

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

Present

MR. JUSTICE HAZIQL KHAIRI, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN.

CRIMINAL APPEAL NO. 86/I OF 2006.

1. Amanullah son of Rasul Bakhsh
2. Ghulam Yasin son of Muhammad Hussain
Both r/o Mauza Ara Jaffar, Tehsil and
District D. G. Khan Appellants.

VERSUS

The State	....	Respondent.
Counsel for the appellant.	.... ....	Mr.M. Saliheen Mughal, Advocate.
Counsel for the State	....	Mr.Shafqat Munir Malik, Asstt. Advocate General.
Case F.I.R. No. date & Police Station.	.... ....	No.415, 12-11-2001, P.S.Kot Chhutta, District D. G. Khan.
Date of judgment Of trial Court.	....	03-04-2006.
Date of Institution	....	25-04-2006.
Date of hearing.	....	14-12-2006.
Date of decision.	....	09.01-2007

JUDGMENT

Dr.Fida Muhammad Khan, J. — This appeal, jointly filed by Amanullah son of Rasool Bakhsh and Ghulam Yasin son of Muhammad Hussain, is directed against the judgment dated 3-4-2006, which on remand by order dated 6.10.2004 of this Court, was passed by the learned Sessions Judge/Juvenile Court, Dera Ghazi Khan, whereby he has convicted the appellants/accused Under Section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (hereinafter referred to as the Ordinance) read with section 34 PPC and sentenced them, each, to imprisonment for life, and fine of Rs.100,000/-, each to be paid to the legal heirs of deceased Mst.Nasreen or in default thereof, to undergo three years imprisonment, each. He has further convicted them Under Section 302 (b) read with section 34 PPC and sentenced them, each, to imprisonment for life, with compensation amounting to Rs. One Lac, each, to be paid to the legal heirs of deceased Mst. Nasrin or, in default thereof, the appellants/accused shall further suffer three years imprisonment, each. Both the sentences are ordered to run concurrently. The benefit of section 382-B, Cr.P.C has been extended to them.

2. Briefly stated, the case of prosecution, as disclosed in the F.I.R (Ex.PN) registered at Police Station Kot Chhutta, district Dera Ghazi Khan, on the statement of complainant Ghulam Hassan (PW.11), is to the effect, that he is labourer by profession; he has two sons and five daughters; his one daughter namely Mst. Nasrin aged about 11/12 years was deaf and dumb. On 12.11.2001 at about 9.00 a.m. his daughter Mst. Nasrin went out of her house and did not return after considerable time. Therefore, he got worried and went out in her search. During search when he reached Sahiban Canal at about 2.30 p.m, Hafiz Ghulam Muhammad and Haji Murid Hussain, his co-villagers, met him and told him that while they were passing on a thoroughfare in the middle of sugarcane crop field of Sadiq and cotton crop field of Nazir Ahmad, they saw dead body of his daughter Mst.Nasrin, smeared in blood, with her throat cut from the front. They added that they were coming to inform him. On this information, he accompanied them and reached the spot. On his hue and noise, several other persons from the village were also attracted. According to him, Saifullah son of Ghulam Hussain and Muhammad Rafique son of Ghulam Hassan, his co-villagers, were missing, therefore, he charged both of them

alongwith other unknown persons for committing Zina with his daughter and thereafter murdering her to cover up their crime. Subsequently, the appellant/accused alongwith the acquitted co-accused Saifullah and Muhammad Rafiq were arrested on 3.12.2001 by Rana Khurshid Ahmad, SI (PW 13) and after completion of necessary investigation, challaned to face trial.

3. At the trial, the prosecution examined thirteen witnesses in all. PW.1 is Mauladad, constable. On 12.11.2001, he escorted the dead body of deceased Mst. Nasrin to DHQ Hospital, Dera Ghazi Khan. After conducting post mortem examination on her dead body, the doctor handed over to him one Qameez (P-1), Shalwar (P-2) and Dopatta (P-3) of the deceased alongwith one sealed parcel and post mortem report which he produced before the I.O, who took the same into his possession vide recovery memo (Ex.PA). He attested as its marginal witness. PW.2/PW 7 is Muhammad Nawaz, constable. On 11.12.2001, Muharrir of the Police Station handed over to him one sealed parcel containing Churri for onward transmission to the office of Forensic Science Laboratory, which he deposited over there on 12.12.2001, intact. On 28.12.2001, he was handed

over one sealed parcel containing blood stained shirt of accused Yasin for onward transmission to the office of Chemical Examiner, Lahore, which he delivered in the said office on 29.12.2001, intact. PW.3/PW.6 Dr. Abdul Rehman, Medical Officer on 3.12.2001 medically examined both the appellants and the acquitted co-accused and found them fit to perform sexual act. PW.4 is lady doctor Fatima Sherin, W.M.O. On 12.11.2001 she examined the dead body of Mst. Nasreen aged about 11 years and observed the following:-

“Mark of cut was present over neck. Cut was approximately 10 cm in length, 2 cm in width. It started below the left mendibular angle to right sternocledomastoid. Eyes and mouth were closed. Post mortem staining was present over abdomen (right side). Blood was coming out from cut mark. Abdomen was distended. Blood and grass were over both hands and fore arm, clothes were stained with blood and mud. Lower limb was stained with feces. Cut throat was present and blood was coming out from cut mark.

Larynx and traches, had been cut, common carotid artery had been cut.

Esophagus had been cut, except these all were healthy.

Examination of Genetila.

Hymen had been torn. Lacerations were present over vulva. Oozing of blood was present from injured hymen. Feces were present over thighs.”

According to her, rape was ante mortem and her death was due to cut throat and cutting of trachea, larynx, esophagus and carotid, blood loss and stoppage of respiration was sufficient to cause death within few minutes. Time between injury and death was stated to be approximately 5 to 10 minutes and the time between death and post mortem was 5 to 7 hours. The post mortem report is Ex.P-F, while the injury statement is Ex.P-F/1 and inquest report is Ex.PF/2. After post-mortem examination she handed over the dead body, last worn clothes, police papers containing vaginal swabs to the police.

PW.5 is Ejaz Hussain, ASI. On 12.11.2001 the I.O handed over to him two sealed parcels one containing blood stained earth and the other an envelope of Khaki colour for safe custody in the Malkhana. On 15.11.2001 he delivered both these parcels to Muhammad Nawaz, constable for onward transmission to the office of Chemical Examiner, Lahore and Multan, intact. PW.8 is Muhammad Ajmal. He deposed that while on 24.11.2001, he alongwith Mustafa at evening time was sitting on his khokha, the appellants/accused Amanullah and Yasin came there. When they inquired from the appellants/accused, who seemed perplexed, that who

were the killer of Mst. Nasrin, the dumb and deaf girl, aged 10/11 years.

Yasim made a confession to the effect that on 12.11.2001, he alongwith Amanullah, appellant/accused Saifullah and Rafique was present on Wat, intervening sugarcane and cotton crops fields of Nazir Ahmad. Mst. Nasrin came over there with her younger sister; Yasim threatened her younger sister and made her to run away. He further deposed that Saifullah, forcibly laid down Mst. Nasrin on the ground and committed Zina-bil-jabr with her. She became unconscious, blood was oozing from her vagina. Amanullah and Yasim also committed Zina with her and Amanullah brought Churri from his house. All the other accused caught hold her and Amanullah cut her throat. He specifically stated that "Above mentioned story was narrated to us by Yasim". He added thereafter that "Amanullah accused present in court also stated the occurrence before us and gave details mentioned above". PW9 Liaqat Ali, SHO, on 12.11.2001, recorded formal FIR (Ex.PN) on the statement of complainant. PW10 is Muhammad Sharif who identified the dead body of deceased Mst. Nasrin in the hospital and witness to the recovery memo (Ex.PA) whereby the last worn clothes, envelope and police papers were secured. PW11 is Ghulam Hassan,

complainant, who reiterated his statement as mentioned hereinabove. He also added the following "On the day of occurrence I alongwith Haji Majeed and Abbas were coming from Dramin Ghulam Yasin and Amanullah accused present in Court were coming out from the cotton crops owned by Nazir who were perplexed and went away". PW12 Ghulam Abbas on 12.11.2001 at about 2.30 p.m. saw both the appellants coming out from the cotton and sugarcane crops fields who on their sight got perplexed. PW13 is Rana Khurshid Ahmad, SI/SHO investigated the case. He went to the spot, prepared injury statement (Ex.PF/1) and inquest report (Ex.PF/2) and sent dead body to the hospital for post-mortem examination. He took blood stained earth vide memo (Ex.PO) prepared site plan (Ex.PP) and recorded statements of PWs under section 161 Cr.P.C. On 13.11.2001 he took into possession last worn clothes, blood stained shirt (P1), shalwar (P2) and Dupatta (P3) vide memo (Ex.PA) and a sealed envelope vide memo (Ex.PQ). On 3.12.2001 he arrested the accused and got them medically examined. On 6.12.2001 Yasin lead to the recovery of his blood stained shirt (P4) which was taken into possession vide memo (Ex.PL) and on 17.12.2001 Amanullah accused in police custody lead to the recovery of

chhurri (P.5) vide memo (Ex.PM) and site plan (Ex.PM/1) was prepared.

On 10.12.2001 patwari produced site plans (Ex.PR and PR/1) before him.

After completion of investigation he submitted challan against the accused.

The reports of Chemical Examiner (Ex.PS, PT and PU) and serologist reports (Ex.PV, PW and PX) were tendered in evidence.

4. The appellants/accused made their statements under section 342 Cr.P.C. wherein they denied the allegations and pleaded innocence.

The appellant/accused Amanullah, in answer to question No.5, replied as under:-

“I am innocent. PWs are closely related with interse. They have involved me in this case falsely with connivance of local police. My house is near the place of occurrence. In fact it was a blind murder.”

The appellant/accused Ghulam Yasin while responding to question No.5, made statement in the following words:-

“I am innocent. PWs are closely related with interse. They have involved me in this case falsely with connivance of local police. My house is near the place of occurrence. We have sufficient land. The complainant had obtained land on Muta from my grand father but he had not paid the lease money. In

order to get rid of the lease money and for obtaining more land/Chatti the complainant has involved me in this false case. In fact it was a blind murder.”

Both of them declined to make statements on oath under section 340(2) Cr.P.C as well as to produce any evidence in their defence. However, Zulfiqar Ali, DSP was examined as DW.1.

5. We have heard the learned counsel for the appellants as well as learned Assistant Advocate General for State and perused the record with their assistance.

6. Learned counsel for the appellants/accused vehemently contended that this is an unwitnessed occurrence, that the appellants/accused are not nominated in the F.I.R, that two other persons namely Saifullah and Muhammad Rafique were nominated; that several other suspects were also associated in the investigation; that extra-judicial confession being joint and having been made before a person who was neither a councilor nor anyone with authority but only a labourer is therefore unworthy of credence, that the recovery of shirt and churri was effected after 22/23 days of the occurrence, and presence of blood stains on

the churri were not possible after it was burried in the ground and that the PWs are close relatives and interested witnesses. The learned Assistant Advocate General, however, rebutting the arguments of the learned counsel for the appellants/accused, fully supported the impugned judgment.

7. We have given our anxious consideration to the contentions raised by the learned counsel and have critically appreciated the evidence on record in the light of their submissions.

8. Perusal of the record reveals that the occurrence took place on 12.11.2001 and, after having been informed of the dead body of his daughter Mst. Nasreen at about 2.30 p.m; Ghulam Hassan (PW.11) reported the matter to police on the same day at about 5.25 p.m. In his promptly lodged initial report, he did not nominate the appellants/accused and only nominated Saifullah and Muhammad Rafique as the accused who, after commission of rape with Mst. Nasreen, committed her murder. He expressed suspicion against the said accused for the reason that both of them were then found missing. However, subsequently, when on 21.11.2001, both the appellants/accused made extra-judicial confessions before PW.8, Muhammad Ajmal, they were arrested on 3.12.2001. After

their arrest, while the appellant/accused Yasin, on 6.12.2001, led police to the recovery of his blood stained shirt (P.4), the other appellant/accused Amanullah, on 7.12.2001, also led to the recovery of incriminating weapon of offence, i.e. blood stained churri (P.5). Later, the complainant (PW.11), in his deposition before the court, while reiterating his initial statement incorporated in the F.I.R, also added that while on the day of occurrence he alongwith Haji Majeed and Abbas was coming from Driamin, they had seen both the appellants/accused Ghulam Yasin and Amanullah, in perplexed condition, coming out of the cotton crop, owned by Nazir. PW.12, Ghulam Abbas also made similar statement and specifically mentioned that both the appellants/accused got perplexed on their sight. PW.13, Rana Khurshid, S.I/SHO, who arrested the appellants/accused on 3.12.2001 deposed about the above mentioned recoveries of blood stained shirt and churri, respectively, on pointation by each of the appellants/accused, which were made into sealed parcels and took into possession by him vide recovery memos Ex.PL and PM. Thus it is evident that the case of prosecution mainly rests on the extra-judicial confessions, recoveries of incriminating articles and ocular evidence to the extent of the

appellants/accused having been seen at 2.30 p.m. on 12.11.2001, i.e. the date of occurrence, while they were emerging from the same field wherefrom dead body of Mst. Nasreen was recovered.

9. As it appears, the occurrence is admittedly unwitnessed. No PW saw the appellants/accused either committing Zina with Mst. Nasreen or putting her to death. However, the chain of circumstantial evidence is so strong that it completely excludes hypothesis of the innocence of appellants/accused and leads only to their guilt without any room for doubt. Ghulam Hussain (PW.11) and Ghulam Abbas, (PW.12), saw both the appellants/ accused in perplexed condition coming out from the cotton crop owned by Nazir--- the same field wherefrom the dead body of Mst. Nasreen was recovered. Both the PWs are consistent in this respect and despite cross-examination nothing has been adduced that could favour the defence in any way. It is very significant to note that, despite this, PW.11 Ghulam Hassan, complainant, did not name them as accused in the F.I.R. The only apparent reason that could be gathered from the cross-examination on the statement of PW.11 and PW.12, as to why he did not nominate them as accused, is that both the appellants/accused, who belonged to his

brotherhood also, resided in the close vicinity, at a distance of one acre, from the place of occurrence around the house of complainant. Therefore, he naturally considered their presence over there at that time as something usual and normal. Since the other nominated accused namely Saifullah and Muhammad Rafique were found missing from their houses at that time, the complainant guessed about their involvement in the occurrence and expressed suspicion against them. However, after lodging of the F.I.R, when the said PWs recapitulated various series of links and when the appellants/accused also made extra-judicial confessions before PW.8 Muhammad Ajmal on 21.11.2001, they got convinced about their involvement. They were therefore arrested on 3.12.2001. Although PW.8 Muhammad Ajmal before whom the extra-judicial confessions were made is neither a councilor nor enjoys an influential status in the village, it is worth mentioning that he is husband of Mst. Naseem, sister of Mst. Nasreen, deceased, and in this way he was an important person who could be genuinely expected to exercise his influence in the family and play his role in effecting compromise between the parties. After making the confessions, both the appellants/accused, therefore, asked him to arrange

pardon from the complainant, being his father in law. In circumstances, his family status qua the complainant assumed greater weight than that of a councilor or anyone else in authority. Regarding the said extra-judicial confessions it may also be noteworthy that the deposition of PW.8 nowhere indicates that it was a joint confession. Instead, it is quite clear that both the appellants/accused made separate confessions about the same occurrence in detail. According to him, when Yasin made confession, Amanullah also stated the occurrence and mentioned the details. Mere presence of both the appellants/accused at the same time when they made separate confessions cannot, therefore, be construed as joint confessions. Here we may point out that we are not oblivious of the fact that extra-judicial confession is rightly regarded as a weak piece of evidence and, in absence of any other satisfactory evidence, it is to be thoroughly examined with utmost care and caution and should be supported by convincing independent corroboration. The fact that it was truly and voluntarily made is also to be ascertained. In the case before us we find that the instant extra-judicial confessions made by the appellants/accused meet the required standard. The PW before whom these confessions were made is reliable. He was not shaken on any point in

his cross-examination and he had no grudge or motive whatsoever to falsely depose against the appellants/accused. Even no suggestion has been put to him in this respect. There is no reason on record why out of all the people, he only picked them up and concocted their involvement in the offences that carry heavy capital punishment.

10. In the instant case, the extra-judicial confessions find corroboration from the recoveries of churri (P.5) and shirt (P.4)--- both blood stained. It may also be worth mentioning that the appellants/accused made the said confessions on 21.11.2001, i.e. nine days after the occurrence, and they were arrested 12 days thereafter. Then it was on the 4th/5th days of their arrest, respectively, that they led to the recovery of blood stained shirt and blood stained churri. There is nothing on record to show that the blood stained churri was ever found earlier to that or was falsely planted to strengthen the case of prosecution. Columns No.22 and 23 of Inquest Report (Ex.PF/2) prepared on 12.11.2001 contains no reference whatsoever in this respect and, instead, clearly show that nothing was found/observed near the dead body of deceased Mst. Nasreen. Presence of blood on the said churri was detected by the Chemical Examiner vide his

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report (Ex.PU). We may point out that particles of blood could not be completely vanished from the same unless properly washed out or roughly rubbed sufficiently before getting it buried in the ground. We may also mention that apparently these extra-judicial confessions were necessitated by the fact that PW.11 Ghulam Hassan, PW.12 Ghulam Abbas and one Haji Majeed, who was won over, had earlier seen the appellants/accused near the cotton field on the day of occurrence. As it is a common phenomena, particularly in the rural areas, the news travel fast and, resultantly, both the teen ager appellants/accused must have found themselves constrained to seek the help of PW.8, Muhammad Ajmal, son in law of the complainant. We may also add that, as is held in dozens of judgments by the Superior Courts, it is well settled by now that even a retracted confession whether judicial or extra-judicial can, in law, validly form the sole basis of conviction of its maker, in cases of Tazir, if the court is satisfied that it was actually made and believes that the same was true, without torture, coercion or inducement. For safe administration of justice and as an abundant caution, however, it should have sufficient corroboration from other independent source.



11. Admittedly Mst. Nasreen, deceased aged about 1 1/12 years, has been murdered--- her throat cut by sharp edged weapon. The post mortem examination was conducted at 10.20 p.m. on 12.11.2001 by PW.4, who, inter-alia, also observed that her hymen had been torn, lacerations were present over vulva and blood was oozing from the injured hymen. Thus obviously Mst. Nasreen was murdered after having been subjected to Zina-bil-jabr. The vaginal swabs taken on that occasion were found by the Chemical Examiner vide his report (Ex.PG), to be "stained with semen". Potency tests of both the appellants/accused conducted by PW.3 Dr.Abdur Rehman reveals that there was nothing to suggest that they were not capable of doing sexual offence under ordinary law of nature at this stage. The post mortem report reveals that Mst. Nasreen was raped, ante mortem, and her death was due to cut throat. In this view of the matter, the extra-judicial confessions--- which are fully corroborated by circumstantial evidence furnished in the shape of appellants/accused having been seen very close to the cotton crop on the day of occurrence, at about the same time; by the recoveries of blood stained shirt of one accused as well as of blood stained weapon of offence

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(i.e. churri) by the other accused, on their pointation; post mortem report regarding the cut throat of deceased and her vaginal status, besides the positive report of Chemical Examiner on the vaginal swabs, which highlights the motive—warrant inevitably that reliance be placed on the same as it comes from the mouth of a PW who seems credible. His deposition inspires confidence. It is significant to note that none of the PWs, including the police officials who effected the incriminating recoveries on their pointation, is alleged to have any grudge ill will or animosity against the appellants/accused to falsely implicate them in the heinous offences. Their depositions ring true and inspire confidence. Despite lengthy cross-examinations, they have remained firm and appear credible. They are natural witnesses who were residing very close to the place of occurrence. Their relationship interse, alone is neither sufficient to discredit their testimony, which otherwise has stood unshakable on the touchstone of lengthy cross-examination, nor reasonable enough to term them as interested witnesses, as discussed above in detail.

12. Regarding submission of the learned counsel that several other persons were also joined in the investigation, it is worth mentioning

that this was necessitated to ascertain the truth by putting all bits and pieces together and exclude possibility of implicating innocent persons and, therefore, resultantly the other persons were finally dropped and the appellants/accused were nominated. Though the statement of DW.1, Zulfiqar Ali DSP, who partially investigated the case earlier, has referred to some previous enmity between one of the appellant/accused namely Amanullah and the complainant, but the same amounts only to hearsay as nothing has been brought on record to substantiate this plea. He has also referred to the recovery of the weapon of offence, i.e. churri, before the alleged date but no evidence worth the name is available to support his version. He himself also has given no reason that formed the basis of his opinion. PW.13, Rana Khurshid, who investigated the case and effected the incriminating recoveries, had no motive whatsoever to falsely implicate the appellants/accused. Defence plea of the appellant/accused Ghulam Yasin regarding obtaining of land on Muta is also only a bald statement and is not supported by any cogent piece of evidence. The very fact that the complainant did not nominate him in the F.I.R inspite of seeing him earlier, near the place of occurrence, on the same date, lends

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strength to his credibility. Had he been inimical, as alleged by the appellants/accused, he would have certainly used the opportunity to implicate them in this case right from the beginning. It may also be pertinent to mention that substitution in cases of this nature where a minor daughter is brutally raped and murdered is a very rare phenomena. The circumstances clearly indicate that the culprits were known to Mst. Nasreen and on account of fear of their exposure after rape, they committed her murder. Thus we have come to the irresistible conclusion that the case of prosecution against the appellants/ accused is proved to the hilt.

13. In the interest of justice, we have also considered the quantum of sentences, awarded to the appellants/accused. However, we have found the same to be appropriate and commensurate with the gravity of offences committed by them. Both the appellants/accused have been awarded the sentence of life imprisonment under section 10 (4) of the Ordinance as well as under section 302 (b) PPC, wherein the normal sentence provided for both the offences, is death. However, since the appellants/accused have been tried and convicted by the Sessions Judge/Judge Juvenile Court, they

have been awarded the lesser sentences, i.e. life imprisonment, in view of their minor ages. We could find no other mitigating circumstance which could enable us to further reduce their sentences according to law.

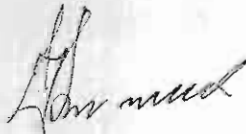
14. Consequently, for the reasons stated above, we maintain conviction and sentences of the appellants/accused on both counts and dismiss their appeal. The benefit of section 382-B, Cr.P.C granted to them as well as the order passed by the learned trial court in respect of fine, compensation to be paid to the legal heirs of deceased Mst. Nasreen and concurrence nature of the sentences, shall remain intact.



(DR.FIDA MUHAMMAD KHAN)
Judge.



(JUSTICE HAZIQUL KHAIRI)
Chief Justice.



Announced on 9 January 2007
at Islamabad.

F.Taj/*

Fit for reporting.



9.1.07