

IN THE FEDERAL SHARIAT COURT.
(Appellate Jurisdiction)

PRESENT.

MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE SAEED-UR-REHMAN FARRUKH
MR. JUSTICE ZAFAR PASHA CHAUDHRY

J. CRIMINAL APPEAL NO.122/I OF 2003 Linked With
CRIMINAL MURDER REFERENCE NO.14/I OF 2003.

Muhammad Ashraf S/o Wali Dad,
Caste Sial, R/o Chak No.132/SB,
Tehsil Sillanwali District Srgodha,
--- Appellant.

VERSUS

The State	---	Respondent.
Counsel for the. Appellants	---	Mr. Aftab Ahmed Khan, Advocate
Counsel for the State	---	Mr.M.Sharif Janjuja, Advocate.
Case F.I.R No, date & Police Station	---	No.163, dated 25.06.2002. P.S. Sillanwali. District Sargodha
Date of Judgment of trial Court.	---	14.01.2003
Date of Institution	---	31.05.2003.
Date of hearing	---	27.09.2005.
Date o decision	---	27.09.2005.

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J.- Jail Criminal Appeal

No.122/I of 2003 as well as Murder Reference No.14/I of 2003 have been taken up together to be disposed of by this single judgment. Both arise out of common judgment dated 14.01.2003 passed by Additional Sessions Judge, Sargodha.

2. Muhammad Ashraf, appellant aged about 22/23 years was sent up to face trial in case F.I.R No.163, dated 25.6.2002 under section 302 PPC read with section 10 (3) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (hereinafter referred to as the Ordinance) registered with Police Station Sillanwali, District Sargodha. On conclusion of the trial, the appellant was convicted under section 302-B, PPC and sentenced to death and also to pay Rs.50,000/- as compensation under section 544-A, Cr.P.C to the legal heirs of deceased. In default thereof to suffer 6 months S.I. Conviction was also recorded under section 10 (3) of the Ordinance to undergo R.I for 20 years as well as under section 377 PPC to suffer 10 years R.I. He was also convicted under section 201 PPC and sentenced to undergo 7 R.I years and to pay a fine of Rs.20,000/- or in default to suffer three months S.I.

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All the sentences were ordered to run concurrently.

Benefit of section 382-B, Cr.P.C was allowed.

3. The proceedings initiated on an application moved by Abdul Qayyum (PW.10), uncle of victim Mst. Farwa aged about 8 years. According to him, father of victim Mst. Farwa had left for Saudi Arabia about 9/10 years ago. He left his family comprising of his wife Mst. Shahnaz, daughter Mst. Farwa aged about 8 years and an infant son aged about 1.1/2 year; Abdul Qayyum first informant used to look after his family in absence of his cousin Amjad. Muhammad Ashraf, appellant used to run a shop in the same Chak, i.e. Chak No.132-SB located in his residential house. On 23.6.2002 Mst. Shahnaz mother of victim Mst. Farwa gave Rs.5/- to her to purchase some eatable. She left the house and proceeded towards the shop of the appellant. Although about one hour elapsed yet Mst. Farwa did not return, her mother got worried and she informed and apprised Abdul Qayyum, the first informant about the situation. Search was made in the area but no clue of missing Mst. Farwa could be found. The respectable of the village were collected and they were also informed about the missing girl. Abdul Qayyum thereafter reported the matter on the night in between 24 & 25.6.2002 at about 1.30 a.m. through an application Exh.PH and



as such lodged the report with Police Station Sillanwali. The formal F.I.R. Exh.PJ was registered on 25.6.2002 at 6.45 p.m. Search was continued but of no avail.

4. On 25.6.2002 Riaz and Said Hakeem Shah, PWs informed Abdul Qayyum that they had seen the dead body of Mst. Farwa lying in the jungle in between 'Sheesham' trees within the area of Chak No.50-SB at a distance of about one mile from the village. The complainant reached the spot and found a semi naked dead body of Mst. Farwa. The dead body had swollen.

In the meantime Muhammad Javed and Noor Muhammad met the complainant who informed him that on 23.6.2002 at about 2.30 p.m. they came across Muhammad Ashraf, appellant, who was going towards Chak No.50-SB on bicycle. He was carrying a gunny bag on the carrier of the bicycle and was coming from Chak No.132-SB. Bahadar Ali, PW also met the complainant and informed him that on 23.6.2002 at about 1.30 p.m he had seen Mst. Farwa entering the shop of Muhammad Ashraf, appellant.

After discovery of the dead body of the victim, Abdul Qayyum left Muhammad Khan and Arshad, PWs to guard the dead body and himself proceeded to Police Station Sillanwali,

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whereafter he lodged F.I.R Exh.PJ at about 6.45 p.m. on 25.6.2002. At the time of leaving the house Mst. Farwa was wearing shalwar and shirt of yellow colour with black flowers and with black shoes. She was also having pink Dopatta of small size. She was wearing a steel 'Karra' in her left arm and a 'Taveez' in her neck. When the dead body was discovered the said clothes, i.e. shalwar and Qameez were on her but the shoes were missing.

5. After registration of the case F.I.R, necessary investigation was carried out and on completion of the same the appellant was challaned to the court. The learned trial Judge framed charge under three heads against the appellant Muhammad Ashraf, i.e. firstly under section 10 (3) of the Ordinance for committing Zina with Mst. Farwa, secondly under section 302 PPC for committing Qatl-i-amd by strangulating Mst. Farwa deceased to death and thirdly under section 201 PPC for concealing the evidence of murder by carrying the deceased and then throwing her dead body in jungle with a view to screen the material evidence. The appellant denied the charges, however, it was noted that the victim had been subjected to commission of unnatural offence as well; the appellant committed sodomy with her and as such committed an offence under section 377 PPC.



The charge under this section was also added. The appellant pleaded not guilty; therefore, he was put on trial.

6. The prosecution in support of the charges examined 16 witnesses. PW.1 Muhammad Saleem Draftsman prepared the site plan Exh.PA and Ex.PA/1. PW.2 Ghulam Hussain constable carried and delivered two phials and a sealed envelop in the office of Chemical Examiner on 1.7.2002. Muhammad Akram, MHC (PW.3) kept in safe custody the aforesaid parcels.

PW.4, lady doctor Labina Azam conducted post mortem examination of the dead body. Her age was recorded about 8 years. She was identified by Muhammad Khan and Muhammad Arshad. She described the condition of the dead body as its skin had been peeled of. Dopatta has been wrapped around her neck. She was wearing yellow shirt and Pyjama-shalwar; a silver 'Karra' was also on her left fore arm. On local examination of genital organs vulva-vagina were swollen and wounded. Anal area was also bruised and wounded. She observed the following injuries:-

1. An orange colour Dopatta tightly tied all around the neck, having five loops around the neck. 2-knots, first knot in first loop of dopatta around the neck and second knot in last loop of dopatta around the neck. A ligature mark 28 cm x 4 cm present all around the neck.



DISSECTION.

On dissection under injury No.1 showed damage to muscles, great vessel of neck, trachea and larynx.

2. A lacerated wound 6 cm x 1 cm around valvo vaginal area. 3 swabs were taken and sent to Chemical Examiner, Rawalpindi for detection of semen and grouping.
3. A lacerated wound 4 cm x 1 cm around anal area. 3 rectal swabs were taken and were sent to the office of Chemical Examiner Rawalpindi for detection of semen and grouping. 3 valvo vaginal and 3 rectal swabs were handed over to the police after being sealed and stamped.

The cause of death was found to be asphyxia, cardio pulmonary arrest, shock and death. Injury No.1 was sufficient to cause death in ordinary course of nature of injury No.2 and injury No.3 also contributed towards death. The post mortem report was exhibited as Exh.PB.

PW.5 is Ziaullah, constable. He collected the last worn clothes of the deceased and also 'Karra' worn by her.

PW.6 is Muhammad Arshad. He along with complainant Abdul Qayyum and other PWs went to the jungle and found the dead body lying over there. He guarded the dead body and also identified the same at the time of post mortem examination.

PW.7, Muhammad Javed is a witness who saw Muhammad Ashraf, appellant carrying a gunny bag on the career of his

bicycle and was proceeding towards jungle. When he learnt about the murder of child Farwa he appeared before the police and made statement to that effect.

PW.8 Muhammad Riaz saw the dead body lying in the jungle. He identified the same. He informed the complainant Abdul Qayyum.

PW.9 is Bahadar Ali. He is brother of Mst. Shahnaz, mother of the victim. He is a witness of last seen and also of the fact that Mst. Shahnaz gave Rs.5/- to Mst.Farwa to purchase some eatables. After a while when he was returning from the house of his sister, he saw Mst. Farwa who had just entered the shop of the appellant holding five rupees note in her hand. He appeared before the police and made the above statement. This witness is important in the sense that he is a witness of the last seen. He saw the deceased entering the shop of Muhammad Ashraf whereafter she was not seen alive.

PW.10, Abdul Qayyum complainant, uncle of Mst. Farwa deceased is cousin of Amjad Khan, victim's father. He reiterated the statement already made by him before the police through the application Exh.PH. He further alleged that the F.I.R was lodged with the police after the dead body of Mst. Farwa was detected and found. This witness also furnished information

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about the prosecution witnesses who had seen Muhammad Ashraf, appellant carrying a gunny bag on his bicycle's carrier and coming from the side of chak No.132-SB. He also gave the details of the last worn clothes and shoes of the victim. When the dead body was found, the same clothes were on her person, however, the shoes were missing.

PW.11 Farman Ali is a witness of recovery. He joined the investigation on 6.7.2002 while appellant was in police custody. In his presence the appellant led the police to his shop, which was locked. The accused opened the lock with a key carried by him. The appellant led to the recovery of the last worn pair of sandals Exh.P-5/1-2 from his shop. He also led to the recovery of 'Palli' made of nylon Exh.P.6, and the same procured vide recovery memo Exh.PL. The appellant also led to the recovery of bicycle P.7. The pair of sandals Exh.P-5/1-2 were identified as that of the victim by Mst. Shahnaz, mother of deceased. This witness again joined the investigation on 11.7.2002 and attested recovery of cycle P.7. at the instance of appellant. The above said recoveries were also attested by this witness.

PW.12, Mst. Shahnaz Bibi, mother of the victim, is a witness to the fact that she gave Rs.5/- to her daughter who was wearing yellow shirt and shalwar with green and black flowers.



She was having 'Dopatta' wearing a 'Karra' in her left forearm and a 'Taveez' around her neck. She made statement in line with the statement already made by Abdul Qayyum complainant. This witness identified the dead body of the deceased. She found that same clothes were worn by her, 'Karra' and 'Taveez' were also on her person.

PW.13, Mr. Israrzada, Judicial Magistrate Section 30 is important witness because he recorded confessional statement of Muhammad Ashraf, appellant under section 164 Cr.P.C on 12.7.2002. This witness deposed about the necessary measures taken and the question asked by him in order to ascertain that the statement to be made by the appellant was voluntary. The appellant was provided an opportunity by giving him time to think over the matter and was explained that he was not bound to make confessional statement. He also explained that in case, the incriminating confession made by him, the same would be used as evidence against him. The appellant was assured that after statement he will not be handed over to police and would be remanded to judicial custody. The appellant Muhammad Ashraf made a confessional statement Exh.PQ/3, under section 164 Cr.P.C. The Magistrate certified the same to be voluntary and made without any coercion as Ex.PQ/5. The proforma

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containing the relevant question with a view to ensure that the statement was voluntary, was also signed and certified by this witness.

PW.14, Sikandar Hayat constable is a formal witness. He was handed over two phials by the doctor and the same was ultimately delivered by him in the office of Chemical Examiner.

PW.15 is Dr.Asif Masood. He examined the appellant to find out that he was capable of performing sexual intercourse. He was found to be fit and potent.

Sher Muhammad, S.I (PW.16) is the Investigating Officer. He recorded the F.I.R, performed all the necessary formalities, got the post mortem examination conducted. He also attested the recoveries effected at the instance of the appellant. He recovered the incriminating articles like gunny bag, clothes and article worn by the deceased. He conducted elaborate investigation and furnished the details of the same to the court. On 12.7.2002, he produced the appellant before the Judicial Magistrate who recorded his confessional statement. On completion of the investigation he found the appellant guilty and got him challaned to the Court.

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After recording the statements of 16 PWs, the prosecution closed its case after tendering in evidence the report of Sociologist Exh.PBB.

7. The appellant was examined under section 342 Cr.P.C. He denied the allegation against him. He also pleaded that the recoveries were fake and false. With regard to the confessional statement, the appellant answered that he was illiterate person; the police subjected him to torture in order to extort statement and in order to exert pressure they arrested his brother as well. According to him, he was tutored to make the confessional statement before the magistrate. In answer to question as to why the PWs have deposed against him, he stated that PWs had grudge against him. He came up rather with preposterous plea that the complainant Abdul Qayyum had developed illicit liaison with Mst.Shahnaz mother of victim Mst. Farwa and he himself murdered Farwa deceased. He did not opt to appear as his own witness; however, he examined Muhammad Hayat, MHC as DW.1, who stated that as per police record Muhammad Ashraf had no previous criminal record. The rest of the statement made by him does not appear to be of much relevance.

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8. The above noted resume of the prosecution evidence is reflective of five categories comprising of the medical evidence, the evidence of last seen, the evidence of the accused carrying gunny bag with the dead body, evidence of recoveries and confessional statement made under section 164 Cr.P.C.

9. To start with the evidence of last seen of deceased entering the shop of Muhammad Ashraf, the prosecution examined PW.9 Bahadar Ali and PW.12 Mst. Shahnaz Bibi, mother of the deceased Mst. Farwa. According to Mst. Shahnaz Bibi, Mst. Farwa deceased aged about 8 years was given Rs.5/- by her mother Mst. Shahnaz Bibi to purchase some eatable from nearby shop. As deceased Mst. Farwa did not return for quite long time she got worried and looked for Mst. Farwa. A report about missing of Mst. Farwa was made in Police Station Sillanwali. A search to find Mst. Farwa was also carried out. PW.9 Bahadar Ali, who is a brother of Mst. Shahnaz and maternal uncle of Mst. Farwa saw Mst. Farwa entering the shop of accused Muhammad Ashraf. It was the last time Mst. Farwa was seen alive and thereafter only her dead body was recovered. The evidence of last seen as such is furnished by Bahadar Ali maternal uncle of Mst. Farwa who was living with his sister Mst. Shahnaz Bibi (mother of Mst. Farwa). He himself saw Mst. Farwa

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entering the shop of Muhammad Ashraf accused. This witness has neither any enmity with the accused nor he has any motive to falsely implicate him. His statement is supported by the statement of Mst. Shahnaz Bibi, who had given five rupees note to Mst. Farwa to make purchases. It has come in evidence that Muhammad Ashraf, appellant runs his shop located in his house in the village. The evidence of last seen is only to the extent that Mst. Farwa was seen entering the shop of Muhammad Ashraf.

10. The next set of witnesses comprises of Muhammad Javed (PW.7) and Noor Muhammad PW. On 23.6.2002 at about 2.30 p.m. they were coming from Chak No.50-SB to Lahore. On their way they saw Muhammad Ashraf, accused coming on his bicycle. He carried a gunny bag on the career of the bicycle. This fact that these two witnesses saw Muhammad Ashraf coming on bicycle and carrying gunny bag finds mention even in the F.I.R. Abdul Qayyum (PW.10) made statement on oath in court that on 23.6.2002 he lodged the report with the police about missing of Mst. Farwa deceased. On 23.6.2002 at about 2.30 p.m. Javed and Noor Muhammad told him that they met Muhammad Ashraf accused who was going towards Chak No.50-SB on his bicycle and near the garden of Ganjay Arain he was carrying a gunny bag on the career of the bicycle. This witness supported and

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testified the statement of Muhammad Javed (PW.7) regarding carrying of the gunny bag by the accused. Although the evidence of last seen and that of encounter does not specifically pertain to the fact that Mst. Farwa was seen along with the deceased or that the gunny bag contained the dead body. These two pieces of evidence as has come on record, inspire confidence because the witnesses did not make any attempt to improve or inflate the incident. The witnesses stated whatever had been witnessed by them. Their evidence when appraised along with the other pieces of evidence does provide a strong link to the prosecution case. Their evidence is to be considered along with the evidence of recovery. The recovery of the clothes worn by the deceased at the time of her murder at the instance of the accused is a strong corroborative piece of evidence.

11. The recoveries were got effected by Sher Muhammad, S.I (PW.16). The accused/appellant Muhammad Ashraf was arrested on 4.7.2002 by Sher Muhammad S.I. On receipt of secret information a raid was conducted on Dera of Muhammad Shabbir Jhakharr and accused was apprehended therefrom. As it has been mentioned in the resume of evidence that the deceased girl apart from wearing clothes was carrying a "Palli" (a small Dopatia). On 6.7.2002 the accused/appellant got

recovered the same "Palli" P-6 from his shop. The shop was locked and it was opened by the accused with a key who obtained the same from the chapper in front of his shop. The appellant also led to the recovery of pair of sandals Exh.P-5/1-2 belonging to Farwa deceased. The accused also got recovered bicycle P-7, on which he was carrying the gunny bag. It subsequently transpired that it contained the dead body of Mst. Farwa deceased. The cycle was recovered from the room of his house. Infact the shop of the appellant was located in a room of his house. All these recoveries were attested by Farman Ali, (PW.11). He fully supported the said recoveries during his deposition in court. The clothes and sandals recovered from the accused were duly identified by Mst. Shahnaz Bibi, mother of the deceased and Farman Ali and Muhammad Ashraf PW.8, as belonging to deceased. Apart from the said recoveries the appellant got recovered the gunny bag P-8 concealed underneath three big stones near Bans (Bamboo) Lines within the area of Chak No.50-SB. These recoveries coupled with the confessional statement of the accused, furnishes a strong corroboration to prosecution case.

12. The conviction is mainly based on the confessional statement made by the accused before, Mr. Israrzada, (PW.13).



Judicial Magistrate Section 30 Sargodha. On 12.7.2002 Sher Muhammad, Investigating Officer moved an application before him praying that the accused intended to make a confessional statement, which may be recorded under section 164 Cr.P.C. The Magistrate appeared as prosecution witness and proved the confessional statement Exh.PQ/3 recorded by him. The Magistrate with a view to fulfill legal requirements before recording the statement directed all the police officials to vacate the courtroom. He also explained to the accused that he was not under any obligation to make the statement and also that in case he made a confessional statement, the same may be used as evidence against him. The accused was provided opportunity to think over the matter. He would call again after one hour and he was again enquired whether he intends to make statement. The appellant expressed his willingness. He was assured that he would not be handed over to the police after his statement.

13. The magistrate also enquired as to why the appellant was making statement. The appellant submitted that he was repenting and his conscious was pricking him, therefore, he wanted to confess his guilt. The magistrate after fulfilling all the necessary formalities recorded the appellant's statement. The statement was made in detail. The salient features however are

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that the appellant was running a grocery shop in village. On the day of occurrence, which was Sunday, Mst. Farwa aged about 8 years was present outside the shop. He called her inside and locked the door. The appellant tried to commit Zina with her on which she raised hue and cry. He (appellant) got upset and in order to silent her he pressed her throat. As she did not stop crying, therefore, he wrangled her neck with her Dopatta, as a result of which she lost her life. He put her dead body in a bag (جوری) and carried the same on bicycle. Thereafter he concealed it under leaves of the trees and afterwards hid the same under pieces of stones. After completing all that he came back to his house. He remained in the shop the whole day. Next morning he left for "Data Darbar". He repented over the sin committed by him. He was hauled up by police. The appellant also gave details of the people who met him and also the manner in which he was apprehended and ultimately handed over to the police.

14. The confessional statement is fully incriminating and totally inculpatory. Bare perusal of the statement reveals that it would have made by accused/appellant. The manner in which the details of the incident are given and thereafter his conduct has been described leaves no doubt that the statement had not been made voluntarily and had not been tutored. It contains



such details, which were known only to the appellant. No one else could have done it except the accused.

The learned Magistrate who recorded the statement fulfilled all the legal requirements and took all the steps to ensure that statement made by the appellant was voluntary and without any external pressure or inducement. The statement was recorded in absence of the police. He was provided sufficient time to think over the matter and he was also cautioned that the statement may be used as evidence against him. The confessional statement therefore does not suffer from any such infirmity, which may render it illegal or incredible.

15. The accused in his statement under section 342 Cr.P.C in answer to a question relating to confessional statement stated that he is illiterate and that he made statement as a result of torture meted out to him and pressure exerted on him. He further stated that his younger brother and another family member had been arrested. The appellant as such retracted the confessional statement. In case a confessional statement is retracted, then the law requires to look for corroboration to the statement. In the instant case, ample corroboration to the appellant's statement is available by a number of pieces of evidence. As noted above, the prosecution has not based its

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case only on the confessional statement, rather they have brought on record evidence of last seen, the evidence of encounter of the accused with the witness and the recoveries of incriminating articles. Further, the prosecution case is supported and strengthened by the medical evidence.

16. The medical evidence has been furnished by doctor Labina Azam (PW.4). She stated that it was dead body of girl of 8 years, dopatta had been tied all around her neck and she was wearing a 'Karra' on her forearm. On account of tying of dopatta damage was caused to muscular great vessels of neck, trachea and larynx. As a result of this injury right lung, left lung, pericardium and heart got congested. It was therefore opined that the death has occurred due to injury No.1, which led to asphyxia, cardio pulmonary arrest, shock and death. Injury No.1 was found sufficient to cause death.

Apart from causing death, the young victim was subjected to rape and sodomy. A lacerated wound 6 cm x 1 cm was observed around vulvo vaginal area. Lacerated wound measuring 4 cm x 1 cm was also observed around anal area. The vaginal and anal swabs were obtained and dispatched to the Chemical Examiner. As per report of Chemical Examiner Exh.PE. the swabs contained semen.

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17. In nutshell the prosecution evidence is based on the confessional statement, which has been found to be voluntarily made, as the learned Magistrate fulfilled all the necessary formalities. He also ensured that the statement is made without any coercion, duress or inducement. The confessional statement is fully incriminating and inculpatory. Since the appellant retracted from his statement, therefore, necessary corroboration has been looked for.

As observed above, a credible corroboration has come on the record through truthful and natural witnesses. The deceased Farwa was seen entering the shop of the appellant and thereafter was not seen alive. She had left her house to purchase some eatables, which she had to buy from the appellant's shop. Soon after the occurrence appellant was seen coming on a bicycle carry a gunny bag on the carrier. Subsequently after his arrest, the last worn clothes and sandals of the deceased were recovered from the house of the appellant and the bicycle was also recovered. The 'Karra' worn by the deceased was also recovered at the instance of appellant. The appellant/accused led to the recovery of gunny bag, which he had hidden under the stones. According to the appellant, he hid the dead body under the leaves of the trees, which was found by

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the witnesses as such and they made statements in this regard.

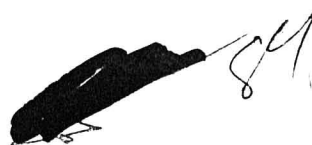
Above all manner, in which the deceased was murdered, has been supported by the medical evidence. The doctor unequivocally observed that the death occurred due to strangulation, which resulted into asphyxia. The medical evidence also established that she was subjected to rape and unnatural offence. The prosecution has thus proved the appellant's guilt beyond doubt. The appellant's conviction on all the counts is unexceptionable and sustainable.

18. As regard the sentence, the appellant has committed a heinous rather abhorrent offence by killing a young girl after subjecting her to his lust. The appellant is a grown up person; he was well aware of the offence committed by him. There are no mitigating or extenuating circumstances available in his favour. Sentence of death under section 302 (b) PPC as recorded by the learned trial Judge is upheld and maintained. The sentence awarded under section 10 (3) of the Ordinance and 377 PPC are fully justified. From the evidence offence under section 201 PPC is also constituted, therefore, all the sentences are upheld and maintained.

The benefit of section 382-B, Cr.P.C as allowed by the trial judge will remain intact. The appeal is dismissed.

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The sentence of death passed by the learned trial
Judge is confirmed. Murder Reference No.14/I of 2003 is
answered in affirmative.



(ZAFAR PASHA CHAUDHRY)
Judge

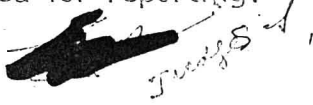


(DR.FIDA MUHAMMAD KHAN)
Judge



(SAEED-UR-REHMAN FARRUKH)
Judge

Approved for reporting.



Islamabad the 27.09.2005.
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