

IN THE FEDERAL SHARIAT COURT  
(Appellate Jurisdiction)

PRESENT

**MR.JUSTICE SYED AFZAL HAIDER**  
**MR.JUSTICE SHAHZADO SHAIKH**

JAIL CRIMINAL APPEAL NO.51/I OF 2009

Mst.Basran Bibi w/o Ghulam Muhammad (deceased), caste Hambi,  
(now confined in District Jail, Quetta).....Appellant.

Versus

The State

..... Respondent.

Counsel for the appellant .... Syed Muhammad Tayyab, Advocate  
Counsel for the State .... Mr.Muhammad Sharif Janjua,  
Advocate  
FIR No.Date and Police Station .... No.24/2004 dated 26.05.2004, P.S  
Bagh, District Sibi  
Date of judgment of trial Court .... 23.01.2007  
Date of institution .... 21.04.2009  
Date of hearing .... 02.02.2011  
Date of decision .... 02.02.2011

**JUDGMENT**

SHAHZADO SHAIKH J:- This jail appeal filed by appellat Mst.Basran Bibi is directed against the judgment dated 23.01.2007 delivered by learned Additional Sessions Judge-II, Sibi whereby she was convicted under section 302-(b) Pakistan Penal Code and sentenced to imprisonment for life as 'Tazir' with a fine of Rs.50,000/- or in default thereof to further undergo for a period of one year simple imprisonment. She was also convicted under section 10(2) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to 10 years rigorous imprisonment and a fine of Rs. 50,000/- and in default whereof to further suffer one year simple imprisonment. The co-convict namely Khawand Bakhsh son of Muhammad Yousaf died in jail ward Civil Hospital, Quetta on 17.07.2007 as informed by the Superintendent, Central Jail Mach vide his letter No.CJM/Judl./10/R & R/464 dated 18.02.2010.

2. Brief facts of the prosecution case are that Muhammad Ramzan son of Tagya Khan, complainant lodged an FIR on 26.5.2004 Ex./10-A at about 10.30 a.m. on strength of the statement of accused/appellant Mst. Basran Bibi claiming therein that he had lodged a report in Roaznamacha No.18/19 Exh.1-B, in the month of July, 2000 at Police Station Bagh regarding abduction of his brother Ghulam Muhammad and his family by Khawand Bakhsh Mangi, who demanded Rs.50,000/- for releasing complainant's brother and his family. He further stated that on 26.5.2004 in the morning at 7.00 a.m. his brother's wife Mst. Basran (accused) alongwith two children Imran and Sara (from second husband Khawand Bakhsh) came to his house and told him the story about the incident: that she alongwith her (first) husband Ghulam Muhammad and two children Hassan and Razia Bibi (from her first husband, Ghulam Muhammad) went to the house of Khawand Bakhsh at Dera Murad Jamali. After two or three days accused Khawand Bakhsh killed her husband by giving Drugs (Nasha), he murdered her husband, in

front of her by strangulating him and buried him in the courtyard of his house; she could identify the place where her husband was buried. She further informed the complainant that accused Khawand Bakhsh also had been giving drugs (Nasha) to her (Mst.Basran) before going to his duty. In his absence co-accused Moala Bakhsh and mother of accused Khawand Bakhsh Mst. Allah Dinni watched over her in detention. She further stated to complainant that her two children were also killed by the accused Khawand Bakhsh, during that period accused Khawand Bakhsh committed illegal intercourse (rape) with Mst. Basran due to which two illegitimate children namely Imran and Sara were born to her. A night before, Khawand Bakhsh slept drunk (in Nasha) condition and did not lock the door. This opportunity was availed of by her and she escaped from his house at Dera Murad Jamali to Bhag. Therefore, crime report Exh.10/A on 26.05.2004 was registered against the accused.

3. Investigation ensued as a consequence of formal registration of the crime report by Muhammad Ibrahim PW-10, SHO Police Station

Bagh. During the investigation accused Khawand Bakhsh got recorded his statement under section 164 Cr.P.C. before Abdul Hafeez PW-7, Judicial Magistrate Dhader and the accused confessed his guilt and complainant Muhammad Ramzan also implicated the accused Mst. Basran, therefore her name was also inserted in column No. 3 of the challan. Investigation Officer of the case visited the place of incident and prepared the site plan Exh.P.10/B. He had also given an application Exh.P.10/C to Judicial Magistrate Dera Murad Jamali for disinterment of corpse of deceased Ghulam Muhammad and also another application Exh.P.1/D to Judicial Magistrate Dera Murad Jamali for disinterment of corpse of deceased Muhammad Hassan and Riza Bibi (Children). The investigation Officer also obtained the report of DNA Exh.10-G of the accused Mst. Basran, Khawand Bakhsh and children Imran and Sara. He also prepared death (Merg) report of deceased Ghulam Muhammad Exh.P.10-J, "Merg" report of deceased Muhammad Hassan Exh.P.10-K, "Merg" report of deceased Mst. Razia Bibi Exh.P.10-L and after completion of investigation, the

investigation, the report was prepared under section 173 of the Code of Criminal Procedure and sent to the court requiring the accused to face trial.

4. Learned trial court on receipt of the said report framed charge against both the accused under sections 11 and 10 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with Sections 302/341/342/346/365/201/34 of Pakistan Penal Code on 15.09.2004. The accused did not plead guilty and claimed trial.

5. The prosecution in order to prove its case produced 10 witnesses at the trial. The gist of statement of witnesses for the prosecution is as under:-

i) Muhammad Ramzan son of Tagy Khan, complainant appeared as P.W.1. He stated that about 8 years ago accused Khawand Bakhsh visited the house of complainant and took his brother deceased Ghulam Muhammad alongwith his family for arranging a job, to Dera Murad Jamali, with him. After six or seven

days on inquiry from the house of accused Khawand Bakhsh at Dera Murad Jamali, ~~accused~~ showed is ignorance about his brother and his family. On 26.5.2004 his brother's wife came to the house of complainant and informed that accused Khawand Bakhsh had killed her husband and also killed her childrens. She also informed the complainant that during all that period, the accused Khawand Bakhsh had committed Zina with her and as a result of that zina illegitimate children Imran and Sara were born to her and she was able to make her escape good from there as she got an opportunity.

✓ Complainant produced his application Exh.P/1-A for lodging the FIR. On the insistence of Mst.Basran, dead body of his husband was recovered from the house of accused Khanwand Bakhsh. On the pointation of accused Khanwand Bakhsh, disinterment of corpse and bones of dead bodies of the children, Hassan and Razia, from the graves was effected.

ii) Muhammad Ramzan son of Bahar Khan appeared as P.W.2 to state that on about 8-1/2 years ago when he was travelling to Jacobabad by bus, at Bagh bus stop deceased Ghulam Muhammad alongwith his wife Mst.Basran and two children namely Muhammad Hassan and Razia met him and on inquiry deceased Ghulam Muhammad informed him that he was going to meet Khawand Bakhsh at Dera Murad Jamali for seeking job through him. On that journey Ghulam Muhammad stayed at,Dera Murad Jamali and this PW-2 Muhammad Ramzan went to Jacobabad. He further stated that it had now come his knowledge that accused Khawand Bakhsh alongwith Mst.Basran had killed Ghulam Muhammad and his children. The dead bodies (bone skeleton) were recovered during disinterment of corpse of the deceased. Due to illicit relations between Khawand Bakhsh and Mst.Basran two illegitimate children had been born namely Imran and Sara.



iii) Muhammad Waris appeared as P.W.3. He stated that in his presence Judicial Magistrate Dera Murad Jamali, DSP Naseerabad and concerned doctor alongwith other officials and SHO concerned recovered the skeleton of deceased Ghulam Muhammad, Muhammad Hassan and Razia Bibi.

iv) Rais Kora Khan appeared as P.W.4, who stated that accused Khawand Bakhsh came to Bagh about 8 years back and took deceased Ghulam Muhammad alongwith his family for providing him job. Now Mst. Basran came to Bagh and told all the story regarding occurrence/offence in his presence.

v) Muhammad Waseem, Police Constable, appeared as P.W.5 and narrated that in his presence Sharbat Khan head constable produced a video cassette regarding disinterment of Corpse of grave of deceased Exh.P.5/A to SHO Muhammad Ibrahim.

vi) Muhammad Yaqoob Head Constable who appeared as P.W.6 is the witness of disclosure memo Exh.3H wherein accused

Khawand Bakhsh made disclosure that he had killed Ghulam

Muhammad, Muhammad Hassan and Razia Bibi.

vii) Abdul Hafeez, Judicial Magistrate appeared as PW-7, who recorded the confessional statement of accused Khawand Bakhsh after fulfilling all the legal requirements.

viii) Dr. Abdul Qadir Medical Officer, DHQ Hospital, Dera Murad

Jamali appeared as P.W.8. He deposed that in his presence grave of

the deceased were exhumed as per requirements of law and

skeleton of Ghulam Muhammad and bones of children Muhammad

Hassan and Razia were recovered from the graves in his presence.

This PW issued MLC Exh.P.8/C in this regard. He stated

that samples of all recovered articles were taken and dispatched to

FSL, Karachi for its Chemical Examiner.

ix) Dr. Abdul Majeed, appeared as PW-9. He is witness

regarding DNA test. He also examined the bones of

deceased Razia Bibi and verified the fact that the same was

recovered on the pointation of accused Khawand Bakhsh.

x) Muhammad Aslam, appeared as PW-10, He was SHO of Thana Bagh on 26.5.2004. He deposed regarding FIR registered against the accused Khawand Bakhsh and others on the basis of written report Exh.P.A/1. He investigated the case as per requirement of law. He visited the place of occurrence at Bagh, prepared the site plan Exh.P.10/B, recorded the statement of witnesses, arrested the accused Khawand Bakhsh, recovered all the incriminating articles related to the offence completed other investigation, and submitted supplementary incomplete challan before the court of competent jurisdiction on 28.6.2004.

6. Learned trial court after close of the prosecution evidence recorded statements of accused under section 342 of the Code of Criminal Procedure. Accused Mst. Basran Bibi in answer

to question No.16 "Why the P.Ws have

deposed against you" stated as under:

"The complainant had not deposed against me whereas the other witnesses are circumstantial and interested one"

7. The statement of Mst.Basran Bibi appellant was recorded under section 340(2) Code of Criminal Procedure, wherein she took the plea that her first husband died a natural death and after his death she married accused Khawand Bakhsh after about 5 years. She further deposed that her son Muhammad Hassan and her daughter also died at Bagh due to measles (khasra). She also produced her "Nikha Nama" Exh.P.2/B performed with Khawand Bakhsh. She failed to produce any evidence in support of natural death of her first husband. She also deposed that complainant Muhammad Ramzan had sold her in Rs.1,00,000/- . These pleas of appellant were not accepted by learned trial court.

8. Ater concluding the codal formalities of the trial the learned trial court returned a verdict of guilt against appellant

Mst. Basran Bibi and co-accused Khawand Bakhsh. They were convicted and sentenced as mentioned in the opening paragraph of this judgment. Co-convict namely Khawand Bakhsh son of Muhammad Yousaf died in jail ward Civil Hospital, Quetta on 17.07.2007 as informed by the Superintendent, Central Jail Mach vide his letter No.CJM/Judl./10/R & R/464 dated 18.02.2010. Hence the present appeal against her conviction.

9. We have gone through the file. The evidence on record as well as the statements of accused have been perused. Relevant portions of the impugned judgment have been scanned. The points urged by the contending parties have been taken note of.

10. Learned counsel for the appellant, has raised the following points for consideration of this court:-

- i. That during the cross-examination the complainant had admitted that the appellant is innocent;

- ii. That the Investigation Officer in his cross-examination admitted that during the investigation he did not find any incriminating material against the present appellant.
- iii. The appellant was the person who first reported the incident, and was initially the star prosecution witness.

11. On the contrary the learned counsel for the State has submitted that the prosecution has proved its case against the appellant and she has rightly been convicted and sentenced by the learned trial court as the co-convict Khawand Bakhsh, since died, had confessed his guilt before the court of competent jurisdiction in his statement under section 164 Code of Criminal Procedure. He implicated the present appellant in this case. Learned counsel also relied upon the case of Jawad Ayub and other Vs. The State, 2005P.Cr.L.J. page-1994 and contended further that it is very clear from the record of this case that dead body of deceased Ghulam Muhammad was recovered on the pointation of present appellant vide pointation memo Exh.Ex.P/3-A.

12. We have heard the learned counsel for both the parties and with their able assistance we have gone through the evidence adduced by the prosecution and the relevant material available on record. In order to prove the unnatural death of deceased Ghulam Muhammad, Muhammad Hassan and Razia Bibi the prosecution depends upon testimony of PW-1 Muhammad Ramzan son of Tagya Khan, the complainant of the case who reproduced the facts regarding killing of the deceased, Ghulam Muhammad and his two children's namely Muhammad Hassan and Razia Bibi by Khawand Bakhsh, as narrated to him by Mst.Basran, and he further visualized connivance of Mst.Basran, in the whole occurrence. This witness remained consistent on his allegation during test of lengthy cross-examination. This witness also filed application Exh.P-A for registration of case contending therein that he had lodged a report in the month of July 2000 in which he had mentioned that his brother alongwith his wife and two children were missing, now the wife of his deceased

brother came to his house and had told all the story regarding killing of his brother Ghulam Muhammad and his children. All the recovery of incriminating articles relating to this case have been proved by the prosecution witnesses such as disinterment of corpse, exhumation of graves, recovery of skeletons of the deceased on disclosure of accused Khawand Bakhsh, in a video cassette in this regard, where he confessed his guilt before PW-7 Abdul Hafeez, Judicial Magistrate during the recording of statement of accused Khawand Bakhsh under section 164 Code of Criminal Procedure. All the PWs corroborated each other regarding disinterment of corpse and exhumation of graves of all the deceased, recovery of skeleton ( bones) of all the deceased, killed by Khawand Bakhsh, on his pointation. PW-8 Dr. Abdul Qadir Mangal and PW-9 Dr. Abdul Majeed have also verified the facts regarding disinterment of corpse, exhumation of grave, recovery of skeleton of all the deceased and DNA test.



13. After carefully analyzing the above assertions of the learned counsel for the appellant and the counsel for the State, following facts weigh heavily in the incident and all related developments ultimately culminating into the trial and present appeal.

14. The trial Court convicted the appellant Mst. Basran Bibi merely on the statement under section 164 Cr.P.C. of the co-accused Khawand Bakhsh, who implicated the present appellant. In our view the same was of no help to prosecution because the same is not a substantive piece of evidence and its use being limited. According to confessional statement of Khawand Bakhsh, Mst.Basran Bibi was also allegedly an active partner in the commission of offence. But evaluation of this statement and appreciation of evidence require careful analysis of all relevant circumstances surrounding the case and attending the occurrence. This statement needs to be evaluated to see as to whether it had capacity to bring home charge against the appellant Mst.Basran Bibi.

15. In this case PW-10 Muhammad Aslam, Investigating Officers has clearly admitted in his cross-examination that during investigation nothing as incriminating evidence could come on record for implication of Mst.Basran Bibi in this case.

16. The appellant, a young illiterate female at her early growing age of 22 years, at the time of unfolding of the tragic incident in her life, where she has stated to have been sold by her relations to a jobless husband, with two minor kids, was allured by the offer of hearth and home. Had it been only the murder of the husband, one could attribute a role to her of elopement with co-accused Khawand Bakhsh, since died. In this tragic incident she lost her two children also. Therefore, it requires deeper analysis.

17. She produced a Nikahnama of her marriage with Khawand Bakhsh performed five years after death of her first husband, deceased Ghulam Muhammad. All these factors point towards absolute coercive enslaving circumstances, where she states that she used to be kept under

sedation and detention, when the co-accused used to go to work. Under these absolute coercive conditions, person cannot be convicted even under charge of Zina, for which reliance is placed on "Mst.Zafran Bibi Vs. The State" reported in PLJ 2002 FSC page 49, wherein it has been held as under:-

*"Where Zina is committed under coercion, the person coerced cannot be convicted for Zina".*

18. It appears that after murder of her first husband, loss of both children, continued detention, helplessness and even senselessness, which constitute absolute coercion, in which she finally succumbed to convert her *bondage* into a marital-*bond*. It was in these circumstances, that she was married with Khawand Bakhsh. All along, she remained abandoned after having been sold-out. Neither brother of her first husband, though he claims to have lodged a complaint of disappearance of his brother and his family in 'Roznamcha'. But during all this period he guiltfully remained mum.

There is no person, neither from her parents, nor from her in-laws to pursue the matter of missing of whole family. This renders very strong support to her allegation that she was sold out and abandoned. Those who received the price, created a thin sheet of shelter behind the alleged "Roznamcha", if any, and they absolved themselves of any responsibility to even lodge FIR and pursue the case of abduction and its imaginable consequences during all this period, when complainant PW-1 Muhammad Ramzan claims to be in full knowledge of his brother and his family going to the house and village of the co-accused Khawand Bakhsh and also the statement of the last seen by PW-2 as he deposed in his testimony that 8 years ago, he was going to Jacobabad, on bus stop of Bagh, he met deceased Ghulam Muhammad and his family and deceased Ghulam Muhammad informed this witness that he is going to accused Khawand Bakhsh, who would provide a job to said deceased.

19. When the appellant Mst Basran Bibi got an opportunity, she showed her resilience for saving her life and the life of her two budding children from the marital-bondage claimed with co-accused Khawand Bakhsh. She herself reported the matter first and she became the prosecution star witness, to face further unfolding challenges, through the process of law as the last hope.

20. While keeping all these factors in mind, the entire evidence, episodes and her conduct has also to be carefully analysed further. It is also a fact that her husband was murdered by the co-accused Khawand Bakhsh, with whom she ultimately, under the given circumstances, compromised to marry. All along this offence of murder of her husband by the co-accused Khawand Bakhsh and disposal of the dead body of her deceased husband into the 'well' in the house of Khawand Bakhsh, were in her knowledge. She was all along living there with haunting memories. She does not make even a claim to have made any effort to disclose the gruesome occurrences, to anyone, for a long time.

21. The co-convict namely Khawand Bakhsh son of Muhammad Yousaf died in jail ward Civil Hospital, Quetta on 17.07.2007 as informed by the Superintendent, Central Jail Mach vide his letter No.CJM/Judl./10/R & R/464 dated 18.02.2010.

22. In this view of the matter, appeal of Mst Basran Bibi for acquittal is dismissed. Her conviction by the learned trial Court under section 302-(b) and 365 of Pakistan Penal Code and sentence of imprisonment for life as 'Tazir' with a fine of Rs.50,000/- or in default thereof to further undergo for a period of one month simple imprisonment, as well as her conviction under section 10(2) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentence of 10 years rigorous imprisonment and a fine of Rs.50,000/- and in default whereof to further suffer one year simple imprisonment, is set aside, but she is convicted under section 201 of Pakistan Penal Code, and awarded a sentence of seven years Rigorous Imprisonment,

and a fine of Rupees Twenty Thousand, and in default of payment thereof, to further undergo Simple Imprisonment for two months. The benefit of section 382-B Cr.P.C. shall remain intact.

23. These are the detailed reasons for our short order dated 02-02-2011.

 SC  
**JUSTICE SHAHZADO SHAIKH**  


 SC  
**JUSTICE SYED AFZAL HAIDER**

Dated 02-02- /2011.

Fit for reporting

 SC  
**JUSTICE SHAHZADO SHAIKH**  
