

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD ZAFAR YASIN
MR. JUSTICE SYED AFZAL HAIDER

CRIMINAL APPEAL NO.24/I OF 2008

Irfan son of Manzoor caste Arain, resident
of Ward No.2, Mohallah Nadeem Abad,
Manawala, Tehsil Shahkot, District
Nankana Sahib.

---- Appellant

Versus

The State

--- Respondent

Counsel for appellant

Mr. Mushtaq Ahmed Mohal,
Advocate

Counsel for the State

Mr. Arif Karim Chaudhary,
Deputy Prosecutor General

FIR No. Date &
Police Station

Private Complaint No.9/2006,
Manawala

Date of judgment of
Trial court

04.02.2008

Date of Institution

10.03.2008

Date of hearing

10.09.2009

Date of decision

28-10-2009

JUDGMENT

SYED AFZAL HAIDER, Judge.- This appeal has been moved by appellant Irfan against impugned Judgment dated 04.02.2008 delivered by learned Additional Sessions Judge, Nankana Sahib whereby he was convicted under section 302(b) of the Pakistan Penal Code and sentenced to life imprisonment. He was also ordered to pay a sum of Rs.50,000/- as compensation to the legal heirs of deceased and in default thereof to suffer simple imprisonment for an additional period of six months. He was convicted additionally under section 449 of the Pakistan Penal Code and sentenced to ten years rigorous imprisonment alongwith a fine of Rs.20,000/- and in default whereof to suffer another term of three months simple imprisonment. Both the sentences were directed to run concurrently. Benefit of section 382-B of the Code of Criminal Procedure was granted to the appellant.

FACTUAL BACKGROUND

2. The case has arisen out of a private complaint filed on 14.10.2005 before the learned Sessions Judge, Sheikhpura through Illaqa

Magistrate Mananwala by PW-5 Mst.Nasim Akhtar, mother of victim Mst.Azra Kausar (deceased), regarding an occurrence alleged to have taken place on 24.05.2005 in the area of Mohallah Nadeemabad Mananwala, District Sheikhpura.

3. Brief facts of the case as narrated in the complaint are that the husband of complainant Sanawar Ali Shah, earned his livelihood as a worker at the brick kiln of chairman Muhammad Iqbal. On 24.05.2005 at about 8.00 a.m, she is reported to have gone to the cattle shed while her daughter Mst.Azra Kausar was in the house. After half an hour she heard some noise emanating from their street and saw a group of persons gathered in front of her house. On enquiry, those persons including Muhammad Arshad, Maqsood Ahmad, Muhammad Akram and Sabir Hussain Shah etc. told the complainant to inquire the matter from her daughter Mst.Azra Kausar herself. When the complainant entered the house she saw her daughter in naked condition who informed her that accused Irfan, armed with pistol, had forcibly taken her inside the room on gun point and committed Zina-bil-Jabr with her after breaking the string of

her Shalwar. On her alarm, the accused, who was having a bottle containing acid with him, forcibly poured the same in her mouth. On hearing her cries the witnesses entered the house of the complainant and on seeing them the accused fled away leaving Mst.Azra Kausar in naked condition. The complainant took her daughter to Dr.Islam Din Kamboh as a private patient who referred her to Sheikhpura District Hospital wherefrom she was further referred to Lahore in view of the gravity of the case. Complainant brought the victim to Mayo Hospital, Lahore where she received emergency treatment. The complainant further disclosed that two days prior to the date of occurrence Munawar Hussain and Anwaar Shah had informed her that they had heard Irfan, Muhammad Wakeel, Abdul Shakoor and Shafaqat Ali conspiring to commit excesses with Mst.Azra Kausar. Complainant took up this matter with the parents of accused Irfan who gave an assurance that Irfan would not do any thing wrong. It was further stated that the complainant lodged an information with the police and her crime report was registered as F.I.R No.187/2005 dated 30.5.2005 in the Police Station Mananwala initially under sections 10 of the Offence

of Zoya (Enforcement of Hudood) Ordinance VII of 1979, 337-C, 337-J and 334/34 of the Pakistan Penal Code while section 302 of the Pakistan Penal Code was added after the death of her daughter.

4. The complainant reportedly filed various applications with police authorities for the arrest of accused Muhammad Wakeel, Abdul Shakoor and Shafaqat Ali but the Police did not oblige. Complainant then filed an application under sections 22-A and 22-B of the Code of Criminal Procedure with the learned Sessions Judge, Sheikhpura who was pleased to direct the Investigating Officer to effect arrest of accused and put up a report in the Court under section 173 of the Code of Criminal Procedure. Irfan accused alone was arrested thereafter by the Investigating Officer but no action was taken against the three other accused nominated by the complainant. The complainant had to file another application before the learned Sessions Judge whereafter the Investigating Officer recorded statements of witnesses under section 161 of the Code of Criminal Procedure. It was further stated that since the accused were not arrested so Mst.Nasim Akhtar, the complainant PW-5 was constrained to file a private

complaint. The learned trial Court after preliminary inquiry summoned all the accused to face trial.

5. The learned trial Court framed charges against the accused on 08.04.2006 under sections 449, 337-J/302 of the Pakistan Penal Code as well as section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and under section 109/302 of the Pakistan Penal Code. The accused did not plead guilty and claimed trial.

PROSECUTION EVIDENCE

6. The prosecution in order to prove its case produced 11 witnesses at the trial. The gist of the evidence of prosecution witnesses is as follows:-

i). PW-1, Khalid Javed, Assistant Sub Inspector deposed that Constable Muhammad Ramzan produced before him an application Ex.PA which was sent by Iftikhar Ahmad Sub Inspector PW-10 for the purpose of formal registration of First Information Report and the report was done on 30.05.2005. F.I.R is Ex.PA/1.

ii) Sanawar Shah, father of deceased Mst. Azra Kausar, appeared at the trial as PW-2 to state that after the death of his daughter "murder case was registered" meaning thereby that section 302 of the Pakistan Penal Code was added in F.I.R No.187/2005 Police Station Mananwala.

iii) Munawar Shah, appeared at the trial as PW-3 to depose that about one year and nine months ago at about 5.00 p.m, he alongwith Anwaar Shah went to the PCO of accused Wakeel where accused Irfan, Wakeel, Shakoor and Shafqat Ali were present. All of them were coaxing the accused Irfan to take revenge of abduction of his sister from Mst. Azra Kausar by murdering her. The witness told this fact to the complainant and then both of them went to the parents of accused Irfan and informed them that the accused were "cooking up this conspiracy". He also identified the dead body of deceased Mst. Azra Kausar at the time of post-mortem examination.

iv) PW-4 Aslam Pervez, Constable deposed that on 18.07.2005 the dead body of deceased Mst. Azra Kausar was handed

over to him for post-mortem examination and he also received the last worn clothes of the deceased which were taken into possession by the Investigating Officer vide recovery memo Ex.PB.

v) Mst.Nasim Akhtar, complainant appeared as PW-5. She endorsed the contents narrated in her written complaint.

vi) The next witness to appear was Sabir PW-6 who stated that on the day of occurrence at about 8.00 a.m, while he on his way towards the house of Sanawar Shah he saw Arshad, Maqsood and Akram and accused Irfan, armed with pistol, emerging out of the house of complainant. He stated further that he alongwith other witnesses went to the house of complainant and saw Mst.Azra Kausar in naked condition in the room. He also stated that later he entered the house after the complainant had covered the naked body of the victim and in his presence the victim in reply to a question, posed by her mother, stated that "accused Irfan had come while armed with pistol, dragged her inside the room and committed Zina-bil-Jabr with her and forcibly put acid in my mouth. She requested

that she be shifted to hospital as she was feeling difficulty in breathing.”

vii) Dr.Sohail Khizar DMS, DHQ Hospital Nankana Sahib appeared as PW-7. He had conducted the medical examination of Mst.Azra Kausar on 24.05.2005 and gave opinion that there was history of “poisoning by some acid”. He further stated that “blood was coming from her mouth” and being in serious condition the patient was referred to Mayo Hospital, Lahore. The witness later on declared injury “No.1 as Jaifa 337/C and Itlaf-e-udw 334” on the basis of surgical notes dated 07.06.2005 of Mayo Hospital, Lahore.

viii) Dr.Muhammad Mansha appeared as PW-8 to state that he got conducted medical examination of deceased Mst.Azra Kausar at the D.H.Q Hospital, Sheikhupura.

ix) Dr.Humayun Siddique, Registrar South Surgical Ward of Mayo Hospital appeared at the trial as PW-9. He had treated the patient Mst.Azra Kausar in emergency, performed different tests and

undertaken surgical steps including "exploratory laparotomy". He discovered greenish fluid in peritoneal cavity, perforation of stomach and gangrenous patches all over the stomach.

x) Iftikhar Ahmad, Sub Inspector appeared as PW-10. He had investigated the case. He visited the spot, prepared inquest report Ex.PG, sent the dead body to hospital for post-mortem examination. He further stated that he found the accused innocent and prepared discharge report through SHO.

xi) Dr. Fareeda Sheraz Warraich, PW.11, conducted the post mortem examination of Mst. Azra Kausar on 18.07.2005 and confirmed presence of "old healed lacerated wound on the tongue". She further stated that the cause of death was injuries caused by acid followed by malnutrition and septicemia.

7. The complainant, before closing the prosecution case, tendered in evidence MLC 1016, Ex.PM, copy of petition and an order Ex.PN passed by the Sessions Court under sections 22A, 22B of the Code of Criminal Procedure on 15.01.2008.

STATEMENT OF ACCUSED

8. The trial court thereafter examined the accused under section 342 of the Code of Criminal Procedure on 01.02.2008. The accused pleaded innocence. Accused Irfan stated as follows:-

“I am labourer. On the day of occurrence complainant and the PWs were not present there. In fact complainant Naseem Akhtar wanted to marry the deceased Azra Kausar with Iftikhar Shah against the will and consent of the deceased due to which complainant firstly abused her and then gave her severe beating and threatened the deceased that her marriage will be held only with said Iftikhar and due to which the deceased Azra Kausar poured acid in her mouth and was taken to hospital. She became healthy and was discharged from the hospital and came to her house. Later on she died in natural death. The complainant with malafide intention did not disclose the injuries inflicted by her upon the person of deceased while appearing before the police in investigation because she wanted to suppress the mischief. The PWs mentioned in the FIR also did not appear before the police during investigation. The case was investigated by Iftikhar Ahmed S.I., Ghulam Nabi Inspector and Imran Khalid S.I. and all these I.Os found

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version of the complainant as false and concocted and discharge report was prepared. I have been involved in this case due to enmity.”

Accused Shafqat Ali denied the charge and claimed innocence.

Accused Muhammad Wakeel as well as accused Abdul Shakoor

made statements in line with the statement of accused Irfan. The

accused neither availed the opportunity provided by section 340(2)

of the Code of Criminal Procedure nor produced any evidence in

their defence except submitting copy of discharge report Ex.DD.

VERDICT OF TRIAL COURT

9. After completing codal formalities of the trial, the learned trial court returned a verdict of guilt against the appellant alone by holding that the “prosecution has successfully proved its case and charge against accused Irfan upto the extent of criminal trespass into the house of the complainant and murder of the deceased by administering acid to her beyond any shadow of doubt.” It was also found that prosecution “failed to prove charge against Muhammad Wakeel, Abdul Shakoor and Shafaqat Ali.” Hence the three co-accused were acquitted. Irfan accused was

convicted and sentenced as mentioned in the opening paragraph of this judgment. Appellant was not convicted for committing Zina. Learned trial judge also mentioned reasons for not awarding capital punishment to Irfan accused. Hence the present appeal against conviction and sentence under two counts.

10. We have gone through the record of the case. The oral as well as documentary evidence brought on record and the statement of accused has been perused. Relevant portions of the impugned judgment have been scanned. We have also heard learned counsel of the contending parties.

DEFENCE PLEA

11. Learned Counsel for the appellant raised the following points for consideration:-

- i) That the appellant was declared innocent by the Investigating Officer;
- ii) That trial commenced upon a private complaint;

iii) That only one person was nominated as accused in the F.I.R whereas the number of accused increased at the time of filing of complaint;

iv) That the incident took place on 24.05.2005 whereas the crime report was lodged on 30.05.2005 with local Police after a delay of 6 days and the private complaint was then filed on 12.10.2005 after a delay of another four months;

v) That Station House Officer had directed local police to submit discharge report. Consequently report was submitted by local Police favouring Irfan accused;

vi) That Muhammad Arshad, Maqsood Ahmad and Mst.Nasim Akhtar complainant PW-5 are not eye witnesses of the case;

vii) That fresh eye witnesses were added at the complaint stage and these witnesses had not seen the occurrence;

viii) The medico legal report dated 24.05.2005 recorded at 10:35 a.m does not show any mark of violence. No vaginal swabs were

taken on that day. Consequently there was no report of the Chemical Examiner ;

iv) That according to the medical report it was a case of suicidal attempt;

v) That no allegation of rape was leveled against the accused by the victim before the medical officers;

vi) PW-9 Humayun Siddique stated that the victim was able to speak before operation but she never nominated the appellant as the person responsible for the offence;

vii) That the statement of victim about the cause of her death, if treated as a dying declaration, has to be accepted in toto or rejected outright;

viii) There was neither any recovery of the pistol nor was the bottle containing acid recovered from the place of occurrence; and

ix) Consequently the appellant is entitled to benefit of doubt.

12. Learned Deputy Prosecutor General on the other hand supported the convictions and ensuing sentences on the following grounds:-

i. That the prosecution has fully established the case beyond reasonable doubt;

ii. That the learned trial court found that appellant had trespassed in the house of victim and poured acid in her mouth;

iii. That the learned trial court had found that delay of six days in reporting the matter was not consequential as the victim was in critical condition in the hospital;

iv. That the complainant is a poor woman who was fighting hard in different hospitals to save the life of her daughter. She had no personal animosity with accused to falsely implicate them;

v. That relationship interse of the witnesses is not sufficient to discard their evidence; and

vi. That the learned trial court has already taken a lenient view by not awarding capital punishment to the appellant.

NATURE OF INVESTIGATION

13. Before proceeding to discuss the points raised before us by the contending parties we would like to examine the conduct of investigation in this case with particular reference to the provisions of section 174-A of the Code of Criminal Procedure *wherein mandatory procedure has been laid down regarding cases of injuries caused by burns or acid*. This provision of law was introduced on public demand on 17.11.2001 in the Code of Criminal Procedure. Our observations as regards police investigation and medical examination of the victim are as follows:-

- i. The incident took reportedly place on 24.05.2005 at 8.00 a.m.

The patient was taken to a private doctor of the locality who referred the patient to the DHQ Hospital Sheikhpura where she was received in "serious condition. Blood was coming from mouth. Blood pressure was not recordable. She was referred to Mayo Hospital Lahore by District Physician". Statement of the victim or any one attending her was neither recorded by Doctor Islam Din Kamboh, who initially examined her, nor

was the requisite statement recorded by Medical officer of DHQ Hospital, Sheikhpura as required by law.

ii. The patient Mst. Azra Kausar was then taken to the hospital by Constable Muhammad Mansha 400/c P.S. Mananwala at 10.35 a.m. on 24.05.2005 which is amply indicated in the medico legal report Ex.PM dated 24.05.2005 placed on record relating to the arrival and condition of victim. The medico-legal report (Ex.P.M) was also received by the said Constable. The constable had gone to the hospital on the strength of Ruptt No.4 (as mentioned in the Medico-legal report).

iii. There was no effort to record a crime report nor was the statement of the patient recorded. The doctor on duty in the D.H.Q Hospital, Sheikhpura did not certify that the patient was unable to speak. The doctor did mention that it was a case with history of "Poisoning by some Acid" but neither the statement of victim nor any one attending the victim was recorded. Magistrate was also not informed.

iv. Medical examination of the victim by a lady doctor was not arranged even on 25.05.2005 to verify whether the incident had to do

something with sexual assault as the patient was a young girl aged 17/18 years.

v. The patient was admitted in Mayo Hospital on 25.05.2005 in emergency. The Registrar, PW.9, appeared at the trial and gave the details of initial treatment. He stated that "*the injured was able to speak prior to operation.*" Notwithstanding the critical situation of the victim and her ability to speak, her statement was not recorded even by the doctors in the Emergency. How come that the Police party officially deputed to keep perpetual watch in the Emergency Ward, failed to notice this particular case of serious gravity? This culpable disregard and motivated neglect to take appropriate and timely legal action is a serious lapse which calls for full fledged inquiry. It is painful to remark that no one from the police contingent, permanently available in the Emergency Ward of the Mayo Hospital, attended the injured with the result that no statement of the victim was recorded by the emergency police contingent. The sole object of maintaining police force in Hospital is to monitor every medico-legal case so that no cognizable case remains unattended. This object was defeated

brazenly by the police contingent deputed that day and time in the Mayo Hospital Lahore.

vi. The fact, that the victim was a student, was recorded even on 24.05.2005 by the Medical Officer as is evident from Ex.PM. The patient was not an illiterate girl. She could have been asked to give her statement in writing. A Magistrate could have supervised the statement made by victim but even afterwards the Police Officer incharge of the investigation, it appears, was certainly not interested in pursuing the culprit at all after registration of the F.I.R. He was outwardly content that the patient was unable to make a statement. With this sense of duty no complainant can expect a fair and a thorough probe from an Investigating Officer. This sort of attitude is a clear message of riddance for the offenders.

vii. PW.10, the Investigating Officer while deposing at the trial, had surprisingly no hesitation in accepting every suggestion of the learned counsel for the accused. This Officer played his part in getting prepared the discharge report of the accused. He appears to have believed in whatever

the accused said. This sort of attitude brings bad name to the disciplined force.

viii. The victim was reportedly removed immediately to the clinic of a local private medical practitioner Dr. Islam-ud-Din on 24.05.2005 who directed the attendants to move her to the District Headquarter Hospital Sheikhupura. *Even the statement of this private doctor was never recorded by local police.* He could have been of some assistance in knowing what the injured person had stated about the mode and manner in which acid was thrown in her mouth. He could have been produced by police at the trial but that was possible only if he had been examined and joined in the investigation.

ix. The emergency department of the Mayo Hospital, Lahore has the facility of a Police contingent to monitor each and every medico-legal case. The absence of the Police and its contribution in the progress of this case as stated above is an atrocious lapse on the part of the Incharge of Emergency Police Post. The Investigating Officer never bothered to check up this point. Evidence of the Emergency Police Incharge was not

intentionally obtained by the Investigating Officer. This is a conscious and calculated omission and is another cruel aspect of investigation by local police.

x. This is a case in which the provisions of section 174-A of the Code of Criminal Procedure have been violated brutally both at the level of three medical stages and at the level of the local police station and Hospital Emergency Police.

14. For sake of reference Section 174-A of Code of Criminal Procedure is reproduced as follows-

“174A. Grievous injury by burns.—(1)Where a person, grievously injured by burns through fire, kerosene oil, acid, chemical or by any other way, is brought to a Medical Officer on duty designated by the Provincial Government for this purpose or, such incident is reported to the Officer-in-Charge of a Police Station, such Medical Officer on duty, or, as the case may be, Officer-in-Charge of a Police Station, shall immediately give intimation thereof to the nearest Magistrate. Simultaneously, the Medical Officer on duty shall record the statement of the injured person immediately on arrival so as to ascertain the circumstances and cause of

the burn injuries. The statement shall also be recorded by the Magistrate in case the injured person is still in a position to make the statement.

(2). The Medical Officer on duty, or, as the case may be, the Magistrate, before recording the statement under sub-section (1), shall satisfy himself the injured person is not under any threat or duress. The statement so recorded shall be forwarded to the Session Judge and also to the District Superintendent of Police and Officer-in-Charge of the Police Station, for such action as may be necessary under this Code.

(3) If the injured person is unable, for any reason, to make the statement before the Magistrate, his statement recorded by the Medical Officer on duty under sub-section (1) shall be sent in sealed cover to the Magistrate or the Trial Court if it is other than the Magistrate and may be accepted in evidence as a dying declaration if the injured person expires”.

15. The above provision of law shows that section 174-A *ibid* mandates a three tier module. The three stages are as follows:-

a. The first stage is that whenever a person, injured by burns or acid etc, is brought to a duly designated Medical Officer or such an incident is reported to an officer in charge of the Police Station then the information of such an incident shall immediately be given to the nearest

magistrate who shall record the statement of the injured person immediately on arrival so as to ascertain *the circumstances and causes of such injuries*. The statement of the victim shall then be recorded by the Magistrate in case the injured person is in a position to make a statement.

b. The Medical Officer or the Magistrate before recording statement of an injured person shall satisfy himself that the injured person is not under any threat or duress. The statement so recorded shall then be forwarded to the Sessions Judge and the District Police Officer as well as concerned Station House Officer for necessary action.

c. In case the injured person is unable to make a statement before the Magistrate then the statement recorded by the Medical Officer shall be sent under sealed cover to the Magistrate or the trial court. *Such statement may be accepted as a dying declaration.*

16. This amendment in fact advances the purpose for which article 46 of the Qanun-e-Shahadat Order, 1984 was enacted. It is unfortunate to note that, in this case under appeal, the Medical Officer DHQ Hospital Shaikhupura and Officer-in-charge of Mannawala Police Station did not observe the express provisions contained in section 174-A of the Code of Criminal Procedure and in this process damaged the cause of justice. This provision was specifically introduced because cases of this nature were registering an increase in our society.

17. The unfortunate part in the conduct of police investigation is the fact that even though F.I.R was registered on 30.05.2005 yet the mandatory provisions of section 174-A incorporated in the Code of Criminal Procedure on 17.11.2001 were callously disregarded because neither any Magistrate was informed nor any report sent to the Sessions Judge. What could be the purpose of this willful disregard of law and lack of performance of official duty? The answer is simple. The culprit had to be protected. Best possible evidence, available through the statement of victim, had to be shelved. An educated victim could have used her hands to write her statement if she was unable to speak. She could have nodded in assent if the name of the culprit had been announced to the victim in the presence or even absence of complainant. There is no evidence that the victim could neither write with her own hands nor was able to respond by gestures either to affirm or to deny the interrogatories of Medical Officer, Police Officer or a Magistrate.

18. Statements, written or verbal, of relevant facts made by a person who is dead, or cannot be found, or who has become incapable of

giving evidence, or whose attendance cannot be procured without an amount of delay or expense, which under the circumstances of the case appears to the Court unreasonable, are declared by Article 46 of Qanun-e-Shahadat Order 1984 to be relevant facts in the eight enumerated cases. The first category relates to the statements which indicate the cause of death. This principle is very clearly enunciated by Article 46 of the Qanun-e- Shahadat. The statement, verbal or written, of relevant facts made by a person as to the cause of his death or as to any circumstance which *resulted in his death* is relevant. The words "resulted in his death" are significant in this provision of law. These words are wider in scope than the term "cause of his death". Such a statement becomes relevant as a dying declaration. The case of Alexander Perera Chandarasetra vs. The King reported as AIR 1937 PC 24 may be seen wherein the answers given by an injured person by way of signs and nods were deemed to be a verbal statement resembling the case of a dumb person and was considered relevant and admissible in evidence. Had this exercise been undertaken the persons attending the victim including the Doctor and the Magistrate

supervising the making of a statement or some other independent hospital attendant available at the spot could have been summoned to testify at the trial that the statement/gesture/nod was made or not in his or their presence.

The injured person or their attendants in an emergency are not generally supposed to be aware of legal technicalities. The purpose of informing police, which under the law is supposed to be an independent law enforcing agency, is to secure assistance for the aggrieved person by preserving the best possible and directly available evidence. In so doing it is expected that the interests of the accused will also be not jeopardized. A balance has to be maintained by State agencies in the larger interest of justice, equity and fair play.

PRELIMINARY PROBE

19. District Police Officer had appeared before us on Court's call as we wanted an inquiry into the different aspects of the matter mentioned above. The result of the cursory inquiry, as can be seen from the report dated 28.07.2009, was unsatisfactory to say the least. A further probe was ordered but the names of Police officers deputed in the Emergency of

Mayo Hospital on 25.05.2005 were not disclosed. The office is therefore

directed to:

- i) Send a copy of this Judgment alongwith the enquiry reports submitted by District Police Officer Nankana Sahib to the Inspector General of Police, Punjab for a detailed enquiry and report within two months of the receipt of this Judgment. The report will reach this Court through the Registrar who will place the same before the Hon'ble Chief Justice of the Federal Shariat Court.
- ii. The Inspectors General of Police of all the Provinces including Islamabad should be provided a copy each of this Judgment with a direction that each and every Station House Officer in their province should be officially apprised of the existence of section 174-A of the Code of Criminal Procedure. The teaching and training institutions, managed and controlled by Police Department throughout the country, should also be informed so as to include section 174-A of the Code of Criminal Procedure in the syllabus if not already done. It is hoped that instruction will be issued upto the lowest level in the police stations throughout the country that the purpose of incorporating this special provision was that its contents shall be honoured in letter and spirit. It should be made known that

violation of these mandatory provisions in future would not be countenanced at all.

(ii) The office is also directed to send a copy of this Judgment to the:-

- a) Health Secretaries of all the Provincial Governments;
- b) The Principals of all Medical Colleges whether run privately or at State expenses;
- c) Professors of Forensic Medicines in all the Medical Colleges;
- d) Pakistan Medical and Dental Council, Islamabad with the direction that the existence of section 174-A of the Code of Criminal Procedure and the ensuing obligations created there-under be made known at grass-root level to the member of medical fraternity.

20. It is unfortunate realization that remedies provided in law are often denied to those who are otherwise entitled to and in dire need of relief from such provisions. It is generally assumed that whatever the Constitution of Pakistan and the statute books has provided and whatever the judge made law/procedure has prescribed is readily available to all and sundry irrespective of colour, caste, creed, race or ethnic division.

Something drastic must be done because this very assumption that legal remedies are duly available is a manifest deception. The persisting complaint against the staff stationed at police stations is that crime informations are generally not registered without judicial intervention or some other measure. Poor people are destined to receive a poor response.

There was a time when BURKING was considered to be a serious lapse in the police administration but now it is an accepted reality. The mode and manner of investigations has deteriorated. The prosecution department is not being properly managed. Administration of justice is becoming difficult day by day. This is what we have experienced in our capacity of court of appellate jurisdiction at Federal level.

21. Cases against vulnerable sections of society have not registered any decrease despite the 2001 amendment. The fault can certainly be traced to the prevalent social prejudices, patriarchal culture, corrupt practices, the inane administrative attitude and the police legal system to establish deterring impact on the transgression. Wrong messages are transmitted from every such case where speedy redress is not provided to a wronged

female. The key role is to be played by Investigation Wing of Police of course with the honest and active participation of the complainant party. It is the function of police not only to maintain law and order but also apprehend the culprit without loss of time and providing necessary and timely help to the victim of violence. Every invasion on the rights of a female, young or old, is a sad reminder that we are standing drifting away from the teachings of the Holy Prophet P.B:U.H. who warned the believers repeatedly to be careful of their obligation towards women folk. Verse after Verse can be quoted from the Holy Quran which vouchsafe the freedoms and rights of the down trodden, the wronged, the vulnerable and weaker sections of society. The basic law itself not only guarantees fundamental rights but provides extra protection for the weaker sections of society in the principles of policy. Chapter 2 of Part II of the Constitution of Pakistan.

ASSESSMENT OF EVIDENCE

22. Reverting to the facts of the case I find that PW.3 Munawar Shah deposed at the trial that he alongwith Anwar PW (not produced), went to the public call office, run by Wakeel accused, where other accused

including Irfan were present. He stated: "*all the accused were saying to accused Irfan to take revenge of abduction of his sister from Azra Bibi deceased by murdering her and they will manage the situation.*" (Emphasis added). The witness reported this development to the complainant. The latter took the witnesses to the parents of Irfan accused and informed them about what was cooking up. However the parents of accused Irfan gave an assurance that nothing untoward would happen. Two days later the incident took place. This part of the story is corroborated by the complainant. The defence did not opt to challenge this part of the prosecution allegation made at the trial.

23. The second step has also been established by the complainant when she stated that as she entered in the room she saw her deceased daughter naked who told her mother that: "Irfan accused had committed Zina-bil-Jabr with her and poured acid in her month and the accused ran away. She further told that her breath was difficult and consequently she took her to the hospital at Mannanwala, and due to her critical condition, she was referred to DHQ Hospital Shaikhupura then she was referred to

Mayo Hospital Lahore and she was admitted there.” This part of the statement of the complainant that the victim told her mother that Irfan subjected her to rape and then poured acid in her mouth has also not been challenged in the cross-examination.

24. The fact that the victim told her mother, immediately after the incident, that Irfan accused had raped her and poured acid in her mouth has been corroborated by the statement of Sabir Shah P.W.6. The defence was not able to establish that PW.6 was not present at the place of occurrence. It was not even suggested to PW-6 that statement of the victim deceased involving Irfan accused was not made in his presence or within his hearing. The statement of this witness that deceased nominated the accused in response to the query of her mother has not been challenged.

25. The fact that medical evidence relating to excessive internal damage to the internal organs of the victim as a result of acid poured in her mouth by the accused, and her subsequent removal to Mayo Hospital as a serious emergency case, which ultimately resulted in her death, have also not been challenged by defence in cross-examination. Injuries and removal

to Mayo Hospital is accepted by the parties. The suggestion by the defence that the victim attempted suicide in protest to a marital arrangement by her parents, has not been proved by producing even a single witness from the village though the Investigating Officer opted to concede that "so many people appeared before me in support of defence plea of accused." At the same time the Investigation Officer admitted that it was through Irfan accused that this fact (attempt at suicide as a protest) came to his knowledge.

26. The argument that it was on the basis of negative report of the Chemical Examiner on the question of rape that discharge report of the accused Irfan was submitted by police in the court has no relevance because the swabs from the vagina of deceased *were obtained after a considerable time. The time when her medical should have been undertaken was apparently allowed to be lost.* Therefore the report of the Chemical Examiner is not relevant under the circumstances, and is of no significance in the facts and circumstances of the case.

27. The argument about delay in the registration of the case is also not helpful to the appellant for the simple reason that the police had come to know immediately not only of the incident but also about its gravity. Constable Mansha from the local police station accompanied the victim to the DHQ Hospital Shaikhupura as is clearly established by Medico Legal Report. If the local police could defeat the clear cut objectives prescribed in the mandatory provisions of section 174-A of the Code of Criminal Procedure with impunity, then the contention of learned Counsel for the appellant about delay in registration of the case does not carry weight. Neither the non-observance of the required provisions of section 174-B has the effect of destroying prosecution story nor does it demolish the otherwise direct verbal deposition of the prosecution witnesses so long as their testimonies are otherwise acceptable. Section 154 of the Code of Criminal Procedure makes it incumbent upon the officer incharge of a police station to reduce into writing every report that relates to the commission of a cognizable offence. The moment a police constable is dispatched to accompany an injured person to the hospital for an emergent.

treatment the information is presumed to have been received by the officer in charge of the police station. Delay in the registration of case in such an event is of no assistance to the accused. If the signatures are required to be affixed by the informer on the crime report then the constable who escorted the victim to the hospital could have signed the FIR after giving the details of the incident or the offence. There was conscious dereliction of duty by police officers in this case for reasons best known to them.

28. An interval between a statement made by an injured person and the time of his or her death would be immaterial so long as the statement relates to the cause of death or ultimately it is found that the statement related to those injuries which resulted in his death. *The law, purposely, does not fix the time limit.* There may be cases where the injury caused has resulted in coma for the time being and the patient dies after some time. In the instant case the father of victim PW.2 informed the police on 18.07.2005 about the death of his daughter whereafter section 302 of the Pakistan Penal Code was added. No serious effort was made at all to procure the version of the victim so long as she was alive. The victim

for all practical purpose had been abandoned by local police. A report prepared by local police under section 173 of Code of Criminal Procedure, to ensure discharge of accused, did not even mention the date when application was moved before the Medical Officer to obtain the statement of victim. There is no mention that repeated efforts were made to secure her statement orally, in writing or by gestures in the Mayo Hospital after her operation or even after she had returned home. She was unable to speak after the operation but she was not unable to write answers to the question nor has it been shown that she was unable even to nod or make facial gestures.

29. I am not persuaded by the other contentions raised by learned counsel for the appellant for the following reasons:-

- i. The fact that police did not find the accused guilty does not legally bind the trial or appellate Court to record acquittal. The Court verdict depends entirely upon the facts and circumstances of the case as they emerge at the trial;

- ii. There is no force in the argument that since the prosecution case arose out of a complaint and ^{not} from a police report so the benefit goes to the accused. Complaint is as good a remedy as an information of a cognizable case laid before the police. In fact the purpose of providing alternative remedy to a complainant is to help him/her set the criminal law in motion when the police fails to perform its duty for one or the other reason. The facts and circumstances of this case have fully established the wisdom of ~~providing~~ an equally efficacious remedy by way of complaint when the police investigation is entrusted to undependable officers;
- iii. The argument that only one person was nominated as an accused originally at the time of registration of the crime report is not worth considering because of the hostile attitude of local police from the outset;
- iv. The argument that fresh eye witnesses were added at the time of filing the complaint is not tenable for the aforementioned reason as well as for the reason that the presence of witnesses at the place of occurrence has not been successfully challenged by defence during cross-examination of the witnesses. Learned counsel for the appellant has not been able to disprove the observation of the learned trial court that “ All the PWs were subjected

to lengthy cross-examination but accused had not been able to elicit any material contradiction to show that they were not witnesses of truth- rather they stood the test of lengthy cross-examination”.

v. The contention of the learned counsel that medical evidence indicates that it was a case of “suicide attempt” is not at all borne out of the injuries on the person of victim; and finally

vi. The non-recovery of bottle of acid is not very material for the cause of injury is admittedly corrosive material like acid. There is no dispute on that aspect of the case. Absence of recovery of bottle or pistol does not destroy the allegation of prosecution.

30. In view of what has been stated above I am in full agreement with the findings of learned trial court on the question of conviction. The sentence awarded to the appellant is not convincing but that aspect cannot be gone into at this stage. Suffice it to say that I am inclined to maintain the conviction and the sentence that has already been awarded by the learned trial court. However I am convinced that the accused had gone with vengeance to execute his plan and satisfy his lust and accordingly he equipped himself with an extremely corrosive material. He intended to kill her after sexual overtures. The intention of the accused can be ascertained from the

medium of assault employed by him. From the facts and circumstances of the case it appears that the accused had full knowledge and had in fact poured acid in her mouth with the intention of causing such multiple injuries inside the body which would be sufficient to cause a sure but a gradual and an extremely painful death of Mst. Azra Kausar over an extended period. The intention was certainly not to cause instant death. The immediate effect achieved was to render her speechless and make her life miserable. This action on the part of the accused caused widespread damage to the internal organs of Mst. Azra Kausar which ultimately resulted in her death. Consequently the action of the accused falls within the mischief of section 302(b) of the Pakistan Penal Code which is liable to the penalty specified therein.

CONCLUSIONS

31. In view of what has been stated above I am not persuaded to interfere with the findings of the learned trial court recorded in the impugned judgment dated 04.02.2008, delivered in private complaint No.09 of 2006 whereby the appellant was convicted and sentenced as mentioned in the opening paragraph of this judgment. As a result

thereof Criminal Appeal No.24/I of 2008 fails and it is hereby dismissed.

Syaidat

JUSTICE SYED AFZAL HAIDER

M. Z. Yasir

JUSTICE MUHAMMAD ZAFAR YASIN

Announced on 28 October 2009
Amjad/*

Fit for Reporting

Syaidat

JUSTICE SYED AFZAL HAIDER