

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SAEED-UR-REHMAN FARRUKH

CRIMINAL MISC. APPLICATION NO.83/L OF 2004

IN

CRRIMINAL APPEAL NO.6/L of 2004

1. Ziman Abbas son of Sher	
2. Sher son of Khan	
3. Abdllah son of Allah Ditta	---
4. Hidayat son of Muhammad Iqbal	---
5. Muhammad Khan son of Sultan	---
	Applicants
	Versus
The State	---
	Respondent
Counsel for the Applicants	---
	Sh.Khizar Hayat, Advocate
Counsel for the Complainant	---
	Mr. Muhammad Masood Chishti, Advocate
Counsel for the State	---
	Mr. Muhammad Sharif Janjua, Advocate
FIR No. Date & Police Station	---
	122, 9.8.2002 P.S. Shah Nikdar, Distt. Sargodha
Date of the Order/Judgment of the Trial Court	---
	17.12.2003
Date of Institution	---
	24.2.2004
Date of Hearing	---
	2.2.2005
Date of Decision	---
	2.2.2005

JUDGMENT:

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This is an application under section 426 Cr.P.C. for suspension of the sentences and grant of bail to the applicants who, on the charges under sections 302, 201, 364, 452, 337-H(ii), 337-L(b), 109 PPC and 10/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, were convicted under section 364 PPC and sentenced to undergo life imprisonment each. They were also convicted under section 201 PPC and sentenced to undergo R.I. for seven years each.

2. Sh.Khizar Hayat, Advocate, learned counsel for the applicants has contended that since the applicants had not entered in the house of the complainant and took no part, physically, in taking away Mst.Nasreen Bibi deceased and remained outside the house throughout therefore, they could not have been held liable for abetting the offences of murder and abduction. It is further his case that evidence of extra judicial confession being fabricated, and that too, at a belated stage, conviction could not have been based thereon. He has added that statements of the witnesses under section 161 Cr.P.C.,

particularly the witnesses of extra judicial confession, having been recorded after the lapse of consideration time, the possibility of concoction could not have been ruled out, hence, the applicants pending disposal of appeal, may be admitted to bail.

3. Mr. Muhammad Sharif Janjua, Advocate, learned counsel for the State, on the other hand, while controverting the contentions raised by the learned counsel for the applicants has submitted that in the instant case the accused persons, duly armed with fire arms including the applicants, who were 11 in number had encircled/cordoned house of the complainant. Some of them entered the house and forcibly abducted Mst.Nasreen Bibi, who, as per confession made by Ghulam Muhammad accused, was subsequently murdered and her dead body was thrown in River Jhelum, whereas the rest of the accused persons remained outside the house to ensure that neither any body from inside the house is able to escape or seek help nor any person from outside is in a position to help them out. Further, the accused persons, besides causing injuries to Mst.Ghulam Fatima also made firing which fact is proved from the recovery of 12 empties from the place of

occurrence therefore, the applicants, who had abetted the other accused persons in committing the offence, do not deserve to be released on bail.

4. Mr.Muhammad Masood Chishti, Advocate, learned counsel for the complainant while adopting the arguments advanced by the learned counsel for the State has submitted that since the applicants were straightaway nominated in the FIR and specific roles were also attributed to each of them therefore, notwithstanding the delay in recording the statements of witnesses of extra judicial confession, statements of the prosecution witnesses were rightly believed by the learned trial Judge and since the submissions made by the learned counsel for the applicants require re-appraisal of entire evidence, which is not possible at this stage, therefore, application may be rejected.

5. We have given our anxious consideration to the respective contentions of the learned counsel for the parties and have also perused record of the case carefully, with their assistance.

6. While disposing of application under section 426 Cr.P.C. though a minute examination of evidence does not deem appropriate as the proper stage for such examination is at the time of hearing of the appeal itself yet, on tentative examination of the record, we are of the view that findings of the learned Court below are neither perverse nor arbitrary and have the support of record. In this case occurrence took place in the night between 8th and 9th of August, 2002 at about 2.30 a.m. whereas, the FIR was lodged promptly on next day in the morning and names of all the accused persons were not only given therein but specific roles to each of them were also attributed. Further statements of eye witnesses i.e. PW.14 Muhammad Khan, PW.15 Ahmad Khan and PW.16 Mst.Ghualm Fatima were recorded, at the very outset, wherein names of the applicants too, find place. No doubt, the 161 Cr.P.C. statements of the witnesses of extra judicial confession were recorded after about three months yet, we are afraid, in peculiar circumstances of the instant case, the accused persons cannot take advantage of the delay because both these witnesses have, at the trial, categorically stated that since the accused persons had

threatened them for dire consequences therefore, they had to keep quiet. Further the contention that since the accused persons, at the time of occurrence, remained outside the house therefore, they could not have been held responsible for the offence too, appears to be devoid of force because as per statement of PW.15 that the compound wall of the house was 3 and a half feet in height and the applicants being allegedly armed with fire arms, it could not have been concluded with certainty that presence of the applicants outside the house was of no significance. Even otherwise, all the contentions raised by the learned counsel for the applicants require re-appraisal of evidence which, is not deemed expedient.

7. It is well settled that while deciding application under section 426 Cr.P.C. a perusal of evidence in depth is neither warranted or desirable and operation of the impugned judgment can be suspended only when on perusal of evidence detailed in the judgment, the appellate Court comes to the conclusion that the impugned judgment, due to any legal error, cannot sustain. This view, receives support

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from observations made in the following reported judgments:-

- 1) Adil Bashir Vs. The State 2003 SCMR 407;
- 2) Allah Ditta Khan Vs. The State PLD 2002 SC 845;
- 3) Farhat Azeem Vs. Waheed Rasool and others PLD 2000 SC 18;
- 4) Ahmad Din and two others Vs. Muhammad Tazeem and another Supreme Court AJ&K 2004 P.Cr.LJ 956;
- 5) Abdur Rashid Vs. The State 1998 SCMR 149;
- 6) Bashir Ahmad Vs. Zulfiqar and another PLD 1992 SC 463; and
- 7) Jamshed Azam Vs. The State 1990 SCMR 1393.

8. The fact cannot be lost sight of that this appeal has been filed recently i.e. on 7.1.2004 and, in all probability, is likely to be heard in near future therefore, we see no merits in this application which is accordingly dismissed.


(CH. EJAZ YOUSAF)
Chief Justice


(DR.FIDA MUHAMMAD KHAN)
Judge


(SAEED-UR-REHMAN FARUKH)
Judge

Islamabad,
the 2nd February, 2005.

Bashir/*

FIT FOR REPORTING.


CHIEF JUSTICE