

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

**HON. MR. JUSTICE SHAHZADO SHEIKH
HON. MR. JUSTICE DR. FIDA MUHAMMAD KHAN
HON. MR. JUSTICE RIZWAN ALI DODANI**

CRIMINAL APPEAL NO.7/P OF 2009

Suleman son of Muhammad Tayyab
R/o Mohallah Mayaganoo Cham, Saidu Sharif
Swat Appellant

Versus

The State
..... Respondent

CR.MURDER REFERENCE NO.1/P OF 2009

The State Appellant
Versus
Suleman Respondent

Counsel for the appellant Mr. Shabbir Hussain Gigyani,
Advocate


Counsel for State Mr. Aziz-ur-Rehman,
Advocate

FIR, Date and 67, dt: 24.02.2007
Police Station Saidu Sharif, Swat

Date of Judgment of 20.10.2009
trial court

Date of Institution 31.10.2009

Date of hearing 04.06.2012

 Date of decision 04.06.2012

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JUDGMENT

DR. FIDA MUHAMMAD KHAN, JUDGE.- This appeal preferred by Suleman is directed against the judgment dated 20.10.2009 passed by learned Additional Sessions Judge/Zila Qazi, Swat whereby he has convicted the appellant under section 302 PPC and sentenced him to death. He has also imposed on him a fine of Rs. 100,000/- to be paid as compensation to the legal heirs of deceased, under the provision of section 544-A Cr.P.C. The appellant has also been convicted under section 380 PPC and sentenced to 03 years R.I. with a fine of Rs. 10,000/- or, in default thereof, to further suffer 06 months S.I. The benefit of section 382-B, Cr.P.C. has been extended to him.

2. The learned Sessions Judge, Swat has submitted Criminal Murder Reference No. 01/P of 2009 for confirmation of the death sentence awarded to the appellant. Since the appeal and the Murder Reference both arise out of one and the same judgment, we propose to dispose of both the matters by this Single Judgment.



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3. Brief facts of the case are that on 23.02.2007 the complainant Gul Muhammad reported to the local police that on the same day at 1400 hours he had gone to offer prayers. On return to his house, he received information that in his absence his grandson Suleman had come to his house and had taken a box containing gold ornaments and other valuables. Later on, the complainant came to know that Suleman had also taken away his grand daughter, namely Iqra aged, 6/7 years, alongwith him. He added that at that time other ladies were on the upper storey of the house. Accordingly, a Murasala (Ex.PA) was prepared and formal FIR (Ex.PA/1) was registered on its basis.

4. The investigation of the case was conducted by Mir Abdullah, SI. and the accused Suleman was arrested by Shams ud Din, ASI on 24.02.2007. During investigation the accused disclosed that he had put the stolen articles in Khodangay Jungle under a stone and he could point out the relevant place. Subsequently, the stolen articles as well as the dead body of deceased Iqra, concealed under grass and stones, were recovered on his pointation on 24.02.2007 and were taken into possession by the



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police vide memo (Ex.PW.8/1) and (Ex.PW.7/1) duly signed by I.O. He also prepared site plan (Ex.PW.8/2) of the said recovery place. The Investigating Officer took into possession the blood stained clothes i.e. Qameez and shalwar (pink colour) of deceased Iqra produced by complainant Gul Muhammad and the same were taken into possession vide recovery memo (Ex.PW.6/1). Confessional statement of the accused wherein he confessed his guilt was also duly recorded by PW 14 under section 164/364 Cr.P.C. on 26.02.2007. The I.O. also recorded statements of witnesses under section 161 Cr.P.C. He obtained medical report of the deceased from the hospital and sent all blood stained articles to Forensic Science Laboratory, Peshawar for analysis. After completion of investigation the I.O. handed over the file to SHO for submission of challan to court.

5. The learned trial court after receipt of challan formally charged the appellant/accused under sections 5 Offence Against Property (Enforcement of Hudood) Ordinance, 1979 as well as 302 PPC. The accused did not plead guilty and claimed trial.



6. At the trial, the prosecution produced 14 PWs. A gist of their evidence is as mentioned herein under:-

- * PW.1 Gul Muhammad complainant reiterated the facts regarding the occurrence as he mentioned herein above;
- * PW.2 is Mst. Saima, daughter-in-law of the complainant. She fully corroborated statement of the complainant;
- * PW.3 is Noor Ullah. He made statement that on the day of occurrence i.e. 23.02.2007 at about 2.00.p.m. when he was going to see his under construction house, he saw accused Suleman near the house of Gul Muhammad, complainant carrying a box. He also deposed that the young girl Iqra deceased was also accompanying him;
- * PW.4 is Inayat Ullah Shah. He also deposed that he saw the accused near a pond carrying a box while the deceased Iqra was walking behind him;
- * PW.5 is Nazir Muhammad. He deposed that in his presence the I.O. recovered a box containing ornaments, papers of land, clothes and other articles and secured that vide memo (Ex.PW.5/1) duly signed by him;
- * PW.6 is Sher Zaman. He stated that in his presence Gul Muhammad complainant produced blood stained clothes of Iqra before the police which were taken by the police and sealed vide memo (Ex.PW.6/1) and he signed the said memo;



- * PW.7 is Hameed Iqbal, constable. He stated that on 24.02.2007 in his presence and Investigating Officer, accused Suleman led the police party to Paharr Almosuma Khodangay and got recovered the dead body of Iqra lying under a tree of Banj. When the dead body was found, grass and stones were put on it and the same was took into possession vide recovery memo (Ex.PW.7/1) which was signed by this PW and Sikandar Hayat;
- * PW.8 is Mir Abdullah, SI who investigated the case. He gave details of the investigation conducted by him in the case;
- * Shah Bakht Rawan, Foot Constable appeared as PW.9 and stated that in his presence the Investigating Officer on the pointation of accused recovered a cloth like sock from Jungle Almosooma Khodangay, from which two golden necklace were took into possession vide memo (Ex.PW.8/2) which was signed by him;
- * PW.10 is Saleh Muhammad. He deposed that in his presence the accused got recovered golden ornaments which were taken into possession by the I.O. vide memo (Ex.PW.8/1) and the said memo was signed by him;
- * PW.11 is Lady Dr. Hameeda of Central Hospital Saidu Shareef. She conducted the postmortem examination of deceased Iqra and prepared report (Ex.PW.11/1). The details of post-mortem etc are given as follow:-



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“EXTERNAL EXAMINATION:- Abrasion was present on right side neck region.

General Appearance:- Small girl wearing pink shalwar pink shirt two white colour vista swollen tange partially closed eyes, hand clinch, soared with mud grass and blood. Bleeding from right ear.

EXAMINATION INTERNAL:-On Dissection of neck no Heamatoma, No Echymosis. On opening cramicium. There were Heamatoma under scalp. Congestion present. Brain Matter damaged. Right tempral and parietal bon damaged and crushed. Heamatoma Present under the scalp. Brain was damaged.

Two HVS took for chemical examination. Perineal soakedwith stool.

Remarks by Medical Officer:- Dead Body with Head Injury Injured Bon on Right side Head crushed bleeding from right Ear hairs soaked with Blood. Both Hands clenched and stained with Blood, Holding grass in hand stand with Mud. Neck bruised and abrasion present but no fracture, no haematoma on dissection.

CAUSE OF DEATH:- Head injury.

Time between death and post Mortem:- 10 to 12 hours. Post Mortem examination performed under supervision of Dr. Shafi ur Rehman Forensic Deptt.”

- * PW.12 is Shams-ud-Din, ASI. He stated that on the statement of Gul Muhammad complainant, he drafted Murasala and sent the same to the police station for registration of formal FIR;
- * PW.13 is Sanobar Khan, SHO. He stated that after completion of investigation he submitted complete challan to the court;
- * PW.14 is Lastly Asim Riaz, Judicial Magistrate. He stated that on 26.02.2007 he recorded confessional statement (Ex.PW.14/2) of accused Suleman which was read over to him and thereafter the accused fixed his thumb impression,

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accepting the same as correct. The accused was then sent to the judicial lock up through police.

7. After close of prosecution evidence the learned trial court recorded statement of accused Suleman under section 342 Cr.P.C. wherein he denied the allegations. In answer to two different questions, "Why the PWs have deposed against you and why the case has been made against you?" he replied that he was unaware as to why he was falsely involved in this case. However, he neither opted to make statement under section 340(2) Cr.P.C. nor produced any evidence in his defence. The learned trial court on coming to the conclusion found the accused guilty and convicted and sentenced him as mentioned hereinabove.

8. We have heard learned counsel for the parties and have perused the record with their assistance. Learned counsel for the appellant submitted that:

- * the FIR has been lodged after a delay of six hours and thirty minutes.
- * the occurrence is un-seen and un-witnessed;
- * the evidence of PW.3 and PW.4 is doubtful as there are contradictions in their statements;



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- * no identification parade of the stolen box was conducted through PW.3 and PW.4;
- * the recoveries are doubtful as these have not been produced before the learned trial Court nor exhibited;
- * the Chemical Examiner's report is fake and is of no credence;
- * the big stone, allegedly shown as weapon of offence has not been sent to the Chemical Examiner;
- * the offence was not planned nor premeditated, there is close relation between the parties, and the sentence could be reduced to life imprisonment.

9. Learned counsel for the State vehemently supported the impugned judgment and stated that the innocent minor girl was brutally murdered with a stone just to eliminate the evidence against himself. He contended that the evidence brought on record by the prosecution has brought home the guilt of the accused to the hilt and he deserves no leniency.

10. We have given our anxious consideration to the points raised by learned counsel for the parties and have thoroughly perused the record with their assistance. It transpires that this unfortunate incident took place on 23.02.2007 at about 2.00.p.m. Though this was an unseen occurrence



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and there is no direct evidence about the theft from inside the house nor about the murder of deceased, however, the bits and pieces of circumstantial evidence produced by the prosecution in this case put together sufficiently establish guilt of the appellant/accused beyond any reasonable doubt. The circumstantial evidence is, in reality, a combination of basic facts which create a network wherefrom further conclusions according to logic and reason could be deduced and which ultimately leaves no escape for the accused because the facts taken as a whole do not admit of any inference but of his guilt. It is well said that men may lie but circumstances do not. However, since circumstances may mislead also, the courts are required to exercise great care and caution in considering each and every piece of such evidence and ensure that it leads to one single conclusion and exclude any other possibility except that of the guilt of the accused.

11. In the case before us, first of all there is a last seen evidence given by PW.3 Noor Ullah and PW.4 Inayat Ullah Shah who saw the deceased alive in the company of appellant/accused. PW.3 deposed that he



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saw the appellant/accused in the street of complainant while he was carrying a box on his shoulder and the deceased Iqra was also accompanying him. He observed that Mst. Iqra was initially reluctant to go with the appellant/accused but later on accompanied him when he told her that they would soon return. PW.4 also stated on oath that he saw the appellant/accused with a box on his shoulder while the deceased was following him and on his asking the appellant/accused told him that he was taking the baggage. Both these PWs saw the appellant/accused at different timings but since they saw him at different places in the same vicinity, the slight difference in timing is not material at all as PW.4 had no watch with him. Even otherwise the concept of timing in rural areas is always only approximate. Their presence over there was natural and, admittedly they were not chance witnesses. Both of them are residents of the same village and were well-acquainted with the appellant/accused. One of them was going to see his under-construction house located just near the house of complainant, and the other one even had an opportunity to talk to the appellant/accused. No enmity, ill-will or grudge has been attributed to any



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one of these PWs. Their depositions ring true and inspire confidence.

Except very minor immaterial discrepancies, their statements are fully consistent in material particulars. Being residents of the same village, they had no difficulty in identifying the appellant as well as the deceased. They have been subjected to lengthy cross-examination but nothing fruitful to the defence has been adduced from their evidence.

12. This last seen evidence provided a clue to the complainant who had initially charged the appellant/accused only for taking away the box and Mst. Iqra, in his Murasala (Ex.PA), dated 23.02.2007 at 2030 hours, later on nominated him in the FIR lodged on 24.02.2007 at 0900, and charged him for her murder also. He was, thereafter, immediately arrested on the same day. The delay of a few hours was natural as the complainant party remained busy in searching whereabouts of the deceased. After arrest, the appellant/accused, during investigation, led the police party on 24.2.2007 to recover the stolen box containing ornaments, identity card, purse and some other documents which were duly taken into possession vide recovery memo (Ex.PW.5/1). It is pertinent that the dead

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body of deceased Iqra which had been concealed under grass and stones was also recovered on his pointation on the same day and was duly taken into possession vide recovery memo (Ex.PW.7/1), as stated by PW.7. The blood stained clothes of the appellant/accused which he was wearing on the same day were duly taken into possession and secured vide recovery memo (Ex.PW.7/2). Similarly the blood- stained clothes of deceased Iqra were also taken into possession and duly secured. PW.5, PW.6 and PW.7 who are witnesses of these recovery memos have been cross-examined at great length but they have stood firm and their testimony has not been shaken even a bit. Despite some small negligible discrepancies, their testimony is fully consistent, rings true and leaves no doubt whatsoever about veracity of their depositions. The statement of PW.8 Mir Abdullah, SI confirms the same. The appellant/accused is the single accused nominated in the FIR by his real grand father. No motive of false implication or any other reason is available on record nor the appellant/accused has taken any such plea in defence.

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13. His confessional statement under sections 164/364 Cr.P.C. was also recorded on 26.02.2007 by PW.14 Asim Riaz, Judicial Magistrate, Swat. That statement is inculpatory in nature. PW.14, who recorded the same is a responsible officer and had nothing to do with the case of prosecution. He recorded the statement after observing and completing all legal formalities. The confessional statement was read over to the appellant/accused in Pashto language. Replies in the questionnaire Ex.PW.14/1 show that it was a voluntary confession and was not at all the result of any coercion. In this connection it may be mentioned that he was specifically asked whether he was subjected to torture, threat or force or any inducement for making the confession and he answered in negative. It is also pertinent to mention that at the time of recording the confession he was free and in full senses. At that time he had been duly told that he will not be handed over to the police and, as such, under no pressure or fear. Though thereafter he was sent to the judicial lock up through the same police but, as highlighted in the impugned judgment, it was necessitated by circumstances on account of the fact that he had to be shifted to a jail in



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another District. It is also very significant to point out that this statement is fully corroborated by the recoveries of box, dead body of deceased and blood stained stone, made on his pointation, and the matching report of chemical examiner about the blood on his clothes with that found on the last worn clothes of deceased. The MLR/PM report is also fully in line with the deposition of PWs.

14. To sum up, the case of prosecution against the appellant/accused mainly rests on the last seen evidence, recovery of the dead body of deceased Iqra, as well as recovery of stolen box, both on his pointation, judicial confessional statement and chemical examiner's report.

We are conscious of the fact that last seen evidence in itself is a weak type of evidence and cannot alone form basis for conviction by itself. However, in the instant case the facts and circumstances brought on record show that the deceased Iqra was last seen alive in the company of appellant/accused by PW.3, Noor Ullah and PW.4, Inayat Ullah Shah. When she did not return, the complainant who is real grandfather of the appellant/accused, after getting convinced, nominated him initially for taking away Iqra



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deceased and the stolen box and, later on for her murder, as the single accused in the FIR. The dead body which was concealed under the grass and stones, was recovered on his pointation from a place which was neither a thoroughfare nor known earlier to any one. This fact reveals that it was in his exclusive knowledge. Likewise the stolen box he was carrying on his shoulder was also recovered on his pointation. Though it was not exhibited, it is significant to note that it had been duly handed over to the complainant on superdari on 03.03.2007. There was no other claimant of the same as well. It is also significant to note that he made judicial inculpatory confession about commission of the offence on the very next day. It was recorded by PW.14 Asim Riaz, Judicial Magistrate strictly in accordance with requirement of the law. The last and strong piece of evidence in this connection is report of Chemical Examiner Ex.PW.8/8 which reveals that the blood found on the clothes of deceased matched with that found on the clothes of accused he was wearing on the day of occurrence.

15. We may mention that when a man of sound mind and mature age makes a judicial confession in ordinary simple language, after he has been



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duly warned, and the Court is satisfied that it was voluntary, true and trustworthy it could be made the foundation for conviction. The weight to be attached to a confession depends on the facts and circumstances of each case. However, regarding other circumstances, the indisputable rule being consistently followed by the Superior Courts for conviction is that the facts proved must be incompatible with innocence of the accused and must be incapable of any other hypothesis, other than that of his guilt.

16. We have also anxiously considered the quantum of sentence but have been unable to find any reason for reducing the same. The appellant/accused has been guilty of committing the murder of a minor girl in a very callous manner. Being her first cousin he should have been the first one to protect her from other people. Instead he betrayed her trust and brutally killed her just to get rid of her to cause the evidence disappear against him. Therefore, we find no mitigating circumstance to alter the death sentence awarded to him.

17. In view of the above, we find that the prosecution has successfully established its case against the appellant/accused beyond any



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reasonable doubt. Therefore, we maintain conviction and sentences of the appellant/accused Suleman son of Muhammad Tayyab, under sections 302 PPC and 380 PPC, as awarded by the learned Additional Sessions Judge/Izafi Zila Qazi, Swat in Sessions Case No. 41/2007 on 20.10.2009 and uphold the judgment of the trial court.

18. Criminal Murder Reference No. 01/P of 2009 for confirmation of death sentence is confirmed and answered in affirmative.

19. These are the reasons for our Short Order passed on 4th June, 2012.


JUSTICE DR. FIDA MUHAMMAD KHAN


JUSTICE SHAHZADO SHEIKH


JUSTICE RIZWAN ALI DODANI

Islamabad the 30th June, 2012
*Umar Draz Sial/**

Fit for reporting

