

**IN THE FEDERAL SHARIAT COURT**  
**(Appellate Jurisdiction)**

**PRESENT:**

**MR.JUSTICE MEHMOOD MAQBOOL BAJWA**  
**MR.JUSTICE SYED MUHAMMAD FAROOQ SHAH**  
**MR. JUSTICE SHAUKAT ALI RAKHSHANI**

**JAIL CRIMINAL APPEAL NO.03/K OF 2017**  
**CRIMINL MURDER REF.NO.01/K OF 2017**

GOHAR ALIAS CHAMAN SON OF MEHMOODUL HAQUE,  
(NOW CONFINED IN CENTRAL PRISON, KARACHI)

APPELLANT

VERSUS

THE STATE.

RESPONDENT

COUNSEL FOR THE APPELLANT	MR.KAZI WALI MUHAMMAD, ADVOCATE.
COUNSEL FOR THE STATE	MR. KHADIM HUSSAIN KHOOHARO, ADDITIONAL PROSECUTOR GENERAL SINDH.
COUNSEL FOR THE COMPLAINANT	MR.QADIR KHAN MANDOKHEL, ADVOCATE.
FIR NO. AND DATE & POLICE STATION	222 OF 2005 , 29.12.2005, P.S.LANDHI, EAST, KARACHI
DATE OF JUDGMENT OF TRIAL COURT	10.01.2012
DATE OF PREFERENCE OF APPEAL	23.2.2017
DATE OF HEARING	28.01.2019
DATE OF DECISION	28.01.2019
DATE OF JUDGMENT	04.02.2019

**JUDGMENT**

**SHAUKAT ALI RAKHSHANI, J:** This appeal has been directed against the judgment rendered on 10<sup>th</sup> of January, 2012, (“impugned judgment”) authored by learned IVth Additional Sessions Judge, South,

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

2

Karachi("trial court"), whereby the appellant Gohar alias Chaman in case FIR No.222 of 2005 (Ex.5-B) has been convicted and sentenced for the murder of the deceased Sakinat-ul-Huda alias Sonoo aged 11 years, to capital punishment by hanging him by neck till he is dead with the compensation of Rs.500,000/- (Rupees five lacs ) as provided under section 544-A of The Code of Criminal Procedure [Act V of 1898] ("The Code") to the legal heirs of the deceased and in case of failure to pay the compensation to suffer S.I for six months.

The appellant has also been found guilty of the charge under section 201 of The Pakistan Penal Code (XLV of 1860) ("Penal Code") and consequently sentenced to suffer 7 years R.I with a fine of Rs.50,000/- or in default to suffer six months S.I in addition.

He has further been convicted under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 ("Hudood Ordinance") and sentenced to undergo R.I for 25 years with benefit of section 382-B of The Code.

2. The learned trial court made reference as provided under section 374 of The Code, in order to confirm the death sentence or otherwise, to the Hon'ble High Court of Sindh. The instant appeal as well as murder reference were initially filed and received by the Hon'ble High Court of Sindh but subsequently transmitted for want of jurisdiction to this Court by means of order dated 26<sup>th</sup> of January, 2016, which were received by this Court on 23<sup>rd</sup> of February, 2017.

On 25<sup>th</sup> of September, 2017, the delay in filing the appeal was condoned and the appeal was admitted and clubbed with murder reference.

3. Through this judgment, we intend to decide both the appeal as well as murder reference captioned above.

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

3

4. Briefly stated, the facts of the case, gleaned from the FIR bearing No.222 of 2005 (Ex.5/B) lodged at Police Station Landhi on the verbatim statement of father of the deceased, complainant Muhammad Umer (P.W.1), contending therein that on 28<sup>th</sup> of December, 2005 while he was present as usual on his duty, his wife Mehmooda Umer (P.W.4) informed him on phone that his friend Gohar alias Chaman (appellant) came at his house for taking motorcycle and she told her daughter Sakinatul Huda alias Sonoo (deceased) aged about 11 years to inform him that the motorcycle was not available and showed concern that after laps of sufficient time, her daughter had not come back. According to complainant Muhammad Umer (P.W.1), he reached home and searched her daughter in the neighbourhood, where Rukkunuddin (P.W.2) and Kaleem Ullah (P.W.3) informed him that at about 12.30 p.m, Gohar alias Chamman (appellant) took his daughter Sakinatul Huda alias Sonoo in a black and yellow colour taxi.

He maintained that he along with his friend namely Nasimuddin (P.W.6) met appellant Gohar alias Chaman and asked him about her daughter but the appellant replied inadequately, as such, he with the help of his friend Nasimuddin (P.W.6) handed over the appellant to the personnel of P.S Landhi, where on interrogation, the appellant made disclosure that he had murdered her daughter due to enmity with him and her limbs and trunk of the deceased have been put in an Almirah at his house bearing No.300, Area 5-A, Landhi No.5 Karachi.

It was also incorporated in the FIR (Ex5-B) that the appellant led the police party along with complainant and his friend towards his house, wherefrom he got recovered the limbs and trunk of her deceased daughter.

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

4

5. The record reflects, that during the course of preliminary inquiry conducted by SIP Muhammad Ameen, the appellant was arrested under section 54 of The Code on 28<sup>th</sup> of December, 2005 vide memo of arrest (Ex.5-C) on his disclosure for committing murder of deceased and to get recover the limbs and trunk of the deceased from the room of his rented house. The appellant voluntarily led the police to his rented house, where the land lord of the house Muhammad Zubair (P.W.5) was associated as witnesses. The door was opened by appellant and on his pointation, the limbs and trunk of the deceased coupled with knife and hacksaw were recovered vide recovery memo (Ex.5-A) in the presence of complainant Muhammad Umer (P.W.1), marginal witness Muhammad Zubair (P.W.5) and Ali Ahmed, which followed sketch of the crime scene (Ex.37).

6. The limbs and trunk of the deceased were sent for autopsy through letter (Ex.24), examined by Dr. Kausar Parveen (P.W.8), who after conducting autopsy issued post mortem report bearing No.805 of 2005 dated 28<sup>th</sup> of December, 2005, produced as (Ex.5-D) and death certificate as (Ex.25) of the deceased by observing the following injuries:

- i) "Head was separated from the neck at the level cervical two and 3 vertebrae by a sharp cutting weapon.
- ii) Right upper limb imputed at shoulder joint same was the condition of left limb.
- iii) Both the legs were also separated from the hip joint.
- iv) Three bruises each measuring 1 cm x 1 cm, one on right labia majora and second left labia majora.  
PERINIUN. Tear of 1.5 cm x 1 cm on posterior part noted.  
Hymen two tear one at 5 0 clock and one at 7 0 clock seen margins were seen. Vaginal swabs were taken, preserved given to IO for chemical analysis."

In view of the observation recorded during autopsy, it was opined by Dr.Kausar Parveen (P.W.8) that the death of the deceased was caused as a result of de-composition and amputation of all four limbs and trunk of the

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

5

deceased, causing hemorrhage and shock, caused by sharp cutting weapons and deceased was subjected to act of rape.

7. It transpires, that SIP Akbar Hameed Ghouri(P.W.10) formally arrested the appellant at 3.00 a.m (night) vide memo of re-arrest (Ex.32). He (P.W.10) revisited the room of the appellant and on his pointation got recovered mattress(gadda) on which accused had committed zina with the deceased, a pair of ear ring of the deceased, a pair of slipper of the deceased, a Tap and Mug, and a swab (cotton) stained with blood were taken into possession for chemical analysis,whereof, report was received and produced as (Ex.33). He recorded the statement of Rukkunuddin (P.W.2) and Kaleemullah (P.W.3) and got the appellant medically examined regarding potency by Dr.P.Jesrani, who opined that the appellant at present is capable of performing sexual intercourse and issued certificate.

In the meanwhile, appellant volunteered to confess his guilt as such on 2<sup>nd</sup> of January, 2006, he was produced before Mr.Altaf Hussain,Judicial Magistrate (P.W.7), who after observing codal formalities, recorded the confessional statement of the appellant (Ex.21), whereafter the appellant was remanded to judicial lockup.

Akbar Hameed Ghouri SIP (P.W.10) also got recorded the statements of Rukkunuddin (P.W.2) and Kaleemullah (P.W.3) as envisaged under section 164 of The Code by Mr.Altaf Hussain,Judicial Magistrate (P.W.7) on 9<sup>th</sup> of January, 2006.

On conclusion of the investigation, the appellant was booked and sent to the trial court to face the consequences of his culpability.

8. On 15<sup>th</sup> of November, 2006 the appellant was formally indicted by framing charge under section 10(3) of the Hudood Ordinance for committing

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

6

zina-bil-jabr read with sections 302 and 201 of The Penal Code for committing murder of the deceased as well screening of the evidence.

In order to substantiate the charge the prosecution produced as many as ten prosecution witnesses, including Muhammad Umer, the complainant (P.W.1), Rukkunuddin P.W.2), Kaleemullah (P.W.3), last seen witnesses of the occurrence, Mehmooda Begum (P.W.4) wife of the complainant, Muhammad Zubair (P.W.5) the land lord of the accused, as well as marginal witness of the recovery of limbs and trunk of the deceased, Nasimuddin (P.W.6), Mr.Altaf Hussain, Judicial Magistrate(P.W.7), Dr.Kausar Parveen (P.W.8), SIP Muhammad Ameen,(P.W.9) and SIP Akbar Hameed Ghouri(P.W.10), Investigating Officers.

9. On the closure of the prosecution side, the appellant was examined under section 342 of The Code by affording him an opportunity to offer explanation to the evidence brought forward by the prosecution as well as to produce defence evidence, if any. The appellant neither opted to make statement on oath as envisaged under section 340(2) of the Code nor produced any witness in his defence.

The appellant during examination under section 342 of The Code strenuously refuted the allegations so brought forward by the prosecution for having committed any crime as alleged and professed his innocence, claiming that he had sent Rs.12,00,000/- (rupees twelve lacs) to the complainant from Doha, where he had been working, with the purpose to purchase a house but the complainant (P.W.1) purchased the house for himself and on demand to return his money, he has been involved in the instant case.

He further came up with the allegation that complainant knew his illicit relations with his wife. He maintained that he was called and beaten by complainant (P.W.1) and his brother Akhtar, advancing threats to kill him.

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

7

10. We have heard Kazi Wali Muhammad, Advocate, learned counsel for the appellant, Mr. Qadir Khan Mandokhel, Advocate, counsel for the complainant and Mr. Khadim Hussain Khooharo, Additional Prosecutor General Sindh, for the State and perused the record minutely cover to cover with their valuable assistance.

11. Kazi Wali Muhammad, Advocate, while advancing his arguments, out rightly questioned the admissibility of the confessional statement by submitting that the confessional statement has been extorted by inducement and torture, whereupon no conviction can be based upon. He also argued that the evidence of prosecution witnesses suffers from material contradictions, therefore, no reliance can be placed on their depositions. He maintained that the recovery of the limbs and trunk of the deceased on the pointation of the appellant has been concocted, suffering from several irregularities which has made the same inadmissible. Although, he did not question the medical evidence, however, submitted that it does not connect the appellant with the crime. Reiterating the plea advanced by the appellant, learned counsel argued that he has been falsely implicated due to money dispute, thus sought annulment of the impugned judgment and prayed for acquittal of the appellant.

On the other hand, Mr. Khadim Hussain Khooharo, learned Additional Prosecutor General Sindh, vehemently opposed the arguments so advanced by the counsel for the appellant and urged that the prosecution has successfully proved the charges against the appellant. He contended that the deceased was lastly seen in the company of the appellant by the prosecution witnesses Rukkunddin (P.W.2) and Kaleemullah (P.W.3), whereafter on the arrest of the appellant, he voluntarily led the police to his house, wherefrom the limbs and trunk of the deceased were recovered inclusive of the crime objects,

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

8

having been supported and corroborated by the Expert opinion of the Chemical Examiner and the medical evidence. It was also submitted that the medical evidence is in conformity with the circumstantial evidence, which links and connects the appellant with the brutal murder and rape of an innocent girl of 11 years of age. He prayed that the appeal being meritless needs dismissal and the murder reference requires to be answered in positive as the impugned judgment in all respect is worthy to hold the field.

Mr.Qadir Khan Mandokhel, Advocate, for the complainant while adopting the arguments of the learned Additional Prosecutor General Sindh added that the appellant has pleaded that he had sent an amount to the complainant (P.W.1) to purchase a house, but the appellant has failed either to record his statement on oath or to produce any documentary evidence to substantiate his plea. He also maintained that the circumstantial evidence produced by the prosecution is sufficient enough, justifying the conviction and sentence awarded to the appellant as also the evidence on record has properly been appreciated by the trial court.

12. Admittedly, it is a case, where there is no eye witness of this unfortunate incident. The entire case of the prosecution revolves around the circumstantial evidence, which rests upon the following pieces of evidence, so collected against the appellant, while substantiating the charges:

- 1) Last seen evidence furnished by Rukkunuddin (P.W.2) and Kaleem Ullah (P.W.3)(Also recorded their statement under section 164 of The Code.)
- 2) Recovery of the Limbs and trunk of the deceased and clothes of the deceased (Sonoo), knife and hacksaw on the pointation of appellant from his residential room of his rented house in consequence of his disclosure (Ex.5-C), witnessed by Muhammad Zubair (P.W.5), secured through memo (Ex.5-A).
- 3) Recovery of apparels and other articles of the deceased as well as article of crime, suspected to be blood and stained with sperms taken into possession through recovery memo (Ex.12).
- 4) Report of the Chemical Examiner of Parcels No.1 to 7 (Ex.33).

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

9

- 5) Confessional statement of appellant recorded on 2<sup>nd</sup> of January, 2006 (Ex.21).
- 6) Medical evidence of deceased (Ex.5-D).

13. While, re-appraising the evidence, we would like to have a glance on the touchstone of the appreciation of circumstantial evidence as enunciated by the Hon'ble Supreme Court of Pakistan in the cases of IMRAN DULLY AND ANOTHER VS. THE STATE AND OTHERS (2015 SCMR 155) and HASHIM QASIM AND ANOTHER VS. THE STATE (2017 SCMR 986).

The guided dictum are that while appreciating the circumstantial evidence, the facts of the case must be consistent with the culpability of the accused, the circumstances must be of conclusive nature, excluding every possible hypothesis except the guilt and that the chain of events must be connected and unbroken, whereof one end must touch the crime and the other, the neck of the culprit.

14. The unfortunate episode of the murder and rape of the deceased Sakinatul Huda alias Sonoo aged about 11 years, unfolds initially on 28<sup>th</sup> of December, 2005 at 12.30 p.m, when the door of the house of complainant Muhammad Umer (P.W.1) is knocked by the appellant asking to borrow the motorcycle of complainant (P.W.1) from his wife Mehmooda Umer (P.W.4) and the deceased is sent by her mother (P.W.4) to tell the appellant that the motorcycle is not available, whereafter little Sonoo is found no-where, as narrated by her mother Mahmooda Umer (P.W.4) in her testimony.

Mother of the deceased (P.W.4), also deposed that, when her daughter (deceased) went missing, she informed her husband

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

10

Muhammad Umer (P.W.1), who came home and started searching in the neighbourhood.

When cross-examined, she (P.W.4) denied that she did not see the appellant, lastly when he came at her house. She explained that beside hearing the voice of the appellant, she also saw him at the door, while standing outside.

The testimony of Mahmooda Umer (P.W.4) is further strengthened by the deposition of Rukkunuddin (P.W.2) and Kaleemullah (P.W.3), who are independent witnesses, having absolutely nothing common to falsely depose against the appellant. Both the witnesses (P.W.2 and P.W.3) have corroborated each other on all material points. They have put forth, what they knew while making statement on oath that on 28<sup>th</sup> of December, 2005 at about 12.30 p.m(noon), while they were standing at the corner of the street, they witnessed the deceased in the company of appellant, aboard in the yellow and black taxi. It was also stated by them in a voice that later, while Muhammad Umer (P.W.1) was searching her daughter (Sonoo), they apprised him (P.W.1) about the said factum.

(P.W.2 and P.W.3) were cross-examined on various points but the appellant failed, even, slightly to shake their deposition. They remained firm and consistent with regard to the timings and even manner of aboard on taxi by the appellant with the deceased.

The appellant also failed to suggest any personal grudge or enmity, being a reason to falsely depose against him. From whatever angle the statement of Rukkunuddin (P.W.2) and Kaleem Ullah (P.W.3) are examined and re-appraised, we have found their deposition to be worthy of credence and confidence inspiring.

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

11

We are mindful of the legal proposition that the evidence of last seen usually has not been considered to be a strong piece of evidence but in cases where last seen evidence is corroborated by other strong circumstantial evidence then the evidence of last seen does have a considerable impact, leading to the guilt of a culprit. The Hon'ble Supreme Court of Pakistan in the case of MUHAMMAD ABID VERSUS THE STATE AND ANOTHER (PLD 2018 S C 813), dealing with the evidence of "last seen together" while enunciating the dictum of last seen evidence made these following observations, which is reproduced for ready reference;

*"The foundation of the "last seen together" theory is based on principles of probability and cause and connection and requires 1. Cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused. 2. Proximity of the crime scene. 3. Small time gap between the sighting and crime 4. No possibility of third person interference 5. Motive. 6 time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime."*

In the instant case the evidence regarding "last seen together", furnished by Rukkunuddin (P.W.2) and Kaleem Ullah (P.W.3) is well founded, credible and confidence inspiring, fulfilling the criteria expounded in the Muhammad Abid's case (supra). However, it shall further be scanned and analyses in view of the other pieces of evidence so mentioned in preceding para.

15. The recovery of limbs and trunk and clothes of the deceased (Sonoo) coupled with the recovery of knife and hacksaw being the tools, made on the pointation of the appellant from his residential room of his rented house

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

12

in consequence of his disclosure (Ex.5-C), secured through memo (Ex.5-A) in the presence of Muhammad Zubair (P.W.5), Ali Ahmad and complainant Muhammad Umer(P.W.1) requires to be examined within the four corners of Article 40 of the Qanun-e-Shahadat Order, 1984 ("Qanun-e-Shahadat") to ascertain as to whether it falls within the meaning of discovery of fact or otherwise.

The discovery of any fact on the information of the accused in custody of police is admissible under Article 40 of Qanun-e-Shahadat, which reads as under:

*"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

The Hon'ble Apex Court in the case of MST.ASKAR JAN AND OTHERS VERSUS MUHAMMAD DAUD AND OTHERS (2010 SCMR 1604) held that Article 40 of the Qanun-e-Shahadat firstly serves as a proviso to Articles 38 and 39 of the Qanun-e-Shahadat and secondly, it is founded on the principle that if the statement or information of the accused amounts to confession or otherwise is supported by the discovery of a fact, it may be presumed to be true and not to have been extracted. It comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody and if the information relates distinctly to the fact discovered.

Perusal of the evidence in this regard demonstrates that complainant Muhammad Umer (P.W.1) along with other prosecution witnesses had been searching the deceased, earlier had absolutely no knowledge as to where the deceased had gone missing up-till the time, when appellant was handed over

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

13

to police and during course of informal interrogation for the first time the appellant made disclosure about committing murder of the deceased as well as volunteered to get recover the limbs and trunk of the deceased, kept in his room in and over the almira. The record also reflects that none knew as to where and how the deceased was murdered until the appellant voluntarily led the police contingent and other prosecution witnesses including Muhammad Zubair (P.W.5) (Landlord of the rented house) and Ali Ahmad and got recovered the limbs and trunk of the deceased and tools of crime such as knife and hacksaw. In this regard the testimony of Muhammad Zubair (P.W.5) is material and worthy of credence, inspiring confidence. He corroborated the testimony of Muhammad Umer (P.W.1) and investigating officers (P.Ws 9 and 10) with regard to the timing, mode and manner of the said recovery made on the pointation of appellant.

He is also witness to the recovery of a mattress "gadda", whereupon the appellant statedly committed "Zina" with the deceased, having some human hairs, a pair of ear rings belonging to the deceased, a wiper and Mug and under-waist ("Bunyan") stained with blood and sample of blood from the W.C through cotton swab, as well a pair of slipper and "Dopatta", secured through memo (Ex.12) effected on the disclosure and pointation of the appellant. It would have been commendable, if these articles were taken earlier while taking into possession the limbs and trunk of the deceased, knife and hacksaw in the early hours, but not subsequently, thus, we are of the considered view that placing reliance upon such disclosure and recovery may not be safe, however, not considering such piece of evidence, shall not adversely effect the prosecution case.

16. Dealing with the report of Chemical Examiner (Ex.33) issued in pursuance of examination of parcels No.1 to 7, we would like to analyze its veracity and connectivity as a corroborative piece of evidence.

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

14

Perusal of the report (Ex.33) transpires that parcel No.1 includes apparels of the deceased and white colour 'rilli', parcel No.2 of Hacksaw, parcel No.3 of Churri with wooden handle, parcel No.4 of cotton stained with blood, parcel No.5 of human hair, parcel No.6 of white colour T-shirt(bunyan) of the appellant and parcel No.7 of multi colour mattress(gadda) as well as vaginal swabs of the deceased contained in a tube which were examined by the Chemical Examiner of Government of Sindh, Karachi, who opined that parcel No.1 containing nine articles of the deceased, parcels No.2 to parcel No.7 containing hacksaw, chhurri, cotton stained with blood, human hair, white T-Shirt of the appellant and multi colour mattress are stained with human blood, whereas Article No.7 containing vaginal swabs of the deceased contained human sperms. The report (Ex.33) supports the prosecution case and is in conformity with the recovery made on the pointation of appellant from his room, suggesting his involvement in the crime.

17. The confessional statement is the material incriminating evidence relied by the prosecution, which if found consistent with the aforesaid corroborative evidence shall decide the entire case, holding the appellant guilty of the crime as setup by the prosecution. Before analyzing the confessional statement, we would like to highlight the yardstick settled by the Hon'ble Supreme Court of Pakistan in the cases of HASHIM QASIM AND ANOTHER VERSUS THE STATE (2017 SCMR 986) and AZEEM KHAN AND ANOTHER VERSUS MUJAHID KHAN AND OTHERS (2016 SCMR 274).

The crux of the principles laid down by the Apex court enumerates that while recording and appreciating a confessional statement, mandatory pre-cautions and criteria for recording as well as appreciating a confessional statement, are that;(i) the recording Magistrate of a confession must satisfy himself with regard to the voluntariness of the confessional

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

15

statement;(ii) the accused must be given warning as enunciated in the High Court's Rules and Orders for recording confessional statement by extending sufficient time of reflection with intervals; (iii) assuring the maker, while recording his confession that either he record or does not record his confessional statement, he would not be handed over to the police; (iv) No police official or if possible even no clerk should be present during the course of recording a confessional statement including a Naib Court; (v) the maker shall not be handed over to any official of police and must be remanded to judicial custody with no intervention of the police contingent who brought him; (vi) the confession must be true and voluntary made, contradictory in no manner with the prosecution case; (vii) the certificate as required under section 364 of The Code must be signed with the seal of the Court in the hand writing of the recording Magistrate. If the maker of the confessional statement only understand his mother language, then confessional statement must be got translated in his native language, which he fully understands and such fact must be incorporated in the certificate so reduced at the bottom of the confessional statement.

The confessional statement of the appellant has been examined, analyzed and scanned in view of the principles settled in the cases referred in para (supra). The confessional statement of the appellant has been recorded by Mr.Altaf Hussain,J.M (P.W.7). He produced the application submitted by police official SIP Akbar Hameed Ghouri for recording the confessional statement of the appellant under section 164 of The Code as (Ex.20) on 2<sup>nd</sup> of January, 2016. He testified that the accused was placed in the custody of court staff, and was given two hours reflection. According to him, he introduced himself to the appellant, asked question as to whether he is making statement under pressure, inducement or any of his relative is in custody, besides the

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

16

question incorporated in the questionnaire. Recording Magistrate stated to have given further two hours for reflection with interval. He maintained that the appellant was made to understand that either he records or does not record his confessional statement; he would not be handed over to the police but would be remanded to jail. According to him, after being satisfied that the confessional statement was being recorded voluntarily by the appellant, he reduced the confessional statement as per his verbatim in his own hand writing, in Urdu language which appellant understood. He added that he appended a certificate of his satisfaction that the confessional statement of the appellant was recorded voluntarily, whereupon on each page, the signatures of the appellant were obtained. He also testified that after recording, the confessional statement and obtaining the signatures, he remanded the appellant to judicial custody. He produced the confessional statement as (Ex.21), identifying the signatures of the appellant on the said confessional statement.

18. We have examined the testimony of the Mr. Muhammad Arif, J.M (P.W.7) very carefully and gone through the questionnaire, the mode and manner of recording of the confessional statement, the certificate at the bottom appended with the confessional statement as well as the form of declaration required by section 164(3) of The Code, which have been found to be in accordance with law by all means, fulfilling the yardstick contained in the judgment referred herein before. Mr. Muhammad Arif, J.M (P.W.7) observed all the requisite formalities necessary for recording the confessional statement, which needs to be appreciated as we did not find any illegality or irregularity in such proceedings for recording the confessional statement of appellant.

19. After due scrutiny, we have come to the conclusion that the confessional statement has voluntarily been made, which is true as it is consistent with other circumstantial evidence, so putforth by the prosecution.

**Jail Criminal Appeal No.03/K of 2017**  
**Criminal Murder Ref.No.01/K of 2017**

17

The appellant in his confessional statement in clear words has admitted that complainant Muhammad Umer (P.W.1) was his friend, whom he had sent Rs.470,000/- (rupees four lacs seventy thousand) from Qatar but when he returned, Muhammad Umer (P.W.1) did not return his money as such on 28<sup>th</sup> of December, 2005, he took Sonoo (deceased) daughter of Muhammad Umer from the street to his house, where he committed murder and hid the dead body in the almirah and that he also committed her rape.

20. The autopsy report (Ex.5-D) confirms the commission of 'zina' as well as mode and manner in which little Sonoo was done to death. Dr.Kausar Parveen (P.W.8) as mentioned earlier has opined that the deceased was subjected to sexual intercourse (zina-bil-jabr) which is inconformity with the prosecution story.

21. The defence plea of the appellant raised during cross-examination and under section 342 of the Code has been considered, which seems vague and absolutely unconvincing. The appellant even failed to produce balance sheets of the bank, showing the alleged money being sent by him in the account of Muhammad Umer(P.W.1) or any other document to affirm his version, as such we believe that he has miserably failed to substantiate his version of false implication.

22. Irresistibly, we firmly believe and have arrived at the conclusion that the appellant is guilty of committing rape and murder of deceased Sakinatul Huda alias Sonoo aged about 11 years as the prosecution has successfully proved the charges beyond any shadow of doubt.

The judgment impugned herein, is well worded, coherently drafted and based on prudent and cogent reasoning, suffering from no illegality, perversity, mis-reading and non-reading of evidence, except holding the appellant culpable of screening of the evidence as charged under section 201 of the Penal Code. The conviction and sentences of the appellant recorded under sections 302(b) of The Penal Code and 10(3) of the Hudood Ordinance are maintained.

**Jail Criminal Appeal No.03/K of 2017  
Criminal Murder Ref.No.01/K of 2017**

18

23. As there is no evidence on record including confessional statement nor attending circumstance of the case suggests that the appellant screened of the evidence, henceforth, we hold that the prosecution has failed to prove the charge under section 201 of The Penal Code against the appellant.

24. For what has been discussed above, we found the appeal meritless, which was dismissed, resultantly; the conviction and sentences of appellant recorded under section 302(b) of the Penal Code and section 10(3) of the Hudood Ordinance were maintained. However, the conviction and sentence of the appellant under section 201 of The Penal Code was set aside and he was acquitted of such charge.

**CRIMINAL MURDER REF.NO.01/K OF 2017**

As the Jail Criminal Appeal No. 03/K of 2017 filed by the appellant Gohar alias Chaman against his conviction and sentences recorded under section 302(b) of the Penal Code and section 10(3) of the Hudood Ordinance was dismissed by upholding the impugned judgment, henceforth, the murder reference No.01/K of 2017 in absence of any mitigating circumstance was answered in **AFFIRMATIVE**, confirming the Capital sentence awarded by the trial court by hanging the convict Gohar alias Chaman son of Mehmood ul Haq by neck till he is dead.

These are the reasons for our short order dated 28<sup>th</sup> of January, 2019.

**SHAUKAT ALI RAKHSHANI  
JUDGE**

**MEHMOOD MAQBOOL BAJWA  
JUDGE**

**SYED MUHAMMAD FAROOQ SHAH  
JUDGE**

Islamabad, 4th of February, 2019/  
M.Akram/