

FEDERAL SHARIAT COURT
(Appellate jurisdiction)

Present:

Hon.Mr.Justice Dr.Fida Muhammad Khan
Hon.Mr.Justice Abdul Waheed Siddiqui,
Hon.Mr.Justice Muhammad Khiyar.

Criminal Appeal No. 47/I of 1998
L.W.Cr.M.Ref.No. 1/I of 1998

Abdul Ghafoor alias Ghafar
s/o Ghulam Hussain, Caste, Mochi,
r/o Basti Mohabatpur, Mauza Kotla Baloch,
Tehsil Mailsi, District Vehari.

Appellant

versus

The State

Respondent

Council for the appellant ... Ch.Muhammad yaqoob Kang Advocate

Counsel for the State ... Miss Rukhsana Malik Advocate

FIR No.date,P.S

FIR No.144 dt.20-6-1991
P.S City,Kehror Pacca.

Date of decision of
trial Court

21-04-1993

Date of institution

28-3-1998

Date of hearing

12.10.1998

Date of decision

12.10.1998

JUDGMENT:

JUSTICE ABDUL WAHEED SIDDIQUI, J:- Appellant has assailed a judgment delivered by the court of Additional sessions judge, Lodhran on 21-4-1993 where by he has been convicted under section 302 P.P.C and has been sentenced to death and to pay a fine of Rs.10,000/- or in default to further undergo R.I for a period of two years. A Criminal Murder Reference has also been preferred as required under section 373 Cr.P.C. We hereby dispose off both the Cr.Appeal and Cr.Reference together.

2. One Malik Zulfiqar Ali (PW-4) appeared at Chawk Bukhari Qasba on 20-6-1991 at 9 A.M and made complaint (Ex.PB¹) int recorded by Imdad Hussain (PW-8) ASI which complaint became the basis of an FIR(Ex.PB/1) lodged at Police Station City Kehror Pecca District Multan on 20-6-1991 at 7.10 P.M.

The story as related in the complaint (Ex.PB) is that the complainant was resident of village Kahrur Pacca alongwith his family and had a grocery shop. In his neighbourhood appellant alongwith Mst.Amiran Mai and Muhammad Ramzan were residing in a rented house for labour purposes and were originally from Basti Muhat Pur, District Vihari. These persons had an acquaintace with the relatives of the complainant and used to come to his house as well. They also

used to get guests from their village specially Ghulam Hussain and Manzoor Ahmed. Three months prior to the filing of complaint Ex.P.B, Ghulam Hussain and Manzoor alias Kala also came as guests. On the same day appellant and his wife Amiran Mai came to the house of the complainant at about 4 P.M and requested him to send his daughter Mst. Kauser Bibi for help in house hold work as they had received guests. After some time the girl shall be returned. The complainant then sent his daughter Kauser Bibi aged 7/8 years. The girl did not return upto 10 P.M. Then the complainant accompanied by Muhammad Qssim PW-7 and Allahyar went to the house of the appellant which was found closed. Next day all of them went to Basti Muhabatpur in search of appellant and his family. There they met Ghulam Hussain and Manzoor who informed them that the girl was really brought by appellant, his wife and another to Basti Muhabatpur, but that she has been taken to Ahmedpur Sharqia to their relatives. A mistake has been committed, but the girl shall be returned within 2 to 4 days. Then the complainant and his companions returned back to Kahrora Pacca. The girl was ^{not} returned and again they went to Basti Muhabatpur where ghulam Hussain met them. He promised that he was himself going to Ahmedpur Sharqia and shall bring the girl within 2/4 days but the condition was that the matter

may not be reported to ^{the} Police. Again they returned to Kahrur Pacca, but the girl remained missing. The complainant party remained in search of the girl and again went to Basti Muhabatpur but this time none could be located. Finally then the complainant got satisfied that alongwith appellant, his wife and three other persons have abducted his daughter and she has been concealed somewhere. Thus the complaint.

After completing the investigation, prosecution challaned only the appellant who was charged under article 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979, hereafter referred to as the said Ordinance, and section 302 P.P.C to which appellant did not plead guilty.

3. To prove its case, prosecution examined 12 PWs.

Muhammad Latif (PW-1) is a formal witness of the recovery of the dead body of the victim girl after digging earth with Kassi by the appellant who was in custody and had made pointation towards the place where he had murdered and burried the dead body of the victim girl. This witness has also proved photographs of the clothes on the dead body Ex.1, Ex.P.2, Ex.P-3, Ex.P-4, and Ex.5.

Muhammad Zafar-ul-Din (PW-2) has proved preparation of site plan Ex.A/1 and Ex.A/2 on 8-12-1991 on the direction

of police. Iqbal Naveed (PW-3), P.C, has proved recording of FIR Ex.PB/1 on the basis of complaint Ex.PB. Zulfiqar Ali (PW-4), the complainant, has proved the contents of complaint (Ex.PB). He has deposed further that 5½ months after the complaint, appellant came to his shop at about 8.30 A.M and at that time Muhammad Bux (PW-6) and Muhammad Shafi were present in his shop. The appellant fell on his feet and made confession before him that after taking his daughter Mst. Kausar Bibi to his house, he committed Zina bil-Jabr with her and then murdered her. After that he buried the dead body in the courtyard of his house. He requested further that he may be produced before police and he will lead to the recovery of the dead body. Then the complainant and two other PWs present produced the appellant before police in front of the court at Qaid Azam Road . Police arrested and interrogated the appellant in his presence. While under custody, the ^{appellant} led the police to his house in the presence of witnesses voluntarily. The house at that time was occupied by another tenant Muhammad Yaqub by name. Appellant pointed out a place under a chappar where dead body was buried. The earth was dug by him and the dead body was brought out which was indentified by him as well as the clothes which were worn by her. A photographer was summoned by the police and he ^{remained} / taking the photos of the proceedings. Later on dead body

was taken to the hospital by Police Constable Rabnawaz accompanied by the witnesses. At the time of the post mortem this witness indentified it. Afterwards dead body and clothes were handed over by the doctor to Rab Nawaz Constable. The last worn clothes of the deceased shirt Ex.P/1 Shalwar Ex.P.2 alongwith a paranda Ex.P/3 were produced by Rab Nawaz constable to ASI who took the same into possession under memo of recovery which bears his signature.

Mst. Zainaban Mai(PW-5), mother of the deceased victim, has proved indentification of the dead body through the clothes on the dead body. Muhammad Bux(PW-6) has corroborated the deposition of the complainant, (PW-4) Muhammad Qasim(PW-7), brother of the complainant, has deposed that he lives with the complainant. He has corroborated the contents of complaint (Ex.PB). He had accompanied the complainant to Mehatpur in search of the girl taken away by the appellant/ ^{and} has proved all the steps taken by the family in such a search. Imdad Hussain (PW-8), ASI, has proved the recording of the complaint (Ex PB) on the basis of the Statement of the complainant (PW-4). On the same day he visited the spot and prepared site plan Ex.PD. Statement of PWs Qasim and Allahyar were recorded by him

under section 161 Cr.P.C and on 11.7.1991 he arrested Muhammad Ramzan, but on 17.7.1991 this accused was declared innocent. Amanullah(PW-9),SIP, and Investigation Officer of the case has deposed that on 19-10-1991 he was posted as SIP/SHO P.S Saddar Kehror Pacca. He was entrusted with the investigation of the case. On 7.12.1991 appellant was produced before him by complainant and two others when he was present on Qaid-e-Azam Road. He interrogated the appellant and recorded statements of complainant and Muhammad Shafi under section 161 Cr.P.C. He arrested the appellant while under custody, appellant led him the house where he had buried the victim girl. On each and every detail about the recovery of the dead body he has corroborated the complainant (PW-4). On 11-12-1991 statement of the appellant was got recorded under section 164 Cr.P.C . After completing investigation he challaned the appellant. Birth certificate Ex. PE was produced before him by the complainant. Rabnawaz (PW-10) has proved his posting at P.S Saddar Kehror Pacca on 7-12-1991, and was in the company of Amanullah(PW-9), Investigation Officer, when appellant led them to the house from where the dead body was recovered. He has corroborated complainant (PW-4) and Investigation Officer (PW-9) in the details about the recovery of the dead body. He has proved handing over of the dead body to him for post mortem

examination. escorted it to the civil hospital Kehror Pacca. Complainant and Muhammad Shafi accompanied him to the hospital. After postmortem, last worn clothes were handed over to him which are shirt Ex.P/1, Shalwar Ex.P/2, and Paranda Ex.p-3. These were produced by him to Investigation Officer along with the Rasi. The same were taken into possession vide Recovery Memo Ex. P.C which bear his signature. Zulfiqar Ahmed (PW-11), Magistrate Ist class, has proved recording of the confessional statement of appellant under section 164 Cr.P.C, on 11-12-1991 which was given by him voluntarily. The statement is Ex.PJ which is in his hand and bears his signature. DR.Fazal Karim (PW-12), has proved examination of the dead body of the deceased Kausar Bibi on 7.12.1991 at 1.30 P.M. This dead body was in the form of skeleton and was brought to him by P.C Rabnawaz (PW-10). He has further deposed as under;

The bone skeleton of dead body had been brought to the hospital in piece of cloth(Chader). There were blood stained shirt and shalwar. The hairs of the dead body were intact. There was a paranda on the head of the deceased. The string having a knot was with the bony skeleton and the muscle were not present. All the bone were separated from the skeleton.

The following injuries were found.

1. There was fracture of hyoid bone.

All the other bone except hyoid bone were intact.

In my opinion the cause of death is asphyxie due to strangulation.

Injury No.1 was sufficient to cause death in ordinary in course of nature.

I was unable to give any opinion about rape upon the deceased. Because there were no musculature and only bony skeleton was examined by me.

Proper time between the injuries and death was half an hour. The time between postmortem and death were about 8/9 months.

The dead body in the form of skeleton, Last worn cloth of the deceased and the copy of the P.M report were handed over to the police. Post martem report Ex.K is in my hands and bears my signature. Inquest report Ex.L also bears my signature.

In his statement under section 342 Cr.P.C, appellant has denied all the specific questions. To question No.18 he has replied that the PWs have deposed against him due to enmity. He has declined to be examined on oath and has produced Dr. Muhammad Ikram Registrar of surgical B.V Hospital Bahawalpur in his defence. This DW-1 has deposed as under;

I have undergone training and have obtained diploma in orthopaedic surgery. It is not possible to tell the duration of the death on observing bone. It can however be done by forensic specialist. It is difficult for ordinary M.O to tell about the duration after abserving the bone. Hyoid bone are U shape Hyoid mole increases with age.

4. We have heard the counsel for the appellant and State. The counsel for appellant has relied upon the following grounds;

1. That the delay in lodging the FIR has not been explained.
2. That all the prosecution witnesses are interested and inimical towards the appellant and their evidence is not corroborated and reliable, therefore, the same cannot be made the basis of conviction of the appellant.
3. That the extra judicial confession as well as judicial confession is not in accordance with requirements of the releveant provision of law.
4. That the recoveries have been planted.
5. That the appellant has been acquitted for the charge Under Section 10(3) Offence of Zina (Enforcement of Hudood) Ordinance, 1979, by disbelieving the evidence put forward by the prosecution. Thus, the same set of prosecution witnesses cannot be relied upon for the charge U/S 302 P.P.C
6. That the opinion advanced by the Medical Officer in respect of post-mortem of the alleged deceased cannot be relied upon in the instant case.
7. That the extra-judicial confession is a weak type of evidence which cannot be relied upon.
8. That memo of recovery of dead body was not prepared.

The counsel for the State has supported the impugned judgment. He has contended that inspite of retracted confession, there is recovery of the dead body and last worn clothes of the victim on the pointation of the appellant before independent

witnesses which is enough to connect him with the guilt.

5. As to the delay in lodging FIR is concerned, the counsel for appellant has relied on the following two pieces of evidence which are apparently in conflict with each other.

1. From complaint ex.PB lodged on 20.6.1991

"چنانچہ میں نے اپنی لڑکی کوثر بی بی نابالغہ بعمر ۷/۸ سالہ کو ان دونوں کے ہمراہ ان کے گھر بھیج دیا۔ بچی قریب ۱۰ بجے رات تک میرے گھر واپس نہ آئی تو میں معہ مسمیان (۱) محمد قاسم ولد خدا بخش (۲) اللہ یار ولد احمد بخش اقوام بھٹی سکنائے وارڈ نمبر ۱ کھروڑ پکے کے اپنی لڑکی کوثر بی بی کا پتہ کرنے عبدالغفور مذکور کے مکان پر پہنچے تو مکان کو باہر سے کھنٹی لگی پائی اور مکان خالی تھا ادھر ادھر پتہ کرنے پر کچھ پتہ نہ چلا چنانچہ میں معہ محمد قاسم اللہ یار متذکرہ کے دوسرے روز بستی محبت پور عبدالغفور وغیرہ ملزمان کے گھر گئے تو وہاں مجھے غلام حسین۔ منظور احمد عرف کالا ملاقی ہوئے جنہوں نے دریافت پر بچی کے متعلق بموجودگی محمد قاسم، اللہ یار متذکرہ کے بتایا کہ واقعی کوثر بی بی کو وہ عبدالغفور۔ مسماء امیران مائی زوجہ عبدالغفور محمد رمضان عرف بگا کھروڑ پکے سے بستی محبت پور لے آئے تھے۔ غلطی ہوئی ہے اور بچی کو آئیندہ عبدالغفور، مسماء امیران زوجہ عبدالغفور اور محمد رمضان عرف بگا۔ احمد پور شرقیہ انہوں کے رشتہ داروں کے پاس لے گئے ہیں جو وہ ۲/۲ روز تک بچی کو وہ تمہارے پاس کھروڑ پکے گھر پہنچا دیں گے چنانچہ میں معہ ہمرائیاں کے واپس کھروڑ پکا آگیا، لیکن بچی کوثر بی بی حسب وعدہ میرے گھر کھروڑ پکے نہ پہنچی تو پھر میں معہ محمد قاسم، اللہ یار کے بستی محبت پور گیا تو ہمیں غلام حسین ملا جس نے دریافت پر بتلایا کہ اب میں خود عبدالغفور وغیرہ کے پاس جا رہا ہوں۔ احمد پور شرقیہ سے بچی کو ۲/۲ روز تک تمہارے گھر پہنچانے کا لیکن شرط یہ ہے کہ پولیس میں رپورٹ نہ کرانا"

From statement under section 164 Cr.P.C recorded on

on 11.12.1991;

مدعی نوالفقار میرا پہلے سے رشتہ دار تھا ہمارا دونوں کا ایک دوسرے کے گھروں میں آنا جانا تھا مدعی نوالفقار کی لڑکی کوثر باعمری تقریباً دس سال بوقت وقوعہ بھی میرے گھر آتی رہتی تھی۔ بروز وقوعہ میں نے اپنی داڑھ نکلوائی ہوئی تھی

اور گھر میں تقریباً تین بجے دن اکیلا اپنے کمرہ میں سویا ہوا تھا جبکہ میری بیوی مدعی ذوالفقار کے گھر گئی ہوئی تھی کوثر نے مجھے آکر بوجھا کہ چچی یعنی میری بیوی کدھر ہے میں نے کہا کہ وہ تمہارے گئی ہے ، میرے منہ میں درد ہے مجھے تنگ نہ کرو ، تین دفعہ اس کو بار بار کہا کہ چلی جاو لیکن وہ چوٹھی دفعہ پھر آگئی پھر میں نے اسے زبردستی پکڑ لیا ۔ اس کی شلوار کا ازاربند کھول لیا اور اس کے ساتھ ہی اسے دھمکی دی کہ شور کیا تو مار دونگا۔ پھر وہ چپ ہوگئی پھر میں نے اپنی شلوار کھول دی اور اس کے ساتھ زنا بالجبر کیا ، کوثر دوران زنا بالجبر خاموش رہی ۔ زنا بالجبر کرنے کے بعد کوثر نے خود شلوار باندھی اور میرے گھر سے باہر چلی گئی۔ دو منٹ بعد پھر آگئی اور اسے کہا کہ میں اس واقعہ کے بارے میں اپنے ابو کو بتا دوںگی، میں نے اسے کہا اور دھمکی دی کہ نہ بتاؤ وہ چلی گئی پھر تھوڑے تھوڑے وقفہ بعد دو دفعہ پھر آئی اور اس واقعہ کو اپنے ابو امی کو بتلانے پر مذ کرتی رہی جب چوتھی دفعہ پھر آکر زنا بالجبر کے واقعہ اپنے ابو امی کو بتلانے کے بارے میں مذ کی تو میں اپنے دائیں ہاتھ سے کوثر کا گلہ دبا دیا ۔ گلہ تقریباً دو چار منٹ دبا دیا تھا جس سے وہ وہیں موقع پر ہی مرگئی کیونکہ میں تقریباً آٹھ سال سے دل کا مریض ہوں جس وقت میں نے کوثر کا گلہ دبا دیا تھا تو اس وقت مجھے دل کا دورہ تھا۔ موقع پر ہی میرے گھر میں رسی پڑی ہوئی تھی جو میں نے اٹھا کر کوثر کے گلے میں ڈال کر اس سے باندھا پھر میں نے کوثر کو اٹھا کر میرے گھر کے صحن میں کھنڈہ میں ڈال کر اوپر مٹی اپنے ہاتھوں سے ڈال دی کھنڈہ میرے صحن میں اس لئے تھا کہ مجھ سے پہلے کرایہ دار گادر قوم کے لوگ اس مکان میں کرایہ پر آباد تھے جنہوں نے اپنے پیشہ کپڑوں کی رنگائی کے لئے صحن میں کھنڈہ بنوایا ہوا تھا ۔ وقوعہ کے بعد تین روز تک میں اپنے گھر میں رہا ۔ کسی نے مجھ پر شک نہ کیا تھا۔ ایک مہینہ تک پہلے میں کراچی میں آباد رہا، میری بیوی بھی میرے ساتھ تھی ۔ اور پھر میں لاہور آگیا"

Both these pieces of evidence are in conflict to the extent that the confessional statement of appellant refers to the rape and murder of Mst. Kausar Bibi in the rented house of Kehor Pecca, whereas the complaint Ex.PB refers to the presence of the victim girl at Mehatpur a few days later. This conflict can easily be resolved. In fact victim girl was in custody of the appellant. There is every possibility that he had taken the girl to Mehatpur where

she was seen with him by Ghulam Hussain, Manzoor Ahmed alias Kala who reported as such to the complainant. Later on, at some other occasion she was brought back to Kehror Pecca by appellant alone and then the occurrence took place. In the presence of recovery of dead body and last worn clothes on the pointation of appellant before independent witnesses whose evidence inspires confidence, appellant's statement under section 364 Cr.P.C on this point cannot be considered as a gospel truth. The delay in lodging FIR is otherwise plausibly explained in complaint Ex.PB. Consequently this contention is rejected.

6. so far as the second contention about enmity of the complainant with the appellant is concerned, it does not transpire from evidence.

7. It has been contended that extra judicial confession is not in accordance with law. The learned counsel for appellant is correct to the extent that the extra-judicial confession is a weak type of evidence. In the present case this confession stands corroborated by judicial confession and recovery of the dead body etc, on the pointation of the appellant himself. Hence this contention is repelled as misconcieved.

8. It has been contended that the judicial confession was recorded 4 days after the arrest. Hence

it was obtained under the duress. Since the Magistrate who recorded the confessional statement namely Zulfiqar Ahmed (PW-11) has denied such a suggestion and that no proof has been given to falsify such denial, this contention merits no consideration.

9. In view of the above-mentioned discussion, the impugned judgment is upheld and the appeal is dismissed.

Criminal Reference is replied in affirmation.

(Abul Waheed Siddiqui)
Judge

(Dr. Fida Muhammad Khan)
Judge

*Received on 3. 5. 99
by Judge*

(Muhammad Khayar)

Judge. 3. 5. 99

Approved for Reporting

Judge

Latif Baloch