DW.3 Maqsood Ahmed that the complainant reached Lahore from Sumandari on 12.12.2006 at about 3.00 a.m. (night).

22. When the complainant and PWs saw Sarfraz accused plying Churri on the neck of Ammad deceased, they did not raise any alarm and they did not apprehend the accused at the spot nor they made any effort to chase them. This does not portray the natural response particularly from the father in such a grave situation when his son is being murdered. Even no people from the vicinity have been attracted at all.

23. The dead body of Ammad deceased was brought to the hospital on 12.12.2006 at 1.00 p.m. while the postmortem examination was conducted at 6.00 p.m. Besides belated postmortem, the belated arrival of the dead body at the hospital, and the fact that it was identified by others and not the father (the complainant) himself, if he would have been present there,

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corroborates the defence versions that the complainant came to Lahore after he was informed about the murder of his son. This would further go to support the defence claim that the FIR was lodged with deliberation and consultation, and yet there are many contradictions and apparent doubts.

24. In view of above, we allow both the appeals i.e. Cr. Appeal No.65/L/2009 filed by Allah Ditta & Cr. Appeal No.72/L/2009 filed by Sarfraz, and set aside the impugned judgment dated 23.10.2008 passed by the Additional Sessions Judge, Lahore whereby they were convicted and sentenced as under:

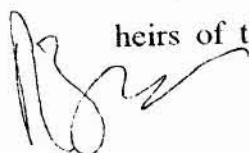
Sarfraz, appellant:

- i) Under section 302 PPC to death sentence.
- ii) Under section 377 PPC to ten years R.I. with fine of Rs.50,000/- or in default thereof to further undergo one year S.I.

Allah Ditta, appellant:

- i) Under section 302 PPC to life imprisonment.
- ii) Under section 377 PPC to ten years R.I. with fine of Rs.50,000/- or in default thereof to further undergo one year S.I.

Both the appellants were also held liable to pay compensation of Rs.1,00,000/- each to the legal heirs of the deceased Ammad, recoverable as



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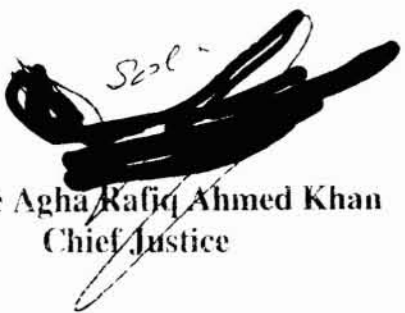
land revenue, or in case of default to further  
undergo 6 months S.I.

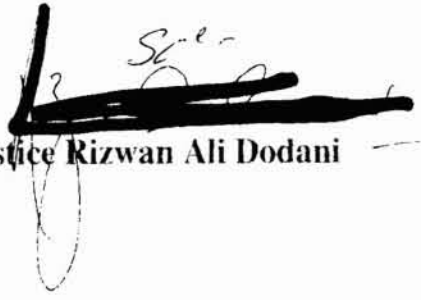
The benefit of section 382-B Cr.P.C. was  
extended to both the convicts.

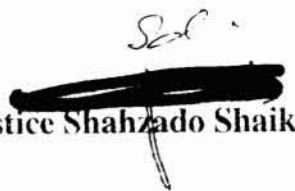
25. Murder Reference No.3/L/2010 is not confirmed and  
answered in negative.

26. Sariraz s/o Rasheed Khan and Allah Ditta s/o  
Muhammad Ismail should be released from the Jail immediately,  
unless required in any other case.

27. The above are the reasons of our short order dated  
23.11.2011 announced in the open Court.

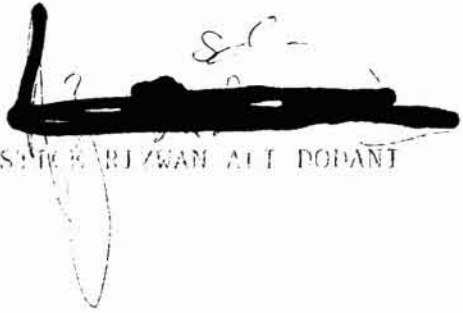
  
Justice Agha Rafiq Ahmed Khan  
Chief Justice

  
Justice Rizwan Ali Dodani

  
Justice Shahzad Shaikh

Dated Lahore the  
23-11-2011  
M. Imran Bhatti /\*

Approved for reporting.

  
JUSTICE RIZWAN ALI DODANI