

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE
MR. JUSTICE SYED AFZAL HAIDER
MR. JUSTICE SHAHZADO SHAIKH**

CRIMINAL APPEAL NO. 86/L OF 2007

1. Munir son Muhammad Ashraf
r/o Chak No.36/K.B. Tehsil Burewala, District Vehari.
2. Muhammad Aslam son of Shakir
r/o Balara Dilawar , District Vehari
3. Bashir son of Muhammad Ashraf
r/o Chak No.35/K.B. Tehsil Burewala, District Vehari

.... Appellants

Versus

The State Respondent

JAIL CRIMINAL APPEAL NO. 100/I OF 2007

Nazir Ahmed son of Muhammad Hanif
r/o Balara Dilawar P.S. Sahuka, District Vehari

... Appellant

Versus

The State ... Respondent

 **JAIL CRIMINAL APPEAL NO. 101/I OF 2007**

Hanif son of Gul Muhammad
r/o Balara Dilawar P.S. Sahuka, District Vehari

... Appellant

Versus

The State ... Respondent

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CRIMINAL MURDER REFERENCE NO 7/L OF 2007

The State Appellant

Versus

Munir Ahmed son of Muhammad Ashraf
r/o Chak No.36/K.B. Tehsil Burewala, District Vehari

.... Respondent

Counsel for appellants ... Mr.Muhammad Ramzan Khalid
Joyia
and Syed Saeed Ahmed Tirmizi,
Advocates

Counsel for the State Mr. Noor Ahmed Bhatti,
DDPP

FIR No. Date & 146, 7-7-2000
Police Station Sahuka, Vehari

Date of judgment of 10-4-2007
trial court

Dates of Institution of all 26-4-2007, 23-4-2007,
the appeals and Murder 23-4-2007 and 5-12-2007
Reference respectively

....

Date of hearing 11.10.2010

Date of decision 21-10-2010

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JUDGMENT:

AGHA RAFIQ AHMED KHAN, Chief Justice:


By this single judgment the following four connected matters will be decided as they have arisen out of judgment relatable to the same crime report:-

- a. Cr. Appeal No. 86/L/2007 moved by appellants Munir, Muhammad Aslam & Bashir
 - b. J. Cr. Appeal No.100/I/2007 moved by appellant Nazir Ahmed
 - c. J. Cr. Appeal No. 101/I/2007 moved by appellant Hanif
- and
- d. Cr. Murder Ref. No.7/L/2007
The State Vs. Munir Ahmed sent by the learned trial Court.



The impugned judgment was delivered on 10.04.2007 by learned Additional Sessions Judge, Burewala in Sessions Case No.27-2002 & Sessions Trial No.7-2003 whereby they were convicted and sentenced as under:-

- i) Appellants **Munir, Bashir, Hanif, Aslam and Nazir** were convicted under section **148** of the Pakistan Penal Code and sentenced to three years rigorous imprisonment each.
- ii) **Appellant Munir** was convicted under section **302(b)** of the Pakistan Penal Code as Tazir and sentenced to death on two counts with direction to pay compensation of Rs.50,000/- to the legal heirs of deceased under section 544-A of the Code of Criminal Procedure or in failure of payment of compensation it was directed that the same be recovered as arrears of land revenue and also to undergo six months simple imprisonment.
- iii) Appellants **Hanif, Aslam, Bashir and Nazir** were further convicted under section **149** read with section 302(b) of the Pakistan Penal Code and sentenced to life imprisonment each with direction to pay compensation of Rs.50,000/- each to the legal heirs of the deceased. The compensation be recovered as arrears of land revenue and then also to undergo six months simple imprisonment each.
- iv) The five appellants were also convicted under section **11** of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to life imprisonment each with fine of Rs.10,000/- each or in default thereof to further undergo two months simple imprisonment each.



All the sentences awarded to the appellants were ordered to run concurrently with benefit of section 382-B of the Code of Criminal Procedure. The learned trial Court through the same judgment acquitted co-accused Muhammad Yaseen, Sabir, Ashraf, Mumtaz, Mukhtar and Jan Muhammad by extending them benefit of doubt. The learned trial Court also directed to

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issue perpetual warrants of arrest against absconding accused Maqbool. The learned Additional Sessions Judge, Burewala has moved a murder reference, registered in this Court as Criminal Murder Reference No.7/L of 2007, which has been put up for confirmation of death sentence along with the appeals.

PROSECUTION CASE

2. The prosecution case is based upon the statement of complainant Muhammad Amir PW.10 who went to police Station Sahuka, District Vehari on 07.07.2000 and laid information about the omission of various offences. His statement was recorded by Jamil Hassan S.I. P.W.20 which registered as FIR, Ex.PU at 6.45 a.m. on the same day.

3. The complainant stated in the crime report that about 1½ years before the incident he contracted Nikah with Mst. Salma Bibi (divorcee) and were living as husband and

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wife. Munir Ahmed, real brother of Mst. Salma Bibi got registered a case against him and others at Police Station Sahuka under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 vide FIR No.25/2000. However, they were on bail. On 07.07.2000 at 4.30 a.m. he alongwith his wife Mst. Salma, father Ghulam Fareed, mother Mst. Zeenat, brother Yaseen deceased, Mst. Bashiran wife of Yaseen, Muhammad Abbas, Naseer, Haitum and Mst. Parveen daughter of Haitum and other family members was present in their house when accused Munir armed with rifle, Bashir armed with hatchet, Aslam armed with .12-bore pistol, Hanif armed with .12-bore gun, Nazir armed with Sota and six unknown persons, whom he could identify, armed with Sota entered the Havili. Munir accused raised 'lalkara' that he would teach a lesson to the complainant for abducting Mst. Salma. He fire three shots in quick succession with his rifle hitting complainant's brother

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Yaseen. The shot fired by Hanif hit the left leg of Yaseen. The pistol fire shot of Aslam hit the right arm of Mst. Zainab, mother of complainant. Munir accused armed a shot at the complainant but luckily he escaped and the fire hit the chest of a companion of the accused. Bashir Ahmed accused gave a hatchet blow on the head of the complainant. Nazir and other unknown accused gave Sota blows to Haitum, Mst. Bashiran, Mst. Rabia, Ghulam Fareed and Mst. Zeenat. The accused abducted Mst. Parveen daughter of Haitum and Mst. Salma wife of the complainant and also took away two 8-MM rifles of the complainant. Yaseen, brother of the complainant and one of the intruder, an unknown accused, succumbed to injuries at the spot. The motive of the occurrence, as stated by the complainant, was that the accused persons with common intention attacked the complainant to avenge the marriage of the complainant with Mst. Salma Bibi. The said crime report

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was registered under sections 302/449, 324/148, 149 of the Pakistan Penal Code as well as sections 11/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

POLICE INVESTIGATION

4. Investigation ensued as a consequence of registration of crime report. Jamil Hassan Sub Inspector PW.20 undertook the investigation. He recorded statement Ex.PU of complainant Muhammad Amir on 07.07.2000. He inspected the place of occurrence, prepared site plan Ex.PKK, recorded statements of witnesses under section 161 of the Code of Criminal Procedure, prepared injury statements Ex.PM/2 & Ex.PN/2 as well as the inquest reports Ex.PM/3 & Ex.PN/3. He sent the dead bodies of Yaseen deceased and the unknown accused alongwith the injured witnesses for medical and post-mortem examination of the dead bodies. He prepared recovery memo Ex.PV regarding recovery of earth stained with blood of

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Yaseen deceased and also recovery memo Ex.PW regarding recovery of blood stained earth relating to unknown accused.

He took into possession three empties of 7-MM P-6/1-3 through recovery memo Ex.PX. He also took into possession two

empties of .12-bore gun P-7/1-2 through recovery memo Ex.PY. He also took into possession a cot P-8, on which dead

body of Yaseen deceased was lying, vide recovery memo Ex.PZ. He took into possession last worn clothes of Yaseen

deceased alongwith post-mortem report by virtue of recovery memo Ex. PLL as well as the last worn clothes alongwith post-

mortem report of unknown accused vide recovery memo Ex.PMM which were produced before him by Nawab Ali

Constable PW 21 and also recorded statements of witnesses of recovery memos. On 15.07.2000 he recovered Mst. Parveen

abductee from the Bhaini of Muhammad Ashraf accused. Site plan of place of recovery of Mst. Parveen abductee Ex.PAA

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was also prepared. He submitted applications Ex.PNN and Ex.POO before the Illaqa Magistrate for medical examination of Mst. Parveen PW 12, and for recording her statement under section 164 of the Code of Criminal Procedure respectively. On the order of learned Illaqa Magistrate Mst. Parveen was medically examined. The medico-legal certificate of the said Mst. Parveen alongwith a sealed envelope was produced before him which was taken into possession by him through recovery memo Ex.PAA. He recorded statement of Mst. Parveen and other witnesses under section 161 of the Code of Criminal Procedure. He also recorded statements of Latif Ullah Head Constable PW.8 and Muhammad Ishaq Constable PW.2 under section 161 of the Code of Criminal Procedure on 18.07.2000. He arrested accused Aslam, Sabir, Ashraf, Hanif and Bashir on 02.08.2000 and obtained their physical remand from the Illaqa Magistrate. On 11.08.2000 Mukhtar accused was also arrested

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who produced Sota P-2 which was taken into possession through recovery memo Ex.PC. On the pointation of Bashir accused hatchet P-3 was recovered from his living room which was taken into possession through recovery memo Ex.PD. The witness also prepared site plan of place of recovery Ex.PD/1. Muhammad Ashraf accused got recovered Sota P-4 from his Ihata which he took into possession through recovery memo Ex.PE. Site plan Ex.PE/1 of place of recovery was also prepared. Sabir accused got recovered Sota P-5 from his residential quarter which was taken into possession by the Investigating Officer vide recovery memo Ex.PF. Site plan Ex.PF/I of the place of recovery was also prepared. He sent accused Mukhtar, Bashir, Sabir, Ashraf to judicial lock-up on 12.08.2000. He declared accused Hanif and Aslam innocent on 13.08.2000. On 15.08.2000 Mumtaz accused appeared before

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him and was arrested by him. On 18.08.2000 the witness was transferred.

b. The investigation of the case was then entrusted to Muhammad Akhtar Sub Inspector PW.18. Accused Mumtaz got recovered Sota P-14 from a room of his residential Ihata which was taken into possession by him through recovery memo Ex.PGG. Statements of recovery witnesses were recorded under section 161 of the Code of Criminal Procedure. Site plan Ex.PGG/I of the place of recovery was prepared. He arrested accused Jan Muhammad alias Janoo on 13.09.2000. On 27.09.2000 accused Jan Muhammad alias Janoo got recovered Sota P-15 from his residential room which he took into possession through recovery memo Ex.PHH and prepared site plan of the place of recovery Ex.PHH/1 and recorded statements of recovery witnesses under section 161 of the Code of Criminal Procedure. On 28.09.2000 he obtained warrant of

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arrest Ex.PS, of accused Munir warrant Ex.PR of Yaseen, warrant Ex.PT of Nazir and warrant Ex.PQ of Maqbool from the Illaqa Magistrate through application Ex.PJJ. He entrusted the said warrants to Shah Bahram constable PW.5, for execution. On 24.10.2000 he recorded statements of Muhammad Afzal Muharrar, Shah Bahram PW.5 and Irshad Ahmad Constables PW.9 under section 161 of the Code of Criminal Procedure.

c. The case file was thereafter entrusted to Noor Nawaz Sub Inspector PW.17 on 28.09.2001 who arrested accused Maqbool on the same day and obtained his physical remand on 29.09.2001. On 01.10.2001 Falak Sher cousin of Maqbool accused produced Sota P-1 before him which he took into possession though recovery memo Ex.PA and recorded statements of witnesses under section 161 of the Code of Criminal Procedure. He sent Maqbool accused to judicial lock

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up on 12.10.2001. On 02.12.2001 he was again entrusted with the case file for arrest of proclaimed offenders. On the same day he formally arrested accused Muhammad Yaseen who was already under custody with police station Arifwala and sent him to judicial lock up on 12.01.2002. He formally arrested accused Nazir Ahmad on 05.08.2002 who was confined in District Jail, Bahawalnagar. On 18.08.2002 Ghulam Sabir Lakhuka produced before him Sota P-13 belonging to Nazir Ahmed accused which was taken into possession through recovery memo Ex.PFF. On 20.08.2002 he was transferred and the investigation of the case was entrusted to Abdul Latif Sub Inspector PW.19, on 30.09.2004. On 04.10.2004 Munir Ahmad accused, in police custody, led to recovery of rifle .222, engraved 7-MM on its barrel, from an iron box lying in a room of his residential house situated in Chak No.33/KB. He took the rifle P-11 alongwith magazine P-11/1 into possession vide

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recovery memo Ex.PDD and prepared site plan of the place of recovery Ex.PFF. On 12.10.2004 Munir Ahmed accused again got recovered rifle P-12 after digging the earth from near the cattle shed which was taken into possession through recovery memo Ex.PEE. Site plan Ex.PFF/I of the place of recovery was prepared and statements of witnesses under section 161 of the Code of Criminal Procedure.

d. On 08.10.2004 Asgher Ali Assistant Sub Inspector PW.16 was entrusted with investigation of the case.

He interrogated Munir accused who got recovered a rifle 8-MM P-12 belonging to the complainant from the cattle pond of his house which was wrapped in a plastic paper and buried. It was taken into possession through recovery memo Ex.PEE.

5. The Station House Officer after completion of investigation submitted in the court a report under section 173

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of the Code of Criminal Procedure on 14.10.2004 requiring the accused to face trial.

6. The learned trial Court thereafter framed charges against the accused persons on 13.12.2004 under sections 148, 337-F(i) read with section 149, 324 read with sections 149, 380 read with section 149, 449 read with section 149, 302 read with section 149 of the Pakistan Penal Code and also under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Accused Yaseen and Jan Muhammad were further charged under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

PROSECUTION EVIDENCE

7. The prosecution produced twenty two witnesses to prove its case. The gist of the deposition of the witnesses is as follows:-

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- (i) PW.1 Muhammad Afzal Assistant Sub Inspector stated that he was posted as Muharrar/Head Constable at police station Sahuka. On 28.09.2000 he handed over non-bailable warrants to Shah Bahram constable for execution against accused Munir, Yaseen, Maqbool and Nazir. On 21.10.2000 he handed over proclamation of above-said accused to Irshad Ahmad constable for execution.
- (ii) PW.2 Muhammad Ishaq constable had delivered two sealed parcels containing blood stained earth in the office of Chemical Examiner, Lahore on 15.07.2000 which were handed over to him by the Muharrar on 14.07.2000. He also delivered sealed envelope in the office of Chemical Examiner, Multan on 22.07.2000 which was handed over to him by the Muharrar on 21.07.2000.
- (iii) PW.3 Ghulam Mustafa constable stated that on 01.10.2001 he and Noor Nawaz Sub Inspector were present at police station Sahuka. Falak Sher cousin of Maqbool accused produced a Sota P-1 of Keekar before Noor Nawaz Sub Inspector which was taken into possession through recovery memo Ex.PA.

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(iv) PW.4 Anwar Mahmood Patwari stated that on 12.06.2001 the Station House Officer called him, gave him sketch of the place of occurrence and took him to the place of occurrence where complainant and PWs were present. He prepared site plans Ex.PB, PB/1 and PB/2 in the scale of five karams equal to one inch and handed over the same to the Station House Officer on 15.06.2001.

(v) PW.5 Shah Bahram Constable stated that on 11.08.2000 he alongwith Muhammad Sharif Constable had attested the following recovery memos:-

(i) Ex.PC by which the Investigating Officer took into possession Sota P-2 produced by Mukhtar accused.

(ii) Ex.PD by which the Investigating Officer took into possession hatchet P-3 which was recovered on the pointation of Bashir Ahmed accused.

(iii) Ex.PE by which the Investigating Officer took into possession Sota P-4 which was recovered on the pointation of Muhammad Ashraf accused.

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(iv) Ex.PF by which the Investigating Officer took into possession Sota P-5 which was recovered on the pointation of Sabir accused.

(vi) PW.6 Dr. Muhammad Akram had medically examined Haitum, injured PW, on 07.07.2000 and observed as under:-

- “1. Contusion 26 cm. x 2.5 cm on back of chest transverse in direction.
2. Contusion 11 cm x 2 cm with swelling 14 cm x 7 cm on back and outer side of left chest. Patient complained of severe pain in this area.
3. Contusion with swelling 10 cm x 4 cm on back and inner side of left fore arm on its lower part.
4. An abrasion 1 cm x .5 cm on inner and back of right fore arm.
5. Abrasion 1 cm x .5 cm on upper part of right fore arm.
6. Contusion with swelling 11 cm x 4 cm on inner side of right ankle joint.
7. Contusion with swelling 8 cm x 4 cm on back and outer side of lower part of right fore arm.

The injury No.5 falls u/s 337-F(i) whereas other injuries were kept under observation for x-ray. All the injuries were caused by blunt weapon within the time of about six hours.

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I issued MLC No.281/2000 Ex.PG which is in my hand and bears my signatures.”

The doctor had also medically examined Muhammad Ameer complainant on the same day and observed as under:-

- “1. Lacerated wound 5 cm x 0.8 cm x bone exposed with swelling 9 cm x 5 cm on left side of front of head 8.5 cm above the left ear.
2. Abrasion with contusion 18 cm x 3 cm from upper and outer side of right pelvis to front of upper part of right thigh.
3. Two abrasions, each measuring 2 cm x 1 cm in an area of 6 cm x 3 cm with a distance of 3 cm from each other on front and upper part of right leg.

Injury No.3 falls u/s 337F(i) whereas rest of the injuries were kept under observation for x-ray result. Duration of injuries were within about 6 hours, whereas the weapon was blunt one. I issued MLC No.282/2000 Ex.PH which is in my hand and bears my signatures.”

The doctor had also medically examined Mst. Bashiran, injured PW, on the same day and observed as under:-

- “1. Lacerated wound 3 cm x .4 cm x scalp deep on right side of head 9.5 cm above right ear.

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2. Abrasion 2 cm x .5 cm on outer side of lower part of right upper arm.
3. Abrasion 5 cm x 1 cm on inner side of left knee joint.

Injuries No.2 and 3 fall u/s 337-F(i) whereas injury No.1 was KUO for x-ray. All the injuries were caused by blunt weapons within about 6 hours. I issued MLR No.283/2000 Ex.PJ which is in my hand and bears my signatures.

The doctor had also medically examined Mst. Zeenat Bibi on the same day and observed as under:-

- “1. Lacerated wound 2.8 cm x 0.5 cm x skin deep on outer side of right fore arm with swelling.
2. Contusion with swelling 6 cm x 3 cm on front of upper part of left chest. Patient complained of pain on back of chest.

Both the injuries were kept under observation and caused by blunt weapon within about 6 hours. I issued MLR No.284/2000 Ex.PK, which is in my hand and bears my signatures.”

The doctor had also medically examined Ghulam Farid, injured PW, on the same day and observed as under:-


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- “1. Abrasion with contusion 8 cm x 2 cm on
outer side of upper most part of left upper
arm.
2. Swelling 10 cm x 7 cm within contusion on
back of left fore-arm.

Injury No.1 falls u/s 337-F(i), injury No.2
was kept under observation for x-ray. Both the
injuries were caused by blunt weapons within
about 6 hours. I issued MLR No.285/2000 Ex.PL,
which is in my hand and bears my signatures.”

The doctor had also conducted autopsy on
the dead body of Yasin deceased and observed as
under:-



“It was a dead body of mald, aged about 42
years, with well built, face was pale, eyes
and mouth was closed. Rigor mortis and
post mortem staining was present. Body was
clad in Qamiz and vest (blood stained).

Injuries.

1. Fire arm wound 11 cm x 5 cm on
right lower jaw, starting from middle
of lower lip, passing through the right
lower jaw, breaking the lower jaw
and soft tissues into small pieces,

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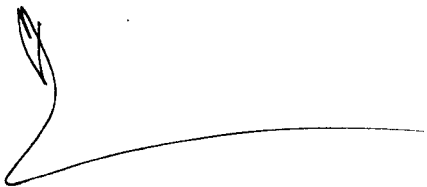
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ending at the angle of tissues into small pieces, ending at the angle of right lower jaw 3.5 cm below the lobule of right ear. Pieces of the bone and tongue was exposed on right side. Foreign body traveled from front of lower lip to angle of lower jaw. That were entry and exit wound correspondingly.

2. Fire arm injury 1.5 x 1 cm on outer side of right shoulder x muscle deep on outer side of right shoulder edges were black and inverted. That was entry wound surrounded by multiple scattered small burns, at variable distance from each other in an area of 10 cm x 8 cm, some are measuring .1 cm, other were measuring .3 cm.
3. Fire arm wound 3.5 x 2.5 cm x bone deep on front of right shoulder. Edges were inverted. That was exit wound. There was fracture of head of right humerous bone.
4. Fire arm wound 2.5 cm x 1.3 cm x deep going on lower most part of middle of chest .3 cm below the line joining both the nipples on lower most part of middle of chest. Edges were inverted. That was entry wound.



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5. Fire arm wound 1 dia meter x deep going on the middle of back or lower part of chest. Edges were averted. That was exit wound.
6. Fire arm wound .75 cm dia meter on inner side of lower part of left thigh x deep going. Edges were inverted. That was entry wound.

Scalp and skull.

Intact. Body of thoracic No.12 Vertibrea No.12 is fractured. Brain intact but the spinal cord at the level of thoracic No.12 was injured.

Thorax.

In the thorax cavity lyanx and trachea, and left lung were healthy, whereas, right lung was perforated close to mediastinum. Plurea perforated on right side and the right chest cavity was full of blood.

Pericardium was perforated. Right side of heart with entries of superior and inferior vena cava was injured. Both sides of heart were empty.

Walls were injured under injury No.4 and 5. Lower part of sternum was fractured. Sixth rib on right side was fractured, at its

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attachment with sternum. Blood vessels under the course of these injuries were injured.

Abdomen.

Walls, mouth, pharynx and esophagus, spleen, kidneys, pancreas, were found healthy.

Peritoneum was injured. Abdominal cavity was full blood. Diaphragm was perforated on right side close to middle line. Stomach was healthy and empty. Small and large intestines were healthy containing gases and fecal matter. There was laceration and through and through the left lobe of liver. Bladder was full of urine and healthy. Organs of generation internal and external were also healthy.

Muscles, Bones and Joints

A foreign body was palpable under the skin on outer side of front of left leg. Foreign body (bullet) was recovered and sealed in jar and handed over to the police.

Remarks.

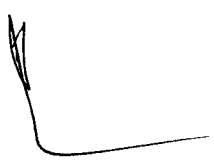
Death in this case was due to hemorrhage and shock as a result of above mentioned injuries. All the injuries collectively and injury No.4 individually sufficient to cause death under ordinary

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course of nature. All the injuries were anti mortem and caused by fire arm weapon. Probable time that elapsed between injury and death was immediate, between death and post mortem was within about 10 hours.

Dead body after post mortem examination, last worn clothes of the dead body, carbon copy report, police papers one sealed jar and foreign body, were handed over to Nawab Ali 44/C. I issued PMR No. 05/2000, Ex. PM and pictorial diagram of injuries Ex. PM/1, which are in my hand and bears my signatures. I also signed injury statement of Muhammad Yasin Ex. PM/2 and inquest report Ex. PM/3 prepared by the police.”



The doctor had also conducted autopsy on the dead body of unknown accused person and observed as under:-

External Remarks.

The dead body was of a male aged 35 years with well built. Face was pale, eyes were open, mouth was closed. Rigor mortis and post mortem staining were present. Body was clad in blood stained Qamiz and Shalwar.

Injuries.

1. Fire arm injury 3 cm x 1.5 cm x deep going on outer side of chest, 15 cm

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below the left axilla. Edges were inverted. That was wound of entry.

2. Fire arm injury 3 cm x 2 cm x deep going on front and lower part of right chest, 11 cm below and inner to right nipple 3.5 cm from middle line below the right costal margin. Edges were averted. That was wound of exit.

In cranium and spinal cord no abnormality was detected.

Thorax.

Walls were injured. Left chest cavity was full of blood. Left pleura was perforated and right pleura was normal. Larynx and trachea and right lung were healthy. There was perforation in the lower most part of lower lobe of left lung. Pericardium was perforated and contained blood. Lower part of heart was lacerated in an area of 6 cm x 5 cm opening both ventricles of the heart. Both sides were empty. Corresponding blood vessels were injured.

Abdomen.

Mouth, pharynx and esophagus, stomach, pancreas, small intestines, large intestine, spleen, kidneys and bladder and organs of generation external and internal were healthy. Stomach contained semi-digested food. Small and large intestines contained gases and fecal matter. Walls injured just below the right costal margin. Peritoneum was perforated. There was perforation 4 cm x 3 cm on left side of the diaphragm.

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There was laceration in the left lobe of liver
11 cm x 7 cm. Abdominal cavity was full of blood.

Remarks.

In my opinion, death in this case was due to
hemorrhage and shock as result of above
mentioned injuries. All the injuries were
collectively sufficient to cause death under
ordinary course of nature. All the injuries were
anti-mortem and caused by fire arm weapon.
Probable time that elapsed

- a) between injury and death immediately and
b) between death and post mortem within about 12
hours.

Dead body after post mortem examination, last worn
clothes of dead body, carbon copy of report and police
papers were handed over to Nawab Ali 44-C. I issued
PMR No.6/2000 Ex.PN and its pictorial diagram of
injuries Ex.PN/1 which are in my hand and bears my
signatures. I also signed injury statement Ex.PN/2 and
inquest report Ex.PN/3 prepared by the police.”

- (vii) PW.7 Dr. Afia Naz Alam had medically examined
Mst. Parveen on 15.07.2000 and observed as
under:-

Local Examination.

No marks of violence or injury found on
external genetilia. Hymen was torn and healed.
Vagina did not admit two fingers easily. Two

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vaginal swabs were taken on posterior fornix of vagina, dried at room temperature, sealed stamped and handed over to police for the detection of semen, if any, by Chemical Examination.

General Physical Examination.

Multiple contusions on front of middle of right arm.

Remarks.

The victim was subjected to sexual intercourse. However, I reserved my final opinion till receipt of report of Chemical Examiner. The report of Chemical Examiner is not before me. I left service from THQ Hospital Burewala in February, 2002, as my service was on contract and thereafter I joined Jinnah Hospital Lahore. The application for medical examination which was presented before me is Ex.PO which is signed by me. The MLR No.63/2000 is in my hand and bears my signatures, which is Ex.PP.”

(viii) PW.8 Latif Ullah Assistant Sub Inspector stated that he was posted as Muharrar/Head Constable at police station Sahuka. On 07.07.2000 Muhammad Jamil Sub Inspector/Station House Officer handed over to him two parcels containing blood stained

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earth for keeping the same in safe custody in Malkhana. The needful was done. On 14.07.2002 he handed over the said parcels to Muhammad Ishaq Constable for onward transmission in the office of Chemical Examiner, Lahore. On 21.07.2000 Muhammad Jamil Sub Inspector/Station House Officer gave him a parcel containing swabs for onward transmission to the office of the Chemical Examiner, Multan which was handed over by him to Muhammad Ishaq Constable for deposit in the relevant office.

(ix) PW.9 Irshad Ahmad Constable was entrusted with proclamations relating to accused Maqbool, Muhammad Yasin, Munir & Nazir Ahmed Ex.PQ, PR, PS & PT. After completing with the requisite formalities he made reports on the back of each proclamation which are Ex.PQ/1, PR/1, PS/1, PT/1.

(x) Muhammad Amir complainant appeared as PW.10. He endorsed the contents of his crime report Ex.PU.

(xi) Muhammad Abbas brother of complainant appeared as PW.11 and gave details about the

occurrence as mentioned in the crime report. He attested the following recovery memos:-

- (a) Ex.PV recovery memo of blood stained earth which was taken into possession from under the dead body of Yaseen deceased.
- (b) Ex.PW recovery memo of blood stained earth which was taken into possession from under the dead body of unknown accused.
- (c) Ex.PX recovery memo of three crime empties of rifle P-6/1-3.
- (d) Ex.PY recovery memo of two crime empties of 12-bore rifle/gun P-7/1-2.
- (e) Ex.PZ recovery memo of blood stained cot P-8.
- (f) Ex.PBB recovery memo of Sota P-9 which was recovered on the disclosure of Mumtaz accused from a room of his residential house.
- (g) Ex.PTT recovery memo of Sota P-10 which was recovered on the pointation of Jan Muhammad accused from a residential room of his house.

The witness further stated that on 15.07.2000 at about 5.00 a.m. he alongwith his brother Naseer

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and the Investigating Officer went to the Bhaini of Muhammad Ashraf for recovery of Mst. Parveen. When they reached there, they heard hue and cries from a room of Bhaini of Muhammad Ashraf. They unchained the door and found Mst. Parveen present there. Mst. Parveen stated before them that accused Jan Muhammad and Muhammad Yaseen committed zina-bil-jabr with her.

- (xii) Mst. Parveen appeared at the trial as PW.12. She gave details of the occurrence. She stated that the accused forcibly abducted her and Mst. Salma by tying their mouths. After covering some distance accused Munir etc. took away Mst. Salma while accused Ashraf, Yaseen, Jan Muhammad, Maqbool, Mumtaz, Sabir, Mukhtar took her to the Bhani of Ashraf while riding on horses. They confined her in a room. Accused Yaseen and Jan Muhammad committed zina-bil-jabr with her one after the other. After eight days her paternal uncle Abbas, Naseer and police came there and recovered her. She thereafter got her statement recorded before the police. The police produced her before the Magistrate on the same day. She

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was medically examined in the Civil Hospital Burewala on the same day.

(xiii) PW.13 Zulfiqar Ali Head Constable had attested recovery memo Ex.PDD whereby the police took into possession .222 bore rifle P-11 recovered on the pointation of accused Munir Ahmed from an iron box lying in his residential room.

(xiv) PW.14 Muhammad Sardar constable had attested recovery memo Ex.PEE whereby the police took into possession 8-MM rifle recovered on the pointation of accused Munir from cattle-shed of his residential Ihata.

(xv) PW.15 Muhammad Siddique Assistant Sub Inspector stated that on 29.09.2004 he received information about presence of proclaimed offender Munir accused at Adda Rehmoon Wala who was waiting for bus. He arrested him from the said place and detained him in the police lock up.

(xvi) PW.16 Asghar Ali, PW.17 Noor Nawaz Sub Inspector, PW.18 Muhammad Akhtar Sub Inspector, PW.19 Abdul Latif Sub Inspector and PW.20 Jamil Hassan Sub Inspector had investigated the case whose detail has already been given in para 3 of this judgment.

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(xvii) PW.21 Nawab Ali constable stated that on 07.07.2000 he alongwith Liaqat Ali and Karim, PW.22, escorted dead bodies of Muhammad Yaseen deceased and unknown accused to the mortuary of RHC, Sahuka. After post mortem examination he produced last worn blood stained clothes of Yaseen deceased, Qameez P-16, Chadar P-17 before the Investigating Officer who took the same into possession through recovery memo Ex.PLL. He also produced last worn blood stained clothes Qamiz P-18 and Shalwar P-19 before the Investigating Officer who took the same into possession through recovery memo Ex.PMM. He attested recovery memos Ex.PNN by which Noor Nawaz Sub Inspector PW.17 took into possession Sota P-20 produced by Falak Sher cousin of Maqbool accused and Ex.POO whereby Noor Nawaz Sub Inspector took into possession Sota P-21 produced by Ghulam Sabir Lakhuka during interrogation of Nazir Ahmed accused.

(xviii)PW.22 Kareem had identified the last worn clothes of deceased Yaseen and the other unknown deceased. He attested the recovery memos Ex.PNN

whereby the police took into possession blood stained Kurta P-NN/A and blood stained Chadar P-NN/B of Yaseen deceased and Ex.PMM whereby police took into possession blood stained Qameez P-OO/A and Shalwar P-OO/B.

8. The prosecution tendered in evidence report of Forensic Science Laboratory Ex.P-PP, report of Chemical Examiner No.812/C Ex.P.QQ, report of Chemical Examiner No.813 Ex.P.RR, report of Serologist regarding earth Ex.P.RR/A, report of Chemical Examiner regarding vaginal swabs Ex.P.SS and closed its evidence on 31.05.2005.

STATEMENT OF ACCUSED

9. The learned trial court thereafter recorded statements of accused under section 342 of the Code of Criminal Procedure. The accused denied the allegations leveled against them and claimed to be innocent. Munir Ahmad

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accused in reply to question "Why this case against you and why the PWs deposed against you?" stated as under:-

"It is incorrect. I am the complainant of case FIR No.25/2000 u/s 16/10/7/1979 P.S Sahuka against the complainant of this case. After that I went to Karachi to earn livelihood. Complainant party is notorious and having enmity with different people. Only to pressurize and to get compromise in above referred case, they have roped me in this false case."

The remaining accused persons in response to the above mentioned question stated as under:-

"All the evidence is based upon suspicion and surmises. I am innocent in this case and there is no incriminating evidence against me."

TRIAL COURT VERDICT



10. The learned trial Court after completing the codal formalities of the trial returned a verdict of guilt. The appellants were convicted and sentenced as indicated in the opening paragraph of this judgment. Reasons that prevailed upon the learned trial court in holding the appellants guilty have been

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detailed in paragraph 20 through 24 of the impugned judgment.

The main points in the said portion of the judgment are as

follows:-

i. the motive is proved. Munir and Bashir accused, two real brothers of Mst. Salma, wife of the complainant, had a motive;

ii. the medical evidence to the extent of Yaseen and Admeera deceased is in line with the ocular account;

iii. recoveries are proved. This clement lends support to the prosecution story;

iv. the circumstantial evidence also lends support to the occurrence; and

v. The learned trial Court also found that:-

“No doubt the accused Hanif and Aslam have been declared to be innocent by the I.O during investigation and no recovery has

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been effected from them but no discharge report was prepared by the police to their extent. No defence evidence has been produced by these accused to prove their plea of alibi. They have been nominated in the FIR with specific roles. They have been alleged to be armed with 12 bore gun and 12 bore pistol respectively. The presence of these five accused namely Munir, Bashir, Aslam, Hanif and Nazir is proved at the place of occurrence so they formed an unlaw-ful assembly.”

Learned trial court found (paragraph 19) that the allegation of rape levelled by Mst. Parveen PW.12, was not in line with the medical evidence. The learned trial Court however gave benefit of doubt to Muhammad Yaseen, Bashir, Mukhtar Ashraf, Mumtaz and Jan Muhammad. Six accused were consequently acquitted and five accused were convicted.

11. We have gone through the file. Evidence of the prosecution witnesses along with documentary evidence as well as statements of the accused have been perused. The relevant portions of the impugned judgments have been scanned. We have heard the learned Counsel for the contending parties.

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12. The learned Counsel for the appellants formulated the following points for consideration:-

- i) that the FIR is not reliable because it was recorded after consultation;
- ii) that Muhammad Amir PW.10 claims to be a complainant on whose statement the FIR was allegedly registered but the actual fact is that Abdul Rehman was the person who lodged the report and this Abdul Rehman has not been produced in the Court;
- iii) that the story of motive is wrong because Mst. Salma, the abductee, has not been produced at the trial;
- iv) that the element of zina as alleged by Mst. Parveen PW.12 lacks certainty;
- v) that accused Jan Muhammad was acquitted while others were convicted under section 11 of the Offence of

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Zina (Enforcement of Hudood) Ordinance VII of 1979.

The element of acquittal demolishes the case of prosecution;

vi) the identification of the accused was not possible as there was no electric light and the occurrence allegedly took place at 4.30 a.m;

vii) that the accused while leaving the place of occurrence took away two rifles belonging to the complainant but recovery of these weapons was not effected;

viii) the conduct of the witnesses at the trial does not inspire confidence;

ix) that three crime empties were recovered from the spot but the witnesses mentioned two shots;

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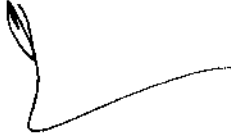
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x) that the rifle allegedly recovered from Munir accused was found to be not in working condition;

xi) that according to the complainant there were thirteen accused but in his examination-in-chief he mentioned only 12 accused;

xii) that no identification parade was held;

xiii) that all the memos were made at the spot as the title of the case at top of the different memos does not indicate name of the accused. It means that the accused were not known at the time when these documents were

 prepared;

xiv) Column 22 of the inquest report is blank which shows that the inquest report was not prepared at the spot. The report indicates that nothing was found at the place of occurrence;

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xv) that the recovery vide Ex.PX of crime empties

from the place of occurrence is of .7-MM whereas the

gun allegedly used by the accused is .222;

xvi) that it is alleged that one cartridge was fired but at

the spot two cartridges were shown to have been

recovered; and lastly

xvii) it was urged that the draftsman had prepared the

site plan after about a year.

13. Learned Counsel for the State supports the

convictions and sentences recorded by the learned trial Court. It

is urged that the motive has been proved because the accused

have admitted registration of FIR No.25/2000 by them against

the complainant. It is also urged that the FIR was prompt and

the death of two persons at the place of occurrence is also

proved. It is further stated that the abduction of Mst. Parveen

lends corroboration to the motive. It is also stated that the

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complainant received injuries and there is no reason why statement of injured witness should not be accepted. The learned State Counsel further stated that the impugned judgment is well reasoned and the evidence has been duly appreciated and there is no technical defect in the trial.

CONCLUSIONS

14. We have considered the contents and reasoning adopted by learned trial Court in arriving at the verdict of guilt.

We have also mulled over the points raised by the contending parties. The evidence brought on record is also before us. Our

observations are as follows:-

i. Mst. Salma was abducted by her brothers accused Munir and Bashir because she had married Muhammad Amir complainant against the wishes of her family. FIR No.25/2000 was registered against the complainant by the accused party

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under section 16 of Ordinance VII of 1979. The complainant group was on bail in that case at the time of the occurrence of the instant case. The abductee was never restored to her husband the complainant.

ii. That the unidentified intruder accompanying the accused was killed during the occurrence. The Post Mortem Report Ex.PB, relating to this intruder, does neither mention his name nor it indicate his parentage. Entries in all these columns relating to identity is unknown. The doctor observed fire arm injuries on the outer side of left chest 15 c.m. below left axilla and a firearm injury 3 cm x 2 cm on front and lower part of right chest 11 cm below and inner to right nipple 35 cm from middle line below the right costal margin. No one including the accused party claimed the corpse of this unknown deceased. The Investigating Officers are also silent on this point. No one filed any separate crime report or private complaint about his

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murder by pointing an accusing finger towards the complainant part. The time and place and nature of injuries on the dead bodies of the unidentified person as well as Yasin, deceased brother of complainant, establish that the occurrence resulting in these deaths took place in the house of the complainant at the time and the manner alleged in the crime reports.

iii. The crime report was prompt and the information to the police was laid by the complainant. It is not expected that a complainant who has witnessed a gruesome episode should reach the police station all alone and should neither speak to any one nor listen to any one till he has met a police officers.

The element of consultation becomes relevant when the identity of the assailant is in doubt or the accused are not known to the complainant or the persons present at the place of occurrence. Unexplained delay in setting machinery of law into motion can cause suspicion. Any person can set the criminal law in motion.

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Information about the commission of an offence, whether cognizable or otherwise has to be recorded in writing in terms of provisions contained in Chapter XIV, Part V of the Code of Criminal Procedure. Thereafter, in a cognizable case, the Police Officer, after information of cognizable offence has been made, is required to apply his mind and would embark upon investigation unless he finds reasonable and strong grounds for not doing so. In the instant case FIR No.146/2000 was thumb marked by the complainant. This fact regarding thumb mark has not been challenged by the appellant while cross-examining the complainant or the Investigating Officer. It is also not a legal requirement that the presence of persons accompanying should either be recorded or their signatures obtained on police papers. The promptness in lodging the FIR eliminates the element of concoction, fabrication or deliberation.

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iv. The factum of notice is a corroborative factor in this case. Indeed motive alone is alone cannot become basis of conviction because motive by itself does neither prove nor disprove any assertion conclusively. The absence of motive does not block the path of prosecution either but once it is set up and proved is a circumstance which guides a police officer in the course of investigation. While determining guilt at the conclusion of the Article, the element of an established motive does acquire significance if untoward incident is established by direct evidence as well as facts and circumstances of the case.

In this case the learned trial court has rightly and with reason held that motive was proved.

v. The allegation of rape was not accepted by the learned trial court. Therefore the contention of the learned counsel for the appellant that the allegation of Zina bil Jabr lacks certainty has no force whatsoever.

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vi. Learned trial court, in a well reasoned judgment has given benefit of doubt not only to Jan Muhammad, as maintained by learned counsel for the appellant, but to five other co-accused. The learned trial court extended "*benefit of doubt considering the rule of abundant caution.*" The element of benefit of doubt has never been held to be a factor which demolishes the entire prosecution case against the co-accused.

vii. The objection about identification of accused has not force because firstly the principle accused were very well known to the complainant group and secondly the early morning in the month of July is not pitch dark. Presence of complainant in his house in the early hours was not challenged. The complainant also received injuries. He is an eye witness. He reported the occurrence promptly under these circumstances his evidence carries weight. Minor, discrepancies in the statement of such a witness cannot wash the effect of his direct

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testimony. Discrepancies do creep up with passage of time.

Every human being is not endowed with photographic memory.

viii. It is in evidence of PW 16 Asghar Ali A.S.I. that one 8MM rifle was recovered on the pointation of Munir Ahmed accused. This is also evident from the relevant recovery memo. The contention of learned counsel that no

ix. It is in evidence of PW.19 Abdul Latif S.I. duly supported by the note on the recovery memo Ex. PDD, that Munir Ahmed accused led to the recovery of .222 rifle. The words 7MM were also engraved on its barrel. In this view of the matter the objection raised by learned counsel for the appellants loses force.

x. The objection about absence of identification parade not having been held has no force for the reason that complainant group and the accused party are not alien to each

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other. PW.11 stated that he identified Bashir, Ashraf and Sabir accused. PW.11 had frankly admitted that he did not nominate Mukhtar, Maqbool, Jan Muhammad, Ashraf and Admir. He had mentioned these persons as unknown. This is the reason why benefit of doubt was extended to the acquitted accused.

xi. The argument advanced on behalf of Munir accused is that no firing took place because the gun recovered from him was not in working condition. The report Ex.PPP from Forensic Science Laboratory states that the weapon is without controlling lever and iron butt." The rapid test firing could not be undertaken. Absence of recovery of crime weapon does not negate the injuries resulting in death of two persons.

xii. The contents of Ex.PX, recovery memo of crime empties on 07.07.2000 from the place of recovery mentions 03 cartridges shot from 7MM rifle. PW.11 stated that two 7MM empties and two .12 bore cartridges were recovered from the

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place of occurrence, though admittedly he mentioned 03 empties in the police statement. Difference of one crime empty does not demolish the factum of injuries caused to the complainant party during the episode.

xiii. The mention of thirteen accused in the crime report by the complainant and twelve persons at the time of trial is not a type of contradiction which destroys the prosecution case.

xiv. The best judge of the demeanour of witnesses is the trial judge who did not notice anything significant to disbelieve the ocular account produced by the prosecution party.

xv. We have checked up all the memos prepared on 07.07.2000. All these documents mention the number of the FIR along with the date of its registration and the offences under which the information was received by the police. The

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objection raised is that since the title of the case is not mentioned so it should be presumed that the names of the accused were not known on 07.07.2000 and the crime report was registered after consultation. This argument is falsified by the various documents placed on record. The title of the case varies according to the person involved in the case. The case number is mentioned in every document. The case number indicators registration of crime report which contains the names of accused persons and mention of unknown accused who could be identified. No mention of articles in Column No.22 of the Inquest Report dated 07.07.2000 would have been relevant if recovery of crime empties had been shown on 08.07.2000 or thereafter. It would be seen that the document dated 15.07.2000 which is an application to seek permission for undertaking medical examination of the abductee Mst. Salma does not mention the title of the case. Only the case number and offences

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are mentioned. Consequently the objection raised by learned counsel for the appellants is not found valid.

xvi. The last objection raised was that the draftsman had prepared the site plan one year after the occurrence. The fact of the matter is that the rough site plans of the place of occurrence, Ex.PKK was prepared by PW.20 Jamil Hassan, PW.20 on 07.07.2000 i.e. on the date of occurrence immediately after registration of crime report. The handwritten notes under the site plan not only identify the places where the two dead bodies were lying as well as the places from where the blood stained earth and crime empties were recovered but the names of accused with their roles played by them is also indicated at social number 5 through 8. The learned counsel has not given careful consideration to the various points which are evident from those documents.

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15. We have given anxious thought to the facts and circumstances of this case in the light of points raised by contending parties and the findings of the learned trial court. The impugned judgment is well reasoned. The entire evidence was appraised properly. The ocular testimony is duly supported by the medical evidence. Motive was established. There was no moral or religious justification to invade the house of complainant. More than one shot was fired. Proclamations under sections 87 of the Code of Criminal Procedure were issued against Munir and Nazir Ahmed appellants as they were avoiding arrest and participation in the investigation. The reply by appellant Munir to question No.12 in his statement recorded under section 342 of the Code of Criminal Procedure lends ample support to the motive set up by the prosecution. Accused were nominated in the crime report registered promptly. Complainant party knew the principle accused and this fact was

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neither doubted nor challenged. Four dwellers of the house including the complainant and two females were injured. Two females were abducted. The report of the Chemical Examiner about semen and blood was positive. Munir appellant avoided arrest for over two months.

16. In view of the what has been stated above the convictions recorded under sections 148, 149, 302 (b) of the Pakistan Penal Code as well as section 11 of Ordinance VII of 1979 are maintained. However the question of sentence has engaged our serious attention. Keeping in view the number of accused originally nominated in the crime report and benefit of doubt awarded to six accused by the learned trial coupled with the fact that the question of family honour had agitated the mind of the appellants we are not inclined to confirm death sentences of the Munir appellant. Capital punishment of Munir appellant on both the counts is consequently converted into life

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imprisonment. The penalty of compensation is maintained. The sentences of other appellants are also maintained. With this modification in the sentence of Munir appellant the three criminal appeals registered as Criminal Appeal No.86-L of 2007, Jail Criminal Appeal No.100/L of 2007 and Jail Criminal Appeal No.101-L of 2007 stand dismissed. Criminal Murder Reference No.7-L of 2007 is therefore not answered in the affirmative. Perpetual warrants of arrest against absconding accused Maqbool were ordered to be issued by the learned trial court. Efforts to apprehend the absconder should not slacken. Benefit of section 382-B of the Code of Criminal Procedure was granted to the convicts. The sentences were also ordered to run concurrently. These concessions will continue.


JUSTICE AGHA RAFIQ AHMED KHAN


JUSTICE SYED AFZAL HAIDER


JUSTICE SHAHZADO SHAIKH

Announced in open Court
on 21/10/2018 at Islamabad

FIT FOR REPORTING


CHIEF JUSTICE