

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR. JUSTICE MUHAMMAD ZAFAR YASIN
MR. JUSTICE SYED AFZALHAIDER

CRIMINAL APPEAL NO. 89-I-2004
CRIMINAL MURDER REF.NO.11-I-2004

Ghulam Yasin of Ghulam Qadir
Resident of Basti Haji Allah Rakha
Tehsil Ahmadpur
East, District Bahawalpur.

Appellant

Versus

The State

Respondent.

Counsel for appellant

Mr. Rafaqat Ali, Advocate

Counsel for the complainant

Mr. Muhammad Aslam Uns,
Advocate

Counsel for the State

Raja Shahid Mehmood
Abbasi, D.P.G Punjab

No. & date of F.I.R.
Police Station

No. 177/2002, dt. 8.9.2002
P.S Channi Goth,
Bahawalpur

Date of judgment of
trial court

6.4.2004

Dates of Institution

12.4.2004

Date of hearing

14.4.2009

Date of decision

30.4.2009

m. Z. Yasir

JUDGMENT

MUHAMMAD ZAFAR YASIN, JUDGE.- Through this criminal appeal the appellant Ghulam Yaseen son of Ghulam Qadir has challenged his convictions recorded by learned Sessions Judge Bahawalpur vide judgment dated 6.4.2004, whereby the appellant has been convicted under section 302-b PPC and sentenced to death with a fine of Rs.100,000/- (one lac) or in default thereof to further undergo S.I for two years. Learned trial judge has also ordered that the appellant shall be hanged by his neck till he is dead. The appellant has also been convicted under section 18 read with section 10(3) Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to four years' R.I.

The learned Sessions Judge has also forwarded criminal murder reference in this Court which has been registered as Cr.Murder Ref.No.11-I-2004.

2. Facts giving rise to the present appeal, briefly stated, are that complainant Abdul Sattar (P.W.2) had lodged F.I.R No.177/2002 with

police station Channi Goth, District Bahawalpur wherein he alleged that on 8.9.2002 at about 12.00 noon he (complainant) was going back to Kot Khalifah from Channi Goth on his cycle when he saw Ghulam Yaseen accused grappling with his sister Mst.Salma Bibi in the cotton crop of his maternal uncle Shah Muhammad. His sister Mst.Salma Bibi, deceased, was raising hue and cry. The complainant came to the spot where he found Ghulam Yaseen accused having "Daranti" (Sickle) in his hands. On the alarm of Mst.Salma Bibi deceased, Shah Muhammad, Yaseen, Allah Wasaya and Muhammad Hassan who were spraying the cotton crop in the nearby fields, also got attracted to the spot. Ghulam Yaseen accused in the
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meanwhile gave "Daranti" blows to Mst.Salma Bibi on her chest and left flank. The complainant and P.Ws chased him but the accused fled away brandishing the "dranti" in his hands. The complainant further alleged that his sister Mst.Salma Bibi, who was seriously injured, was without shalwar and she told the complainant and the other P.Ws that she was cutting fodder when the accused came there and started caressing with her. She further told

them that on her resistance he made her to fall on the ground. According to her the accused forcibly untied the string of her shalwar and attempted to commit zina with her but on her resistance he caused her injuries. The complainant and the P.Ws took the injured lady to Channi Goth Hospital where she succumbed to the injuries, before any medical aid.

3. The police arrested the accused on 25.9.2002. After completion of investigation the accused/appellant was challaned to face the trial. The accused/appellant was charge sheeted on 27.2.2003 under section 18 read with section 10(3) Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 302 PPC by the learned Additional Sessions Judge Bahawalpur. The accused denied the charges and claimed trial.

4. To prove its case the prosecution produced as many as eleven witnesses. P.W.1 Khadim Hussain, Patwari who prepared the site plan of place of occurrence, P.W.2 Abdul Sattar is the complainant. He reiterated the version given in the FIR. In his cross-examination the witness deposed that it is correct that Ghulam Yasin P.W is the husband of a sister of Shah

Muhammad,P.W. The witness further deposed that Shah Muhammad was his mamoon (maternal uncle). He further deposed in his cross-examination that the cotton crop where Salma was injured had been cultivated by Muhammad Nawaz Mahtam. The witness denied the suggestion that he had heard hue and cry while he was on metalled road. P.W.3 Shah Muhammad is an eye witness of the occurrence. He fully supported the version of the complainant. During cross-examination this witness deposed that the place/acre where the occurrence took place was also cultivated by him and the crop standing thereon had been cultivated by him. P.W.4 Dr. Iqbal Shahin who examined the accused qua the potency test and found him potent. P.W.5

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Nazir Ahmad ASI who took the dead body of Mst. Salma Bibi to THQ Hospital Ahmadpur East for post mortem examination, P.W.6 Muhammad Ahmad Shah Constable No.67 deposed that on 15.11.2002 Bashir Ahmad Moharrir handed over him one khaki envelop and one box, both sealed, for onward transmission to the office of Chemical Examiner, and he delivered the said articles at the said office in tact on the same day, P.W.7 Iftikhar

Ahmad is a formal witness, P.W.8 Bashir Ahmad H.C No.66. He deposed that while he was posted at P.S Channi Goth as Moharrir, he was handed over two sealed parcels by the I.O one of which was said to contain blood stained earth and the other said to contain a blood stained sickle. The parcel of the blood stained sickle was given to him on the date of occurrence. He was declared hostile and was allowed to be cross-examined. In his cross-examination the witness deposed that on 29.9.2002 the I.O had handed him over a sealed parcel said to contain a blood stained sickle. In his cross-examination by the defence, the witness again deposed that he had correctly deposed in his examination-in-chief. P.W.9 Muhammad Shafiq is witness of recovery memo Ex.PH of sickle Ex.P-7 which on the pointation of the accused was recovered from a corner of a room of the house of the accused, which was stained with blood. The handle of the said sickle was found broken from corner. He is also witness of the recovery memo Ex.PJ recovery of the clothes of the accused, which he was wearing at the time of occurrence; The clothes were also recovered on the same day and had been

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washed and were not sent to Chemical Examiner for detection of blood on

the shirt. In his cross-examination the witness deposed that he resides in

Mohallah Sheikhan, Channi Goth. The house of the accused is at a distance of

about 2 ½ kilometers from his house. He further deposed that complainant

Abdul Sattar is his distant relative. The witness denied the suggestion that

the assailant had left the sickle Ex.P-7 at the place of the occurrence. P.W.10

Matloob Ahmad S.I is the I.O in this case. He deposed that after the

registration of the case he proceeded towards RHC Channi Goth along with

other staff, where he inspected the dead body, prepared the injury statement

of Mst.Salma Bibi Ex.PK, also prepared inquest report Ex.PL, inspected the

place of occurrence and prepared the site plan Ex.PM, arrested the accused

on 25.9.2002, got his physical remand. On 29.9.2002 the accused made a

disclosure that he could lead to the recovery of the clothes which he had

worn on the day of occurrence and the sickle. On the same day, the

accused while in police custody led to the house situated in Basti Chanran

from where he got recovered a sickle blood stained Ex.P-7 from an iron box

lying in the room of his house. Volunteered that the occurrence had taken place in the cotton crop of Shah Muhammad. P.W.11 Lady Dr.Farzama Kausar who had on 8.9.2002 examined the dead body of Mst.Salma Bibi and found as under:

"External appearance:

A dead body of young lady about 21-22 years age lying on the mortuary table in supine position wearing qameez khaki in colour stained with blood corresponding cut present on qameez shalwar of khaki colour and dopatta purple colored phooldar. (All clothes were signed and handed over to police) eyes were closed, Mouth semi open, face pale in colour. Rigormortis esp. on lower limb present. Postmortem lividity present on dependent parts. On external examination following injuries were noted:

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1. An incised wound on the right side of front of chest at the level of 4th rib measuring 4.00 cm x 02 cm x deep going, .3 cm medially to right nipple.
2. An incised wound on left side of chest at the level of 7th-8th ribs in intercostals space was cut 06 cm from left nipple, measuring 05 cm x 02 cm x deep going.
3. An incised would on palmer aspect of index finger of right hand measuring 01cm x 0.25 cm x bone deep.
4. An abrasion on left foot 02 cm x 0.5 cm on the left side.
5. An incised would on the right middle finger at the level of middle phalanx 01 cm x 0.25cm x skin deep.

CRANIUM AND SPINALCORD.

Scalp, skuli and veriebrae; on dissection of scalp no abnormality detected.

MEMBRANCES-BRAIN,SPINAL CORD: On dissection of skull no abnormality detected.

THORAX:

The walls,4th rib of right side was fractured and intercostals space between 7th and 8th ribs of left side was out. The pleurae was right side healthy while left side was ruptured. Left lung: lower lobe was ruptured due to injury No.2, the heart was empty and healthy. The blood vessels were healthy while blood vessels of lower lobe of left lung were ruptured. Larynx and trachea and right lung were healthy.

ABDOMEN

Walls, peritoneum, mouth, pharynx and esophagus, stomach and its contents, pancreas, small and large intestine liver, kidneys all were healthy.Peritoneum healthy except in left hypochondria. Diaphragm: right healthy while left was ruptured. Spleen was ruptured. Bladder healthy and contain some urine. Organs of generation: external and internal: Uterus was of normal size. No injury seen on vulva. Three internal vaginal swabs taken and send to the Chemical Examiner, Multan for detection of semen. Final opinion about sexual intercourse can be given after report.

MUSCLES,BONES,JOINT

m.z. 70x
Injuries: already described. Disease or deformity: Nil. Fracture: 4th rib of right side. Dislocation: Nil.

REMARKS

After external and internal post mortem examination I am of the opinion that all injuries were ante-mortem in nature. Injuries No.1,2,3,5 were caused by sharp weapon. Injury No.4 caused by blunt weapon. Injury No.2 was the cause of death which lead the damage to spleen and left lung leading to hypovoloamic shock and ultimately death. Injury No.2 was sufficient to cause death in ordinary course of life."

5. After the conclusion of the prosecution evidence the statement of the accused was recorded under section 342 Cr.P.C. wherein he denied the

allegations leveled against him. Further in reply to question No.8 as to "why this case against you and why P.Ws have deposed against you"? The accused stated as under:

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"The occurrence was a blind murder. The P.Ws actually were not present at the spot. The eye witnesses were not present at the time of occurrence. No body saw the person, who committed the offence. As per my information, it was Allah Wasaya PW, who saw Salma Bibi lying dead, who informed the other relatives. I was present at my house at the estimated time of the occurrence. I had enmity with Ghulam Hussain PW some time earlier two parties had clashed with each other with fire arms. In that occurrence, one person from each side had been murdered. One Malik Faiz died, who was my maternal grand father and in that case 13 accused were challaned. In the cross murder case one Karim Bakhsh also died of gun shot wounds. He was the real chacha-zad of Ghulam Hassan P.W. Although the cross cases were compromised but Ghulam Hassan PW had still kept a grudge in his mind. He suggested my name to the complainant and his relatives P.Ws. I am innocent and did not commit the offence. P.Ws have deposed against me because my name was suggested by Ghulam Hussan PW and the actual accused could not be traced."

He opted not to make his own statement on oath under section 340 (2)

Cr.P.C. However, he produced one witness namely Allah Wasaya, as D.W.1

in his defence. D.W.1 Allah Wasaya claimed to have seen Mst.Salma Bibi

in injured condition in the lap of her mother at the place of occurrence and

Allah Wasaya P.W (given up) was raising alarm and on the asking of this

DW Allah Wasaya PW (given up) had told that somebody had stabbed her.

Meanwhile many persons gathered there. However, he never joined the investigation nor made any statement before I.O.

6. The trial court, on the basis of the evidence on record, convicted the appellant and sentenced as noted above. Hence this criminal appeal.

7. Learned counsel for the appellant has argued that the prosecution has failed to prove its case beyond reasonable doubt against the appellant.

Further argued that in the FIR the prosecution has cited two eye witnesses namely Allah Wasaya and Ghulam Yasin apart from third eye witness namely Ghulam Hassan but none of the three eye witnesses have been

produced in the court. Allah Wasaya and Ghulam Yasin P.Ws have been

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given up as unnecessary while Ghulam Hassan P.W has been given up

having been won over by the accused. Hence it is fatal for the prosecution.

Further argued that the recovery of blood stained sickle at the pointation of

the accused from his residential house is also very doubtful because the

recovery witnesses P.W.9 and P.W.10 in their evidence are discrepant

regarding the place of recovery. Further argued that otherwise

also the only private witness of recovery memo Ex.PH produced by the prosecution is P.W.9, who had admitted that he was not inhabitant of the locality wherefrom the sickle Ex.P-7 was recovered. Hence it is violation of section 103 Cr.P.C. Further it has been argued that according to the site plan prepared by the Patwari, the occurrence had taken place in Killa No.18 which was owned by Allah Diwaya Mughal and cultivated by Muhammad Nawaz Thahim, while both the eye witnesses produced by the prosecution have deposed that the occurrence had taken place in the land owned by Shah Muhammad P.W, hence in fact it was an un-seen occurrence as deposed by D.W.1 and the appellant has been falsely implicated in the case.

m.z. jasm

8. On the other hand learned D.P.G Punjab has argued that in this case FIR was lodged promptly by the complainant who is an eye witness of the occurrence i.e the occurrence took place at about 12.00 noon while FIR was lodged on the same day at 1.15 p.m and in the FIR accused Ghulam Yasin son of Ghulam Qadir has been named as the sole accused in this case. Further-more, the occurrence was witnessed by Shah Muhammad an eye

witness who appeared as P.W.3 and lastly it has been argued that even the weapon used in this case i.e blood stained sickle has also recovered from the residential house of the appellant at his pointation. Hence the prosecution has been proved its case beyond shadow of doubt, therefore, the appeal is liable to be dismissed.

9. Heard. Record perused.

10. In this case the prosecution has produced complainant Abdul Sattar, P.W.2, the eye witness who had fully corroborated the FIR and further P.W.3 Shah Muhammad eye witness has been produced who has also fully supported the prosecution version. The appellant/accused had

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failed to show any enmity or previous ill-will on the part of any of the eye witness to falsely implicate him in this murder case by leaving the real culprit. Further-more the non-production of Ghulam Yasin and Allah Wasaya eye witnesses named in the FIR is not fatal to the prosecution case as no particular number of the witnesses are required to prove a particular

fact while non-production of Ghulam Hassan P.W by the prosecution has been fully explained as he was won over by the accused.

11. As regards the recovery of blood stained sickle at the pointation of the accused from his residential house on 29.9.2002, there are minor discrepancies in the evidence of P.W.9 Muhammad Shafique and P.W.10 Matoob Ahmad I.O regarding the place of recovery. However, both the witnesses are unanimous on the point that it was recovered from a room in the residential house of the accused at his pointation. The sickle was also found blood stained as per report of the Chemical Examiner Ex.P.O. and it was human blood as per report of the Serologist Ex.PP. The minor discrepancy in the evidence of P.W.9 and P.W.10 regarding recovery of sickle Ex.P-7 i.e whether it was recovered from the corner of the room or from a box lying in the room is not very material.

12. As regards the place of occurrence suffice it to say that the occurrence took place in the cotton field where the victim was busy in cutting the gross. The cotton crop may have been cultivated by Haji Muhammad Nawaz

Thahim as tenant or lessee of Shah Muhammad, thus the copy of khasra Gardawari Ex.DA in no way supports defence version. The occurrence has taken place in the broad day light which has been witnessed by P.W.2 and P.W.3 produced by the prosecution. The evidence of both the ocular witnesses is fully supported and corroborated by medical evidence. There is nothing on the record to hold that the appellant has been falsely substituted in this murder case and the real culprit has been let off. We are of the considered view that the prosecution has fully proved its case against the appellant, that he had tried to over power the victim Mst.Salma Bibi in order to commit rape with her and on her resistance, the accused Ghulam Yaseen caused injuries on the person of Mst.Salma Bibi with the sickle, which in ordinary course of nature resulted into her death before she could be provided with any medical aid. The D.W.1 admittedly did not appear before the I.O at the stage of the investigation. Had he seen the occurrence as stated by him or had reached at the place of occurrence immediately after the occurrence; he must have appeared before the I.O during the

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investigation and would have brought forth his stance. He is otherwise also related to the accused. Thus the prosecution has proved the guilt of the appellant regarding commission of murder of Mst.Salma beyond reasonable doubt.

13. In view thereof his conviction and normal sentence of death and fine recorded by the trial court under section 302 (b) PPC is in accordance with the law and does not call for any interference by this Court. The fine imposed by the trial court, if recovered, shall be paid to the legal heirs of the deceased Mst.Salma Bibi as compensation under section 544-A Cr.P.C.

14. As regards the conviction of the appellant recorded by the trial Court

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u/s 18 read with section 10(3) Offence of Zina (Enforcement of Hudood)

Ordinance, 1979, we are of the view that the appellant had not yet reached the stage of attempt to commit zina with the victim but still he was at the stage of preparation to commit zina, while the victim had started the resistance. The accused/appellant could only untie the string of the shalwar of the victim. Therefore, it is not safe to hold him guilty of attempt to

commit zina and convict him under section 10(3) read with section 18

Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

15. In view of what has been stated above, as the appellant had used the criminal force against the victim with intend to outrage her modesty, hence he had committed the offence punishable u/s 354 PPC. Therefore, we also convict the appellant u/s 354 PPC and sentence him to undergo R.I for two years with a fine of Rs.10,000/- or in default whereof to further undergo S.I for two months.

Murder reference bearing No.11-I-2004 is answered in **positive** and **death sentence** awarded by the trial court under section 302(b) PPC is hereby confirmed.

M. Z. Yasin

JUSTICE MUHAMMAD ZAFAR YASIN

Justice Haziqul Khairi

JUSTICE HAZIQUL KHAIRI
CHIEF JUSTICE

Syaid Haider

JUSTICE SYED AFZAL HAIDER

Approved for reporting

Announced on 30.4.009.
At Islamabad.
M.Akram/

APPROVED FOR REPORTING .

M. Z. Yasin
JUDGE