

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

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

Criminal Appeal No. 72/L of 2008

Zahid Mehmood alias Zahidi son of Umar, resident of Bhera, Tehsil
Bhalwal District Sargodha

Appellant

Versus

The State

Respondent

Counsel for appellant

Miss Khalida Parveen
and Syed Muntazir
Mehdi Bukhari,
Advocates

Counsel for complainant

Malik Muhammad Akbar
Advocate

Counsel for State

Qazi Zafar Iqbal,
Addl. Prosecutor General
Punjab.

FIR. No. Date &
Police Station

Private Complaint

Date of Judgment of
Trial court

17-07-2008

Dates of Institution

04-09-2008

Date of hearing

21.05.2009

Date of Announcement
of Judgment

06-06-2009

JUDGMENT

SYED AFZAL HAIDER, Judge.- This appeal has been filed by Zahid Mehmood alias Zahidi to challenge the judgment dated 17.07.2008 delivered by learned Additional Sessions Judge, Bhalwal District Sargodha whereby he was convicted under section 364 of Pakistan Penal Code and sentenced to imprisonment for life with a fine of Rs. 50,000/- and in default whereof to further suffer six months simple imprisonment. Benefit of section 382-B of the Code of Criminal Procedure was extended to him. The six co-accused namely Muhammad Khan, Iftikhar son of Muhammad Yar, Iftikhar son of Mushtaq, Ishfaq Ahmed, Ghulam Abbas and Muhammad Shafique, tried alongwith the accused Zahid Mehmood, were acquitted through the same judgment.

2. Initially Case FIR. No. 06/2006 dated 07.01.2006 was registered with Police Station Miani on the written application of Muhammad Khan complainant but being dis-satisfied with the investigation of police, the complainant filed private complaint, Ex.PB in the court of learned District and Sessions Judge, Sargodha through Illaqa Magistrate.

PROSECUTION VERSION

3. Brief facts of the case as narrated in the complaint are that Muhammad Khan complainant lived in Chak Sahib Khan alongwith Mst. Asmat Bibi the widow of his son and Mst. Tabassum Faiz his grand daughter. It is averred further that on 17.08.2005, at about 5.00.p.m, accused Zahid alongwith his friend Iftikhar son of Muhammad Yar had come to his house on a motorcycle and took Mst. Tabassum Faiz alongwith them, in the presence of Zubair and Ghulam Haider P.Ws, on the pretext that his wife was ailing and needed being looked after. After two days when she did not revisit the house, her mother went to the house of Zahid Mehmood to bring her back but Mst. Asmat Bibi also did not return. The complainant also claimed having demanded return of both the ladies through brotherly. Initially accused Zahid Mehmood promised restoration of both the women but then he resiled. The complainant then alleged that during the search of detenues it transpired that accused Zahid was in total control of the cash, jewellery and pension book of Mst. Asmat Bibi and because of this reason the accused Zahid used to visit Mst. Asmat Bibi and Mst. Tabassum Faiz. It was also mentioned in the complaint that accused Zahid Mehmood, with the

help of Muhammad Khan, Iftikhar son of Mohammad Yar and others abducted Mst. Tabassum Faiz and also Mst. Asmat Bibi for the purpose of zina. The complainant expressed apprehension that the accused had either concealed the two women or committed murder of both of them. At the end the complainant asserted that Major Irfan and Nawab Dogar the local SHO³ of Police Station Miani, were supporting the accused.

4. After recording cursory statement of complainant party, the learned trial court summoned accused Zahid Mehmood, Muhammad Khan, Ishfaque, Iftikhar son of Muhammad Yar, Shafique, Ghulam Abbas and Iftikhar son of Mustaq. All of them were formally charged under section 11 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and section 364/34 of Pakistan Penal Code on 23.06.2008. The accused did not plead guilty and claimed trial.

PROSECUTION EVIDENCE.

5. In order to prove its case the prosecution produced 07 witnesses at the trial. The gist of deposition of the witnesses for the prosecution is as under:-

- i. Muhammad Khan complainant appeared as P.W.1. He endorsed the facts recorded in the private complaint Ex.PB.
- ii. Ghulam Haider, P.W.2 corroborated the statement made by complainant P.W.1 regarding the commission of abduction of Mst. Tabassum Faiz.
- iii. Muhammad Zubair appeared as P.W.3 and corroborated the statement made by Muhammad Khan complainant P.W.1 and Ghulam Haider, P.W.2.
- iv. Gulzar Ahmad appeared as P.W.4. He stated that on 17.08.2005 at 5.00.p.m. he was irrigating his land when Zahid Mehmood and Iftikhar PCO-Wala arrived on motorcycle. Zahid Mehmood went to complainant's house. The witness went to his dera where he was joined by Muhammad Zaman and Muhammad Ramzan P.Ws. Mst. Asmat Bibi and Mst. Tabassum Faiz reached there followed by the two accused. On enquiry the ladies told him that wife of accused was unwell so he was taking Mst. Tabassum Faiz with him.
- v. Mst. Sakina wife of Gulzar Ahmed was examined as P.W.5. She stated that three years back she returned home on 18.08.2005 after getting breads from the oven and saw that Mst. Tabassum Faiz was sitting in the room of her house. On enquiry she was told that Zahid accused had left her in their house and had gone some where. After about two hours Zahid Mehmood came and handed over a shopper of Samosas and Pakoras to

Mst. Tabassum Faiz and went away. At about evening time he again came and took away Mst. Tabassum Faiz with him.

- vi. Mudassar Faiz the real brother of Mst. Tabassum Faiz and son of Mst. Asmat Bibi appeared as P.W.6. He deposed that on 17.08.2005 when he returned home he did not find his sister in the house. He enquired about her from his mother and was ³ - ; informed that she had been taken away by Zahid accused. An objection was raised by the defence that this witness did not make a statement before police and consequently copy of his statement has not been supplied. Moreover Mst. Asmat Bibi has not made any statement and hence the statement of this witness was hearsay. (Learned trial court deferred decision on the objection raised by defence). The witness proceeded to depose that next day he went to the house of Zahid accused and asked him to send Mst. Tabassum back as her mother was unwell. He also stated that 10/15 days prior to this occurrence he, alongwith his mother went to Zahid accused and demanded from him a sum of Rs. 3,75,000/- and gold ornaments weighing 25/26 tolas which his mother had entrusted with the accused. The accused two or three days afterwards took his mother to the Bank and on return told him “ that he was looted by some dacoits near Jhal Chakian but it was totally false”. Another objection was raised that no such accusation was made in the FIR or in the statement under section 161 of the Code of Criminal Procedure and this allegation was being raised after about two and a half years. The witness was then cross-

examined. He had also stated that accused Muhammad Khan was a police constable.

- vii. Muhammad Aslam, ASI appeared at the trial as P.W.7 and stated that he recorded FIR No. 156 on 18.06.2007 under section 406/109 of Pakistan Penal Code and one of the accused in the crime report was Irfan Mahmood. The case was cancelled as being false.

COURT WITNESSES

6. The learned trial court after examining the prosecution witnesses also summoned Noor Muhammad, Inspector Abdul Hameed Khan, Retd. S.P. Sargodha, Nawab Hussain Dogar Inspector, Muhammad Riaz Rabana, Retd. DSP, Sher Ahmad Tawana Inspector, Muhammad Azhar Yaqoob Inspector and Shaukat Hayat Sub Inspector who appeared at the trial as Court witnesses No. 1 through 7 respectively. The gist of deposition of these seven court witnesses is as under:-

- i. Noor Muhammad Inspector appeared as C.W.1. He had partly investigated the case. He visited the place of occurrence on 21.01.2006, prepared site plan CW/1-A, took into possession the pension book of Faiz Ahmad deceased vide recovery memo CW/1-B on 28.01.2006, recorded statements of witnesses under section 161 of the Code of Criminal Procedure Code. On

27.02.2006 the S.P. Investigation Sargodha constituted a panel of police officers consisting of himself and Abdur Rauf Inspector.

- ii. Abdul Hameed Khan, Retd. S.P. Investigation Sargodha appeared as C.W.2. He stated that under the orders of DPO Sargodha the investigation of this case was entrusted to the Investigation Cell. A board was constituted consisting of Noor Muhammad, S.I. and Abdur Rauf, Inspector. On 11.03.2006 he examined both the parties and discovered that there was no evidence against the accused and found the accused innocent and hence he prepared a discharge report but the same was not approved by the learned Area Magistrate.
- iii. Nawab Hussain Dogar, Inspector was examined as C.W.3. He stated that on 12.12.2005 Muhammad Khan complainant moved a written application five months after the occurrence which complaint was investigated by him. After making necessary enquiries and examining both the parties he prepared a report on 24.12.2005 and found the application as false.
- iv. Muhammad Riaz Rabana, Retd. DSP appearing as C.W.4 stated that on 25.03.2006 the investigation of this case was entrusted to him. During investigation he recorded statements of many persons from both sides. He got arrested Iftikhar Ahmad son of Mustaq, Ghulam Abbas and Ishfaq through Sher Muhammad Tawana, Inspector and interrogated them and asked the Inspector to get them discharged but the Illaqa Magistrate did not agree. On 16.05.2006 the investigation was transferred

to Range Crime Investigation Punjab under the orders of Lahore High Court, Lahore.

- v. Sher Muhammad Tawana, Inspector appeared as C.W.5. He stated that on 03.05.2006 he arrested accused Iftikhar son of Muhammad Yar and on 08.05.2006 also arrested accused Shafique, Ghulam Abbas and Muhammad Ashraf.
- vi. The learned trial court examined Muhammad Azhar Yaqoob, Inspector as C.W.6. He deposed that on 30.10.2006 he took up the investigation of this case and prepared report under section 173 of the Code of Criminal Procedure.
- vii. C.W.7 Shaukat Hayat, Sub Inspector stated that he had not investigated the case nor any zimni was written by him in the instant case. However he was cross-examined by the prosecution and based its case on another crime report registered in a different police station.

STATEMENT OF ACCUSED

7. After the evidence of witnesses for the prosecution and the court witnesses had been taken down, the statements of accused without oath, were recorded on 16.07.2008. Zahid Mehmood accused in answer to question No.4: "Why this case against you and why the P.Ws have deposed against you"? stated as under:-

“ My brother Irfan Army Captain has refused to take rishta of daughter of Malik Aslam cousin of the complainant, firstly he lodged FIR against Captain Irfan for the theft of buffalos and goats which was cancelled being frivolous, thereafter Muhammad Aslam started proceedings against me after five months of the occurrence. P.Ws deposed falsely due to relationship with the complainant”.

The co-accused of the appellant deposed to the effect that they had been falsely implicated in the case. The accused neither made statement on oath under section 340(2) of the Code of Criminal Procedure nor produced any evidence in their defence.

8. The learned trial court thereafter heard arguments of the contending parties. After considering the evidence on record the learned trial court found Zahid Mehmood accused guilty under section 11 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979. He was convicted and sentenced as mentioned in the opening paragraph of this Judgment while his six co-accused were acquitted vide the same judgment. Hence the present appeal against conviction and sentence by Zahid Mehmood appellant.

CONTENTIONS OF CONTENDING PARTIES

9. We have gone through the file. The deposition of almost all the witnesses of prosecution and the court witnesses as well as the statement, without oath of the appellant, has been perused with the assistance of learned counsel for the parties. The arguments advanced by the learned counsel for the appellant, the complainant and Deputy Prosecutor General on behalf of State have been noted for consideration. The relevant portions of the judgment have also been scanned.

10. Learned counsel for the appellant has raised the following points before us for consideration:-

- i. That there was an element of delay in reporting the matter to the police;
- ii. That the abductees were not recovered;
- iii. That the prosecution has failed to prove the case;
- iv. That the appellant is innocent and
- v. That there are discrepancies and contradictions in prosecution evidence.

11. Learned counsel for the complainant, on the other hand, argued his case for almost three days and took us through the entire evidence including the deposition of Court Witnesses. Lot of emphasis was placed on the deposition of C.W.7. On being asked to formulate his points, the learned

counsel on the third day of his arguments opted to raise the following points:-

i. That the presence of the appellant in the house of the complainant on 17.08.2005 has been established on record;

ii. It has been established that Mst. Tabassum was abducted by the appellant at 5.00.p.m. on 17.08.2005;

iii. That PW.1, 2 and 3 as well as C.W.5 and 6 have endorsed the version of complainant;

iv. That on the day following the abduction of Mst. Tabassum, the latter was found in the company of the appellant;

v. That the element of delay has been amply explained by C.W.6 Azhar Yaqoob;

vi. That P.W.6 asked the accused to send his sister back and the accused had cash and jewelry belonging to Mst. Asmat Bibi;

vii. That the pension book of the late husband of Mst. Asmat was found in the custody of appellant and "the appellant confessed before the police officer that the pension book was received by him a month earlier than the date of incident;"

viii. That the appellant has failed to prove that he did not abduct Mst. Tabassum;

ix. That the contention of appellant that he was involved in this case because his brother had refused to marry Mst. Tabassum is patently wrong. "Hence the appellant has to be convicted and sentenced."

x. There was neither any discrepancy nor any contradiction in the deposition of witnesses. There was no improvement either made by the prosecution as the complainant stated whatever he had seen or heard.

xi. That due to faulty investigation the case of the complainant had been spoiled and "therefore the conviction and sentence of the appellant should be maintained." The learned counsel for the complainant promised to substantiate this very point through precedent law but he did not oblige till today;

xii. That the accused admitted guilt before Panchait and notwithstanding promise did not return the abductees.

xiii. Lastly it was urged that evidence of Shaukat Hayat S.I, at present confined in District Jail, Sargodha should not only be read as part of evidence of this case but should be made basis of conviction of the appellant.

12. On a court question that CW.7 was never assigned the duty of investigating this case which fact has been stated by the witnesses in his Examination-in- Chief by saying that "I have never investigated the instant case at any stage while posted at P.S. Bhera or posted any where else. I had not written any Zimni in this case". In this view of the matter how was reference to his cross examination valid and relevant . However the learned counsel insisted that a) this CW had investigated another case in another police station in another crime report; b) that the police officer wanted that the statement of an accused Ishaque (in another case) be recorded by a Magistrate which was however refused; c) but that Ishaque accused had since confessed before the police officer that Zahid, Iftikhar and Ishfaque

were instrumental in the abortion of some woman; d) therefore on the basis of this information the appellant in this case should be convicted in this case because an accused, even though in another case, had implicated the appellant Zahid in that case before a police officer. We enquired twice whether the learned counsel was serious in submitting this plea and he insisted that this argument advanced by him be recorded and considered in his favour. However we refrain from making any comment on the nature or validity of the argument except that the evidence of CW.7 cannot be read as part of record of this case. The learned trial court had also told the learned counsel for the complainant twice at the time of cross-examination of CW during trial on 14.07.2008, that confession before police officer in another case was inadmissible.

13. This very argument, to our surprise, was picked up by learned Deputy Prosecutor General who, on the one hand conceded that it was a case of “dead end without any clue about the culprit” yet he contended that notwithstanding the cul-de-sac, the conviction should be maintained because a police officer from another police station had entertained apprehensions that the appellant was involved in this case.

REVISITING THE CASE

14. The fact of the matter is that all the 08 accused were charged on two counts:-

“Firstly: That on 17.08.2005 at about 5.00 p.m. you the above named accused abducted Mst. Tabassum Faiz and on 19.08.2005 her mother Mst. Asmat Bibi from the dera known as Chak Sahib Khan with intention to commit illicit inter-course with them knowingly that they were not married legally and thus you have committed an offence punishable under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 which is within the cognizance of this Court.

Secondly: That on 17.08.2005 at about 5.00 p.m., within the area of Dera Chak Sahib Khan Police Station Miani, you all above named accused abducted Mst. Tabassum Faiz and her mother Mst. Asmat Bibi with intention to commit their murders and in this way you above named accused committed an offence punishable under section 364/34 PPC which is within the cognizance of this court. And I hereby direct that you be tried by this court under the above said charge.”

15. The learned trial court however convicted the appellant alone under section 364 of the Pakistan Penal Code. All the accused including the appellant would be deemed to have been acquitted under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. In order to bring an accused within the mischief of section 364 of the Pakistan Penal Code, the prosecution has to establish beyond reasonable doubt the following ingredients:

- i. That the accused by *force compelled* or *by deceitful means induced* a person to go from place to place;
- ii. That the accused did so in order that such person might be murdered or such person might be so disposed of as to be put in danger of being murdered. We have therefore to see whether the charge against the appellant stood proved in view of the evidence brought on record.

16. Let us now analyze section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; The ingredients of Section 11 :
are:

- a. whoever abducts or kidnaps
- b. any woman
- c. with intent
- d. that she may be compelled or knowing it likely that she will be compelled
- e. to marry any person against her will or

- f. in order that she may be forced or seduced to illicit intercourse shall be punished with imprisonment for life,

AND WHOEVER BY MEANS OF

- a. criminal intimidation, as defined in Pakistan Penal Code or
- b. of abuse of authority or
- c. any other method of compulsion,
- d. induces any woman to go from any place,
- e. with intent that she may be, or knowing that it is likely that she will be,
- f. forced or seduced to illicit intercourse with another person shall also be punished as aforesaid,

17. A comparison between section 364 of the Pakistan Penal Code and section 11 of the Offence of Zina (Enforcement of Hudood)

Ordinance, 1979 shows that:

- a. Section 11 is gender specific,
- b. it presupposes a particular INTENT whereas the words IN ORDER employed in section 364 do not refer to intent though the words IN ORDER appear to be wider in scope;
- c. second part of Section 11 does contemplate inducement to go from any place with the intent of subjecting her to illicit intercourse. The purpose of taking the person from one place to another in both the sections are different;

- d. Section 11 does not envision the possibility that a person may be murdered or put in danger of being murdered which is the essence of section 364. The objective contemplated in section 364 is referable to the point of time when abduction takes place. A reference to the instance may be made to the case of Ram Chandra and another Vs. State of Uttar Pradesh reported as AIR 1957 SC 381.

While interpreting the words *in order* occurring in section 364 of the Pakistan Penal Code, the Division Bench of Dacca High Court in the case of Suraj Ali and others Versus The State reported as PLD 1968 Dacca 158 at page 165, held as under:-

“In order” literally means ‘with the object or end aiming at’ So the means to achieve the object or end should be substantiated and not necessarily the achievement of the object itself, as is clear from the use of word “may” before both the objects as provided in section 364, P.P.C. What we intend to drive at is this: Murder or even death need not be invariably proved to substantiate a guilt under section 364, P.P.C. but the prosecution must prove such unimpeachable facts and circumstances which would lead a reasonable man to the irresistible conclusion that the object aiming at kidnapping or abduction of the victim was that either the person might be murdered or might be so disposed of as to be put in danger of being murdered. Where it is proved, by facts and circumstances, that the victim was forcibly carried away by the accused party and thereafter he was seen or heard of

no more, the conclusion can be safely arrived at that the offence under section 364, P.P.C. stands substantiated.

18., The other significant feature of this case is that the entire episode is dependent upon last seen evidence and some other factual links to which we will advert later. However we made it clear to the learned counsel of the parties to address the court on this aspect of the case because the principles established so far on the question of culpability of an accused last seen with the deceased/untraced abductee may be summarized as follows:-

- i. Last seen evidence, due to its inherent defects is a weak type of evidence.
- ii. Even if weak type of evidence is believed to be true, no conviction can be based upon it unless there is strong piece of corroboration.
- iii. Conviction solely based upon last seen evidence is not sustainable.
- iv. Last seen evidence must have a close proximity with the death of deceased so as to rule out any possibility of the deceased having come in contact with any one else during the intervening period.

v. Last seen evidence coupled with extra judicial confession supported by recoveries of gun/empty cartridges/other incriminating articles can sustain conviction.

vi. In a case where the last seen evidence may be considered sufficient to sustain conviction thereon, the circumstantial evidence must be incompatible with innocence of the accused and should be accepted by the Court with great caution and should be scrutinized minutely for reaching a conclusion of guilt and no conclusion other than guilt of accused under the circumstances would be capable of being drawn from the facts disclosed.

vii. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The chain of events must be so complete as not to leave any conclusion consistent with the innocence of accused.

viii. There may be circumstances when the burden would be on the accused to explain his position eg: when the accused was seen with M alive and soon after a shot was heard and M was found lying seriously injured or even dead.

ix. Capital punishment may be awarded if an unbroken chain of events connecting the accused is established by conclusive evidence.

19. We will deal first with the evidence adduced by prosecution and the arguments advanced by learned counsel for the complainant supported by learned Deputy Prosecutor General appearing on behalf of State. However, while considering the arguments we would like to make an

observation that this case depends entirely upon circumstantial evidence because the prosecution has built up its case on the following eight theories.

a. Arrival of appellant alongwith his friend Iftikhar on a motorcycle in the house of complainant on 17.08.2005 around 5.00 p.m. in Chak Sahib Khan, P.S.Miani;

b. The accused thereafter with the permission of complainant took away his grand-daughter Mst. Tabassum Faiz, aged 18/19 in the presence of i) Zubair Ahmed and ii) Ghulam Haider, from the house of complainant on the pretext of attending to his ailing wife.

c. That since the grand daughter of the complainant had not returned by 19.08.2005 so her widow mother, the daughter-in-law of complainant, Mst. Asmat Bibi, went to the house of the appellant to bring her back but she also did not turn up.

d. That Mst. Tabassum Faiz and the accused were in Bhera in the house of PW.5 and left her house in the evening on 18.08.2005.

e. The P.W.6, brother of Mst. Tabassum Faiz, went to the house of accused on 18.08.2005 and asked him to send his sister back home as her mother was unwell.

f. That the complainant thereafter, through his Biradri, pressed the appellant for the restoration of two ladies but despite promises to do the needful, the accused did not oblige.

g. That a pension book in the name of Mst. Asmat Bibi, widow of Faiz Ahmed Constable, the late son of the complainant, was produced by the appellant before Noor Muhammad SI. CW.1 on 28.01.2006. The book contained last entry dated 05.08.2005 disclosing that an amount of Rs.480.00 had been paid to the widow. The pension book was taken into custody vide recovery memo Ex. CW/1-B which contained admission of the accused that a month before the incident the pension book was handed over to him by Mst. Asmat Bibi. However this aspect was not mentioned in the compliant Ex.PB dated 24.05.2008 lodged by the complainant.

h. That accused was Mukhtar of Mst. Asmat Bibi. Cash and jewelry, belonging to the latter was entrusted with the accused.

THE PROSECUTION EVIDENCE

20. Now we proceed to re-appraise the prosecution evidence,

a. The complainant PW1, in the cross-examination, admitted that Zahid Mehmood accused was declared innocent by all the Investigating

Officers and that he had involved the co-accused about a year after the occurrence.

b. The complainant also admitted that Malik Khizar Hayat, a senior officer in the Provincial Government is brother of Mst. Asmat Bibi.

Another brother of the latter is a police officer. None of them was however cited by him as witness. It is very strange that none from the family of Mst.

Asmat Bibi, the alleged abductee, joined hands with complainant. On the contrary Malik Khizar Hayat, brother of the abductee, appeared before the investigating officer, CW.3 Nawab Hussain Dogar Inspector Police, to affirm that his sister/niece were never abducted and that the complainant was making false accusations to dishonor them.

c. The complainant also admitted that the Pension book was in the name of Mst. Asmat Bibi and she alone could receive the pension amount. He, also conceded that he had not mentioned in the FIR that cash or ornaments were taken by Zahid accused. This shows the extent of improvement made by the complainant in his story because on 23.06.2008 *the complainant for the first time* in his examination in chief alleged that 25 tolas gold, 6 lac cash, 2 buffaloes and one goat (belonging to Mst. Asmat

Bibi) was with the accused. He had not disclosed any such thing even in the belated FIR No.06/2006.

d. The element of delay, and in fact an inordinate delay in reporting such a serious case to the police, is suggestive of a protracted consultation that must have been place, after the alleged disappearance of two women from the house of the complainant as a result of which as many as eight persons were involved in the case one after the other. The net result however was that six accused persons were acquitted on the same set of evidence.

e. The complainant, PW.1, stated at the trial that accused came to his house and asked his permission to take Mst. Tabassum Faiz, 18 years old girl, alongwith him on the pretext that his wife was in a state of advance pregnancy and was expecting a baby. The complainant, grand father of Mst. Tabassum Faiz permitted the latter to accompany the accused, as the accused "was close to us". It does not appeal to reason that Mst. Tabassum Faiz, a young girl, who had not even received training in mid-wifery, should be expected to supervise delivery but her mother or for that purpose any other

woman from the house would not have been asked by the complainant to do the needful.

f. The complainant had also alleged in his private complaint that the Biradri had intervened to press the demand upon accused and his father to restore the custody of two females but despite promise of restoration, the accused ultimately refused to honour his commitment. However the record does not show that any Panchait was ever convened or that any promise was made for the return of two missing females. The number of Panchait members was said to be 200/250. Not a single participant of the congregation was either mentioned in the calendar of witnesses attached with the complaint or summoned to depose about the proceedings and unanimous decision of the assemblage.

g. The complainant, while deposing at the trial, in furtherance of the prosecution of his complaint, had improved his story to the extent that the accused Zahid Mehmood was shown having 25 tolas of gold, Rs.600,000/-, two buffalos and one goat with him. The implication was that these things belonged to Mst. Asmat Bibi and the accused was her Mukhtar. Haji Muhammad Nawaz, a secretary to the Provincial Government, is said

to have presided over the Panchait. He never appeared at the trial to affirm the veracity of the fact that any Panchait was ever held for the restoration of two missing females from the custody of Zahid accused or that the accused had admitted that the cash and jewelry was with him.

21. The complainant gradually introduced improvements in the prosecution story. The incident of abduction of Mst. Tabbasum Faiz took place on 17.08.2005 whereas the abduction of Mst. Asmat Bibi was shown to have taken place on 19.08.2005 but the local police was moved by way of a written complaint by complainant only on 05.01.2006 with a delay of almost five months and this belated crime report was registered with police station Miani, District Sargodha on 07.01.2006 as FIR No.6/06 by Sub-Inspector Mansha Ilahi. This delay under the circumstances was uncanny and suggestive of mysterious circumstances lurking in the house and conduct of complainant himself. Then after another lapse of 34 months, the complainant Muhammad Khan moved a private complaint in the Court of learned District and Sessions Judge, Sargodha which was registered at serial No.90 SJ on 30.05.2008 later marked to Additional Sessions Judge,

Bhalwal vide No. 23 ASJ dated 01.07.2008. This complaint contains the following major improvements:-

i. In the FIR accused Zahid Mehmood is shown having gone to the house of complainant on 17.08.2005, in the company of an *unknown person*, but in the complaint he is shown as having gone on a motor cycle alongwith his friend Iftikhar son of Muhammad Yar. The accused is also shown as having sought permission to take Mst. Tabassum Faiz with him as his wife was un-well. The unknown person of FIR becomes Iftikhar in the complaint. The complainant however does not disclose the source from where he got intelligence as to the identity of that unknown companion of the accused.

ii. In the FIR the number of accused was 02 (two) whereas it swelled to 08(eight) by the time the private complaint was initiated.

iii. In the FIR there was no mention of fiduciary relationship between accused Zahid Mehmood and abductee Mst. Asmat Bibi but in the complaint the accused Zahid is shown as "Kul Mukhtar" of huge amount of cash (amount intentionally not mentioned), jewellery (weight undisclosed) and Pension Book of Mst. Asmat Bibi.

iv. In the FIR the complainant had alleged that he made efforts with accused Zahid Mehmood through his Biradri to get back the two females but in the private complaint the additional factor of Panchait was introduced though the details as regards the time and venue of Panchait meeting were withheld for reasons best known to complainant and his witnesses.

v. In the FIR there was no allegation that somebody was at the back of the accused Zahid Mehmood but in the complaint Major Irfan and the erstwhile SHO Miani Police Station, Nawab Dogar, were alleged to have lent support to the accused Zahid Mehmood for the commission of the offence. This Irfan, brother of the appellant, is the person who had refused to marry the daughter of Muhammad Aslam. The latter is admittedly pursuing the case on behalf of prosecution against the appellant, brother of Irfan. A false case against the said Irfan was got registered which was cancelled as false as is evident from the statement of P.W.7.

vi. In the crime report there was no mention of applications having been made to police officers before registration of FIR 06/2006 but in the complaint it was alleged that only after a number of applications were

moved before the police authorities that finally a case was registered as FIR under section 11 of Hadood laws.

vii. While appearing at the trial the complainant had only stated that Mst. Tabassum Faiz was taken away by accused on the pretext that his wife was in a state of advanced pregnancy but later the complainant introduced the factor that Mst. Asmat Bibi, his widow daughter-in-law had accompanied her daughter while she was going out of the house and she returned after a short while to confirm that Mst. Tabassum Faiz had been taken away by both the accused. The complainant is making a conscious effort to introduce additional evidence that Mst. Tabassum Faiz had in fact been seen accompanying the two accused after having left the house of her grand father.

viii. The strength of the Panchait is shown to be 200/250 persons without of course disclosing the date when it was convened.

ix. Malik Muhammad Nawaz, Secretary to Provincial Government is introduced as the convener of the Panchait to resolve the issue of double abduction. The said convener neither appeared before police nor was his statement under section 161 of the Code of Criminal Procedure was recorded

by the Investigating Officer nor did he find mention in the calendar of witnesses at the trial.

x. The complainant (on the hinting of his counsel as recorded by learned trial court) introduced an alleged admission of accused Zahid Mehmood before the Panchait that cash amounting to 6,00,000/-, gold weighing 25 tolas, two buffalos and one goat (ostensibly belonging to Mst. Asmat Bibi) was in his custody.

xi. The accused is also shown having admitted before the Panchait that he would restore the ladies within 10/12 days.

xii. Father of accused Zahid Mehmood had been shown as the person to whom complainant also made requests for the return of two female abductees.

xiii. Complainant's son, Mudassar Faiz aged 23 years, who found mention neither in the FIR nor in the complaint and who never made a statement before police, *appeared as PW.6 on 24.06.2008 i.e., 35 months after the alleged abduction*, for the first time in the trial court and alleged that on 17.08.2005 his sister went to the house of accused Zahid. It is further claimed that on 18.08.2005 he went to the house of accused and asked him

to send his sister back and then on 19.08.2005 his mother went to the house of accused and did not turn up. This witness further added that 10/15 days prior to the occurrence he had, alongwith his mother, gone to the house of accused Zahid Mehmood and demanded Rs.3,75,000/- and 25/26 tolas of gold which his mother had kept as Amanat with the accused. The latter promised to return the things within 2/3 days. The witness also stated that accused and his mother went to Sargodha Bank and on return the accused told this witness that he was looted by dacoits at Jhal Chukian. An objection was however raised by defence before the learned trial court that this witness neither made statement before police nor mentioned these facts in the complaint. However no Crime Report of that Robbery or Embezzlement was registered with police by complainant or P.W.6 or even a belated private complaint.

22. PW.2, Ghulam Haider, is a nephew of the complainant. He attempted to corroborate the story that Mst. Tabassum Faiz was taken away by Zahid Mehmood accused from complainant's house in his presence. This witness also endorsed the improved version of Panchait having been held. In the cross-examination this witness however conceded that a) "both the ladies

did not protest for taking them away anywhere". The witness admitted not having stated before police that father of accused had confessed that Zahid Mehmood was the real culprit. He also did not mention the convening of any Panchait in his statement before the Police.

23. PW.3 Muhammad Zubair is another witness of abduction of two females, the convening of a Panchait and the demand for return of the two missing women. This witness goes a step further by stating that the Panchait gave a verdict against Zahid Mehmood accused and asked him to return the ladies within eight days. However he conceded having made a statement (before police) five months after the alleged occurrence. He conceded that the ladies did not protest against their abduction. The witness also admitted not having mentioned the factum of Panchait or the verdict of the Panchait before the police even though his statement was recorded on 21.01.2006 for the first time i.e. almost five months after the occurrence which allegedly took place on 17.08.2005.

24. Gulzar Ahmed, a neighbour of the complainant and also belonging to the clan of complainant appeared at the trial as PW.4 to corroborate what PW.2 and 3 had stated. However in response to questions

in the cross-examination, the witness claimed having stated before the police that a Panchait had been convened and the accused had confessed that he had taken Rs.3,75,000/-, 19 tolas of gold and two buffalos from Mst. Asmat Bibi but when confronted with his police statement Ex.DC it was found that no such allegation was contained therein. Every witness in this case appears to be privy to improvements of vital nature in the story of the prosecution.

25. Mst. Sakina wife of Gulzar Ahmed, resident of Bhera appeared at the trial as PW.5. She stated that three years ago when she returned to her house at 12.00 noon she found Mst. Tabassum Faiz sitting in a room of their house alongwith her younger sister. This witness stated that Zahid Mehmood accused, who had left Mst. Tabassum Fiaz in her house, came after about two hours and gave "Samosas and Pakoras" to Mst. Tabassum Faiz. Thereafter Zahid went away only to return in the evening when both of them departed from the house. *In cross-examination this witness stated that there was neither any bag nor any article with Mst. Tabassum Faiz nor was she wearing ornaments.* This witness statedly offered to take the latter to her maternal uncle in Bhera but she refused to go anywhere. This witness also admitted that the complainant has a house in Bhera and that Mst. Tabassum

Faiz did not leave message for anybody with her. This witness should complete ignorance as to the lapse of months when her statement was recorded by police after the incident. In so far as this witness is concerned the theory of abduction i.e. use of force or deceitful means stands demolished. The purpose of introducing this witness from Bhera was to show that Mst. Tabassum Faiz was removed from place to place. However the statement of this witness is contradicted by the assertion of P.W.6 that he met the accused in his house in the village and asked him to send his sister back home.

26. Mudassar Faiz, 23 years old brother of Mst. Tabassum Faiz, appeared at the trial as PW.6.. His statement has already been discussed in an earlier paragraph of this judgment. It may however be mentioned here that since the *statement of this witness under section 161 of the Code of Criminal Procedure was not recorded, hence its copy could not be given to the learned counsel for cross-examination purpose. This witness appeared at the trial after a period of almost three years to give a statement for the first time.* He never appeared before the police either to join the investigation and watch the progress of the case of disappearance of his real mother and real

sister nor made a statement of facts before the police. He is a grown up young person aged 23 years and also educated. He is neither insane nor invalid but it is strange that nowhere in prosecution version he has played any role or evinced interest in the case as if nothing had happened. The witness also stated that his mother had built a house on the land of his father who had died in Karachi a few years back. This witness admitted that the complainant Muhammad Khan had on a previous occasion got a case registered against Capt. Irfan, brother of accused Zahid Mehmood which case was ultimately cancelled. This is precisely what the accused/appellant had stated in reply to question No.4 while his statement, without oath, was being recorded. It is worth noting that complainant PW.1 had alleged that a sum of Rs.6,00,000/- apart from other things (belonging to Mst. Asmat Bibi) was admitted by the accused to be with him whereas this witness stated that cash amounting to Rs.3,75,000/- was with the accused Zahid Mehmood. A house was also built by Mst. Asmat Bibi but she was the widow of only a constable getting a monthly pension between 4 to 5 hundred rupees. The pension book reveals that pension had started in 1987. The amount received by widow at the time of death of her husband was

presumably spent on construction of the house. However the prosecution has not brought on record any ostensible source of income of Mst. Asmat Bibi to own 26 tolas of gold, buffalos and cash amounting to Rs.6 Lac. This witness admitted that Muhammad Aslam alongwith his son was pursuing the case of prosecution. This Malik Muhammad Aslam is the same person who wanted his daughter to be married to Captain Irfan, brother of accused Zahid Mehmood, but he had refused. This is also the defence plea.

27. PW.7 Muhammad Aslam ASI is a formal witness. He had recorded FIR No.156 on 18.06.2007. Thereafter the other police officers appeared as court witnesses.

COURT WITNESSES

28. Noor Muhammad Inspector appeared at the trial as CW.1. He had initiated investigation in the crime report on 21.01.2006. A panel of Officers was deputed by S.P. Investigation to probe into this mysterious matter. The result of the joint investigation, undertaken by the panel of officers was duly confirmed by S.P. Investigation, whereby the appellant was found innocent.

29. Abdul Hameed Khan, S.P. Investigation at the relevant time, appeared at the trial as CW.2. He confirmed the statement of CW.1. This witness however denied that Pension Book, golden ornaments and cash having been produced by the appellant. He had confirmed the finding of the innocence of accused on 11.03.2006.

30. Nawab Hussain Dogar, Inspector Police appeared at the trial as CW.3. He had received application from the complainant on 12.12.2005, five months after the alleged occurrence. He investigated the case under section 157 of the Code of Criminal Procedure. He found that the complaint was false. He had found that Malik Muhammad Aslam wanted Captain Irfan to marry his daughter. On his refusal Malik Aslam managed the complaint against accused persons.

31. Muhammad Riaz Rabana, D.S.P. at the relevant time, appeared at the trial as CW.4. He had also investigated this case and recorded statements of witnesses. This witness stated that on the insistence of complainant he got Ifikhar Ahmed, Mushtaq and Ghulam Abbas arrested but found no evidence against them. This case of abduction had also reached the Lahore High Court. This witness claimed having "examined both the

parties thoroughly” and found that complainant could not produce any solid evidence of abduction against the accused. This witness also stated that he had interrogated the appellant in jail. Moreover this Investigating Officer claimed having arranged confrontational meetings between parties on different dates but the complainant *kept on implicating different persons as accused for the abduction of ladies*. During investigation no solid evidence about abduction was found against the accused by Muhammad Riaz Rabana.

32. Sher Ahmed Tawana, Inspector, appeared at the trial as CW.5.

He had arrested Iftikhar, Shafiq, Ghulam Abbas and Muhammad Ashraf accused. According to this witness “Iftikhar son of Yar was found having gone to the dera of Mst. Tabassum Faiz on the day of occurane. Similarly the accused Iftikhar son of Mushtaq was also found alongwith Zahid accused at that time when he had taken Mst. Tabassum Faiz from the house of Mst. Sakina (PW.5). Both the accused were arrested by this witness.

33. Muhammad Azhar Yaqoob Inspector appeared at the trial as CW.6. He recorded supplementary statement of Muhammad Khan complainant. He also arrested Muhammad Khan constable as well. He also submitted report under section 173 of the Code of Criminal Procedure.

34. Shaukat Hayat S.I. appeared at the trial as CW.7. He did not investigate this case at any stage of the trial. The counsel for complainant however cross examined him at length and the witness stated that in another Police Station he had investigated a different crime report bearing FIR number 250/07 under section 302 of Pakistan Penal Code relating to murder of one Rukhsana Dai. The complainant's counsel had put a question about the accused in that case which the learned trial court had disallowed. The counsel of complainant wanted to know if the accused in that other case had made a confession before the police officer implicating accused Zahid Mehmood, Iftikhar and Ishfaq as responsible for a miscarriage of some woman but the learned trial court disallowed the question on the ground that confession before a police officer was in- admissible. The basic thing to be noted about the deposition of this witness *is that at no stage did he ever investigate this case.* The sole purpose of summoning this witness to depose at the trial, as is apparent from the trend of cross-examination of this witness by the learned counsel for the complainant was to bring on record some sort of evidence preferably a confession even through illegal means and thus involve persons accused in this case on the basis of admission of some

accused before a police officer in some other case from a different police station. Lot of emphasis was placed upon the deposition of this witness before us both by the learned counsel for the complainant and the learned Deputy Prosecutor General. Both of them stressed that a confession before a police officer in any case can be used against un-connected accused in a subsequent case and such an admission/confession would form the basis of conviction. The learned counsel insisted upon this at the risk of repetition.

35. The complex nature of the case and the number of police investigations undertaken in this particular occurrence demands an in-depth analysis of the various steps and the trend of development of the prosecution case in its chronological sequence.

CHART OF PROGRESS OF PROSECTON CASE.

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| 1. | Mst.Tabassum Faiz reportedly accompanied the accused, in Chak Sahib Khan Awan. | 17.08.2005 |
| 2. | PW.5 finds Mst. Tabassum Faiz in her house in Bhera | 18.08.2005 |
| 3. | PW.6 however stated that he met accused in his house in Chak Sahib Khan Awan | |
| | Mst. Asmat Bibi, mother of Mst.Tabassum Faiz allegedly goes after her to the house of accused in Chak Sahib Khan Awan and does not return. | 19.08,2005 |
| 4. | Panchait is held due to the efforts of the Complainant to pressurize the accused for Restoration of women and cash but accused Resiles. See PW.1 | Date not disclosed |
| 5. | Application made by PW.1 to Nawab | 12.12.2005 |

Hussain Dogar, Inspector CW.3 who had undertaken investigation under section 157 of the Code of Criminal Procedure. see CW.3.

6. After the probe CW.3, the *complaint was found false*.
24.12.2005 Malik Khizar Hayat Director labour, Faisalabad brother of Mst. Asmat Bibi and maternal uncle of Tabassum Faiz appeared before CW.3 and stated that complainant had moved a false application to disgrace and humiliate them. No body had abducted the women folk. See CW3
7. FIR lodged by complainant PW.1 Muhammad Khan with Police Station Miani. FIR No.6/06 was registered by Mansha Ilahi S.I. under section 11 of the Offence of Zina (Enforcement of Hudood)Ordinance, 1979, *five months after the alleged occurrence*. This witness finds mention at Serial No.13 in the calendar of witnesses in the report under section 173 dated 30.10.2006. This witness however did not appear at the trial. 07.01.2006
8. Investigation marked to S.P. Investigation CW.2. 14.01.2006
9. Investigation entrusted to Noor Muhammad Inspector CW.1 who prepared site plan Ex.CW 1/A. 21.01.2006
10. Statement of witnesses recorded and site plan of the place of occurrence prepared by CW.1. 27.01.2006
11. Pension Book allegedly produced by accused before Noor Muhammad CW.1. 28.01.2006
12. Zahid Mehmood accused joined investigation see CW.1 28.01.2006
13. Panel of Officers constituted by S.P. Investigation for a thorough probe in the matter. see CW.1 27.02.2006
14. Zahid Mehmood formally arrested by Abdur Rauf Inspector as stated by CW.1 27.02.2006
15. Physical remands of accused Zahid obtained on two dates. See CW.1 06.03.2006
& 09.03.2006
16. CW.2, S.P. Investigation, confirmed the result of panel investigation: appellant was declared innocent. 11.03.2006
17. Investigation entrusted to Muhammad Riaz Rabana D.S.P. Investigation. He got Ifikhar, Ghulam Abbas and Ashfaq arrested. See CW.4 25.03.2006
18. House of Ishaq accused was raided where 19.04.2006

according to complainant the two abducted women were confined but nothing was recovered. Zahid accused had been interrogated in jail on 17.04.2006. Confrontational meetings were arranged between complainant party and accused on different dates as the complainant kept on implicating different persons but no solid evidence was found against any accused.

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| 19. | CW.5 Sher Ahmad Tawana Inspector Investigation cell arrested Iftikhar accused | 03.05.2006 |
| 20. | CW.5 arrested Shafique Ghulam Abbas and Muhammad Ashraf accused. | 08.05.2006 |
| 21. | D.P.O. Sargodha deputed Sher Ahmad Tiwana Inspector to assist CW.1 in the investigation. | 03.05.2006 |
| 22. | Investigation transferred to Punjab Investigation Lahore from Muhammad Riaz Rabana DSP by the order of Lahore High Court. | 16.05.2006 |
| 23. | Muhammad Riaz Rabana DSP concluded that Ashfaq, Shafiq, Ghulam Abbas, Iftikhar, Ashraf and Iftikhar son of Muhammad Yar were innocent. | 16.05.2006 |
| 24. | Discharge report prepared. Learned Area Magistrate did not agree with this. | 11.10.2006 |
| 25. | Report under section 173 submitted by SHO Miani indicating various steps taken during investigation by different police officers. All the seven accused suspected of the crime were found innocent. However report was submitted against seven accused because the learned trial judge had not agreed with the discharge report. | 30.10.2006 |
| 26. | CW.6 Muhammad Azhar Yaqoob Inspector recorded supplementary statement of complainant Muhammad Khan. He nominated Muhammad Khan Constable as the culprit and latter was arrested on 22.12.2006. | 20.12.2006 |
| 27. | Fresh report under section 173 submitted in the court requiring eight accused persons to face trial. | 17.04.2007 |
| 28. | Private complaint by Muhammad Khan against eight accused filed in the court of District and Sessions Judge Sargodha. | 24.05.2008 |
| 29. | Charge framed against eight accused. The 8 th accused Muhammad Ashraf was declared proclaimed offender. | 23.06.2008 |
| 30. | Recording of evidence of witness commence | 23.06.2008 |

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|-----|---|------------|
| | on 23.06.2008 and continued till 14.07.2008 | 14.07.2008 |
| 31. | Statement of accused without oath recorded | 16.07.2008 |
| 32. | Impugned judgment announced by learned Additional Sessions Judge, Bhalwal. Six accused were acquitted. One accused was P.O. Only the accused Zahid Mehmood (appellant) was convicted under section 364 Penal Code and sentenced for life imprisonment with fine of Rs. 50,000/- and in default of payment of fine to undergo a sentence six months S.I. | 17.07.2008 |

THE IMPUGNED JUDGMENT

36. In paragraph 23 of the impugned judgment learned trial court enumerated eight reasons on the basis of which it was found that the prosecution had failed to prove the case against six co-accused. The reasons that found favour with the learned trial court for acquitting six co-accused were:-

- i. The entire version of the prosecution was mentioned as ground No.1 in paragraph 23 of the impugned judgment.
- ii. Delay of 05 months in reporting the FIR.
- iii. Six persons were involved as co-accused only because of their friendship with Zahid Mahmood, accused.
- iv. After a period of one year and four months accused Muhammad Khan was involved in the occurrence.
- v. All the investigating Officers exonerated the accused.
- vi. The complaint was filed by Muhammad Khan three years after the occurrence or in other words two and a half years after the FIR was registered.
- vii. That the complainant while deposing before the trial court did not disclose the source of information as to how he identified the unknown person as Iftikhar PCO Wala who was accompanying Zahid Mehmood at the time of occurrence. Similarly Pw.3 and 4 also failed to disclose the source how the unknown was identified as Iftikhar by them.
- viii. Mudassar Faiz, PW.6, stated that his statement was not recorded under section 161 of the Code of Criminal Procedure and he appeared in the trial Court on 24.06.2008 after a lapse of about three years.

37. On the other hand the learned Additional Sessions Judge notwithstanding the eight points referred to above, on the same set of evidence found, (in paragraph 26 of the impugned judgment) that the appellant was guilty for the following eleven reasons:-

i. That initially the complainant had lodged a crime report against the appellant alleging that the latter took away his grand daughter in the presence of witnesses and then on 19.08.2005 Mst. Asmat Bibi went to the house of accused to fetch Mst. Tabassum Faiz but she also did not come back.

ii. That on 17.08.2005 the appellant accompanied by co-accused Iftikhar PCO-Wala on Motorcycle took away Mst. Tabassum Faiz. Thereafter Mst. Asmat Bibi went to the house of accused to get back her daughter but she also did not turn up.

iii. PW.2 supported the complainant that accused Zahid Mehmood took away Mst. Tabassum Faiz from the complainant's house.

iv. PW.3 also supported complainant that accused Zahid Mehmood took away the abductee.

v. PW.4 also deposed to the same effect.

vi. PW.5 Mst. Sakina “also corroborated the complainant story.”

vii. Zahid accused alone is nominated for taking away Mst.

Tabassum Faiz from the house of the complainant and later on Mst. Asmat

Bibi went to the house of the accused but did not return.

viii. The witnesses of prosecution remained unshaken on the point that accused Zahid Mehmood took Mst. Tabassum Faiz and that Mst. Asmat

Bibi did not return from the house of the accused.

ix. There is no evidence to prove Zina.

x. There is no evidence of Murder

xi. What is certain that Zahid Mehmood accused abducted Mst.

Tabassum Faiz on “the pretext to meet his wife” has not been located.

Furthermore Mst. Asmat Bibi also did not return.

38. The reasons which prevailed upon the learned trial court to acquit six co-accused of appellant amply covered the case of the latter. It is an established principle of law that doubt accruing on one substantial point can entitle the accused to an acquittal. The position that boils down is as follows:-

i. Why were not the factors, found favourable for the six acquitted accused, not attracted in the case of the appellant?

ii. Had the ingredients of section 364 of the Pakistan Penal Code been proved beyond reasonable doubt?

iii. What factors the court is required to consider in a case like this where the element of last seen and extra-judicial confession have been alleged but not proved satisfactorily?

iv. Is the appellant not entitled to the benefit of reasonable doubt in view of inexplicable and inordinate delay in reporting the matter initially to police and then introduced substantial improvement by invoking judicial intervention by way of a private complaint?

v. Did not the case require a deeper appreciation particularly when Mst. Asmat Bibi was stated to have gone after her daughter but there is no direct evidence that she was seen going to the house of accused or was seen in the house of accused?. From the evidence it appears that she was last seen in the house of complainant. The complainant however stated that on 19.08.2005 she had left for the house of the accused but no one confirmed that assertion. According to PW.5 the accused was in Bhera on 18.08.2005

and Mst. Asmat Bibi was in the house of the complainant and thereafter she does not figure anywhere.

38. The chronology of events and the inferences that can legitimately be deduced therefrom present a picture absolutely different from the recorded version of the prosecution. The abductee is reported to have gone to the house of the accused on 17.08.2005 at 5 p.m. but PW.6 stated positively that he met accused on 18.08.2005 at his house i.e. in Chak Sahib Khan Awan and asked him to send his sister back home as her mother was not well. Mst. Asmat Bibi is shown to have left for the house of the accused in the same Chak on 19.08.2005. It means that from 17.08.2005 evening to 19.08.2005 the accused was in Chak Sahib Khan Awan. But PW.5 Mst. Sakina to the contrary, stated that the accused had brought Mst. Tabassum Faiz to Bhera in her house on 18.08.2005. There is no mention of Mst. Asmat Bibi in her deposition. This means that the statement of PW.6 as well as PW.1 and PW.2 are false. PW5 has been introduced by the complainant to establish the fact that Mst. Tabassum Faiz was taken by accused Zahid Mehmood from place to place but this improvement totally contradicts and demolishes the prosecution case relating to the presence of accused with

Mst. Tabassum Faiz abductee in Chak on 18th and 19th August 2005 when

Mst. Asmat Bibi supposedly joined both of them.

CONCLUSIONS

39. In the light of what has been stated it is not possible for us to maintain the conviction and sentence of the appellant also for the following reasons:-

i. That the evidence of last seen alone is not sufficient to establish the guilt. Last seen evidence is a weak type of evidence. It is not even supported in this case by any reliable evidence of extra judicial confession.

There is no incriminating recovery on the pointation of accused.

ii. The element of Zina and Murder has already not been believed by the learned trial court.

iii. The ingredients of section 364 of the Penal Code have not been established.

iv. The mysterious and inexplicable reluctance of complainant initially to inform the police for almost five months on such a serious incident having taken place at his residence and then the unwarranted and

enigmatic delay in moving the Court by way of private complaint has only added confusion to the enigmatic crime story.

v. The improvements on vital points introduced in the shadowy narrative make us extremely skeptical about this melodrama.

vi. The fact that the uncle of the abductee, Mst. Tabassum Faiz, appeared before the police to denounce the allegation of abduction with avowed assertion that the complainant was making wild accusations to dishonor them goes a long way to demolish the prosecution case.

vii. Not a single independent witness has appeared to establish that big Panchait was ever convened to consider and decide the allegation of abduction.

viii. The varying versions about the assets of Mst. Asmat Bibi does neither inspire confidence nor it appeals to reason that in the presence of a grown up son, aged about 23 years P.W.6, the mother would keep valuable ornaments and large amount of cash and buffaloes with a stranger. Moreover we are not at all certain as to whether Mst. Asmat Bibi had the resources to save enormous amount without ostensible means particularly when she had already built a house. As a landowner, living in a village, and depending

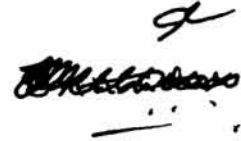
upon 2/3 acres of agricultural land would never keep her buffaloes/goats with someone and thus deprive herself and her land from the gains accruing therefrom.

ix. Dishonest additions in the number of accused as the investigation progressed is indicative of the unfortunate trend that must be deprecated as it is one of the causes of delays in completing the investigation and consequent slowing down of the judicial process apart from being a source of agony for innocent persons.. The result of this nefarious tendency is that the real culprit at times escapes conviction because innocent persons are acquitted on the same set of evidence and the benefit of reasonable doubt cannot be denied to the accused. It was for this reason also that we had to examine minutely the record and the file of this case. The delayed report and protracted investigation and still more delayed trial signals caution to the judge.


x. The evidence on record is not self-assuring.

40. Resultantly Criminal Appeal No.72/L of 2008 is accepted. The impugned judgment dated 17.07.2008 delivered by learned Additional District & Sessions Judge, Bhalwal in the Private Complaint entitled

Muhammad Khan Vs. Zahid Mehmood and others is hereby set aside. The
appellant is directed to be released forthwith unless required in some other
case.

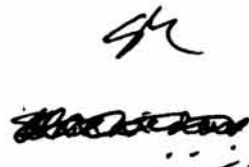


JUSTICE SYED AFZAL HAIDER



JUSTICE MUHAMMAD ZAFAR YASIN

Announced in open Court
on 06.06.09 at Islamabad
Mujeeb-ur-Rehman/



Fit for reporting

