

IN THE FEDERAL SHARIAT COURT
(Appellate / Revisional Jurisdiction)

PRESENT:

MR. JUSTICE DR. FIDA MUHAMMAD KHAN, JUDGE
MR. JUSTICE SAEED-UR-REHMAN FARRUKJ, JUDGE
MR. JUSTICE ZAFAR PASHA CHAUDHRY, JUDGE

JAIL CRIMINAL APPEAL NO. 141/I OF 2002
L/w Murder Reference No. 13/I Of 2002

Sajjad Ali son of Abbas Ali,
resident of Mauza Dhalokay,
police station, Kahna, LAHORE

.... APPELLANT

VERSUS.

The State.

.... RESPONDENT.

Counsel for appellant

.... Malik Abdul Haq
Advocate

Counsel for State

.... Mr. Aftab Ahmad Khan,
Advocate.

No. FIR, date &
police station.

.... 219, dated 23.6.2001
Police Station. Batapur, Lahore

Date of impugned Judgment

.... 31.05.2002

Date of receipt of appeal

.... 24.06.2002

Date of hearing

.... 14.09.2005

Date of decision

.... 16.09.2005

JUDGMENT

DR. FIDA MUHAMMAD KHAN,J.- This Jail criminal appeal filed by Sajjad Ali son of Abbas Ali is directed against the Judgment dated 31.5.2002 passed by learned Additional Sessions Judge, Lahore whereby he has convicted him under section 302-B PPC and sentenced him to death. He has further been ordered to pay compensation of Rs.50,000/- under section 544-A Cr.P.C and in case of its recovery, it has been directed to be paid to the legal heirs of deceased Misbah. In default of its payment, he shall suffer six months R.I. He has also convicted him under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, hereinafter referred as the Ordinance, and sentenced him to undergo 25 years R.I. The benefit of section 382-B Cr.P.C has been extended to him.

2. The learned trial court has submitted criminal Murder Reference No.13/I-2002 for confirmation of death sentence. Since both the matters arise out of one and same Judgment, we are disposing them of by this single Judgment.



3. Briefly stated, facts of the prosecution case as narrated in complaint (Ex.PA) drafted by Ghazanfar Ali, SI (PW7) on the statement of complainant Tallat Jabeen (PW1) which was incorporated into formal FIR (Ex.PA/1) at police station, Batapur, Lahore on 23.6.2001 at about 6.00 p.m. are to the effect that she is living alongwith his family in Atokay Awan. She has five children and her husband as well as her two elder sons are working as labourers whereas her daughter Misbah Bibi, aged 10 years, used to help her doing house work. About 3/4 days prior, her sister Saiqa came there to meet her. Her step son Sajjad (i.e. the appellant/accused) had come to meet them and stayed over there for 5/6 days. On the said date, at about 11.30 a.m. she alongwith her sister Saiqa went to leave her at the house of their brother Mauzam, near Masjid Haq Mohallah Qureshian, Naseerabad, Shalimar Town, Lahore. Her husband Abbas alongwith the two elder sons, namely Asad Ali and Mujahid Ali, had already gone for labour work and had left them at her house. Therefore, at that time only her daughter Misbah alongwith

Handwritten signature or initials.

her step son aged 20/21 years remained in the house. At about 2.30 p.m./3.00p.m. when after leaving her sister, she came back to Attokay Awan she met her brothers Mauzam Ali (PW2) and Nasir Ali (given up PW) in the street as they were coming towards her house. When they reached near her house, they saw that the appellant/accused Sajjad Ali was locking the door of the house whereupon they asked him to give them keys of the lock as they had returned. However, the appellant hurriedly locked the door and ran away. On this they broke the said lock and entered the room. They saw that neck of said Misbah, after having been wrapped with a printed Safa all around was pressed. Her shalwar was torn and blood was oozing from her vagina and she was lying in blood. A bottle of mustard oil was also found lying near the cot. She alleged that the said appellant had murdered her daughter Misbah by pressing her neck after subjecting her to Zina-bil-jabr and had run away. Her hue and cry attracted the neighbours. While she was about ^{to} go to lodge FIR PW7 Ghazanfer Ali S.I, in the meanwhile, reached there and recorded her complaint. It was made

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basis of FIR (Ex.PA/1). Thereafter, the appellant/accused was arrested on 8.7.2001 by said Ghazanfer Ali, SI. After necessary investigation he was challaned to face trial. He was formally charged on 21.2.2002. He did not plead guilty to the charge and claimed trial.

4. At the trial, the prosecution examined seven witnesses in support of its case. Tallat Jabeen (PW1) is the complainant who reiterated her statement as mentioned hereinabove. Mauzam Ali Islam (PW2) is brother of the complainant and wajtaker who fully supported the prosecution version. Abdul Rashid, ASI (PW3) recorded the formal FIR (Ex.PA/1) on the basis of complaint (Ex.PA) dispatched by Ghazanfer Ali, SI. Hameed-ud-Din Draftsman (PW4) prepared site plan (Ex.PD) and (Ex.PD/1) on pointation of the witnesses. Lady Dr. Nasreen Ishaq (PW5) conducted the postmortem examination of deceased Misbah Bibi, aged 10 years, on 24.6.2001 at 11.45 a.m. and recorded following observation as under:-

“EXTERNAL EXAMINATION:

It was a dead body of a young girl of stated age with short hair, 148 c.m. in length, fair but pale complexion. Eyes mouth close, a nose pin was present in

left nostril which was left in situ. Body was clad in yellow blood stained shalwar without waist cord and white qamiz. Postmortem staining was present at the back between areas of direct contact. Rigged mortis was present. Genitalia and inner thighs were stained with fresh blood coming out from the vagina.

LIGATURE MARK

There was 19 c.m. ligature mark present at the back and sides of neck. Only 10 c.m. was spared area in front. Total neck circumference was 29 c.m. Ligature was 1.5 c.m. in width. 6 c.m. below left ear and 8 c.m. below right ear and spare area was below chin. On dissection under lying skin was bruised, hyoid was intact and trachea was frothy.

EXAMINATION OF GENITALIA.

There was bleeding from vagina. A fresh tear was present at posterior vaginal wall extending upto the perineum. Hymen was torn freshly with posterior tear and two more fresh tears at 5 O' clock and 7 O' clock, position.

INTERNAL EXAMINATION.

Thorax: All chest organs were healthy. Trachea was congested containing froth.

ABDOMEN: All abdominal organs were healthy. Stomach with contents, small intestine with contents, piece of Liver spleen and kidney were sent to chemical Examiner, Lahore for detection of drug/poison.

OPINION:

The injuries of ligature and external genitalia were anti-mortem. The cause of death in this case was interference of respiration at the level of neck by means of ligature after rape, and this injury was sufficient to cause death in ordinary course of nature.

Time between injury and death was 3 to 5 minutes.

Time between death and post-mortem was 16-24 hours.

Dead body after post-mortem alongwith clothes, carbon copy of post-mortem report with police papers, two sealed cottons and two sealed packets all after signatures were handed over to police. Ex.PE is the carbon copy of PMR, which is in my hand and signed by me. While pictorial diagrams are Ex.PE/1 and Ex.PE/2".

Zafarullah Khan, ASI (PW6) on 24.6.2001 received one sealed parcel blood stained Niwar and other sealed parcel containing swabs from Ghazanfer Ali, ASI, Investigating Officer, for safe custody in Malkhana. On 27.6.2001 and on 28.6.2001 he handed over both the parcels to Muhammad Akram, Constable for onward transmission to the office of the Chemical Examiner, Lahore. Ghazanfer Ali, SI (PW7) who investigated the case, made deposition in the following words: -

“On 23.6.2001 I was posted as I.O. P.S. Batapur, Lahore. On the same day I was present on patrol duty near Gate No.2 of Bata Factory, alongwith other police employees. After receiving the information of the occurrence I alongwith other police employees reached the place of occurrence. The complainant appeared before me who got recorded her statement Ex.PA which was read over to her and she thumb marked the same in token of its correctness. I dispatched the complaint to the Police Station for formal registration of FIR through Khizer Hayat H.C. I inspected the place of occurrence, and prepared site plan without scale Ex.PF. I also recorded the statements of the PWs under section 161 Cr.P.C. I took the dead body in possession and prepared application for post-mortem examination Ex.PG and inquest report Ex.PH. I handed over the dead body to Khizer Hayat H.C. and Muhammad Akram for escorting the same to the dead house. I took into possession three pieces of Niwar P.1/1-3 from the cot which were blood stained and on which the dead body was lying, one bottle of oil P-4, one Pholdar Safa P-6 and one broken lock P-5 which were taken into possession vide recovery memo Ex.P1. I searched for the accused. I deposited the case property with the Muharrir for keeping the same in the safe custody of Malkhana. On 24.6.2001 the postmortem of the dead body was conducted by the doctor. I handed over the dead body to its legal heirs. Khizer Hayat H.C.

and Muhammad Akram, Constable produced before me PMR and two sealed boxes and two sealed envelopes and last worn clothes of the deceased Qamiz P-7 and Shalwar P-8. I took the last worn clothes into possession vide memo Ex.PC. On 24.6.2001 the draftsman was summoned who took through notes of the place of occurrence on my instruction and on the pointation of the witnesses. The draftsman produced before me site plan with Scale Ex.PD and Ex.PD/1 before me. Notes in red ink are in my hand writing and signed by me. I recorded the statement of the draftsman under section 161 Cr.P.C. On 4.7.2001 report of the Chemical Examiner, Lahore was produced before me by Muhammad Akram Constable. Then I recorded the statement of Muharrir and witnesses of the parcel. On 8.7.2001 arrested the accused present in Court. On 9.7.2001 I obtained the physical remand of the accused. On 14.7.2001 the accused was sent to judicial lockup. Then the file was handed over to the SHO for preparation of the challan.”

The Chemical Examiner's reports (Ex.PJ, PK, PL) and serologist reports (Ex.PM and PN) were tendered in defence.

5. The appellant made statement under section 342 Cr.P.C in disproof of the charges levelled against him. He denied the allegations and pleaded innocence. In answer to question No.6 “why this case against you and why the PWs have deposed against you?, he made statement in the following words:-

“I am innocent. I have falsely been involved in this case on bald allegation by the police on the instigation of my step mother, because from the day of her marriage with my father since my childhood, I am living with my paternal aunt at Kahna due to her dis-liking. I cannot think of such a un-human act alleged against me. Deceased Misbah Bibi was my real sister and I always loved her like my real sister”.

He declined to make statement on oath as required by law under section 340(2) Cr.P.C. He also did not lead any evidence in his defence.

6. We have heard learned counsel for the parties and have perused the record with their assistance. Learned counsel for the appellant submitted that the case of prosecution is based on conjectures and surmises and there is no eye witness of the occurrence who has either come forward to depose about commission of Zina-bil-jabr or even about murder of the deceased Mst. Misbah. He also submitted that no witness from the public supported the case of prosecution. Learned counsel also submitted that the complainant is the step-mother of Sajjad Ali, appellant/accused and this can be a sufficient reason to cast doubt on veracity of the prosecution evidence. He also submitted that the key allegedly taken away by the appellant/accused, after locking the door, was not recovered from him. Learned counsel for the State supported the case of prosecution.

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7. We have thoroughly considered the contentions raised by learned counsel for the parties and have minutely gone through the evidence on record. It transpires that the case of prosecution mainly rests on the statement of PW1 Tallat Jabeen and PW2 Mauzam Ali Islam. PW1 is mother of deceased Mst. Misbah and PW2 is her maternal uncle. Although both are closely related to the deceased Mst. Misbah, but mere relationship of a witness does not disqualify him/her if his/her statement inspires confidence. Such a testimony made on oath cannot be discarded just on the basis of relationship and particularly so in the absence of any strong motive for false implication. It is to be appreciated that intrinsic worth of the statement made by him/her before the competent court is the sole criteria that decides the ultimate fate of a case. Of course the courts are fully conscious of the possibility of false implication as well, and are duty bound to thoroughly consider the statements from all angles for the sake of safe administration of justice but, keeping in view the practical situations prevailing all around the country where witnesses from the

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public on account of dangers to their own security and various other factors are normally reluctant, by and large, to appear as witnesses, especially in cases of such grievous nature, testimonies of relatives cannot be discarded merely for their relationship with either of the parties. In the instant case, we find that both PW1 and PW2 have made consistent statements in respect of the occurrence. Their presence at the place of occurrence is natural and has not been questioned. PW1 has furnished credible evidence to the effect that she left her daughter, Mst. Misbah, in the company of her son Sajjad Ali, appellant/accused. Although he was step son of the complainant, there is nothing in the evidence that he was disliked. On the contrary it is confirmed that he was on visiting terms and was never treated like a step son. He had been not only visiting the house of complainant but was also staying there for considerable time on various occasions. At the time of occurrence he had been there in the house for 5/6 days. This portion of the statement made by PW1 has not been shattered in any way. Neither his father has appeared in his defence nor his

paternal aunt with whom the appellant/accused was allegedly residing at Kahna has come forward to support his version. According to statements of PW1 and PW2, on their return, both saw the appellant/accused locking the door from outside. Despite their intervention he not only locked the door from outside but also hurriedly ran away. This circumstance has also remained unchallenged in the evidence. After breaking the lock opened, PW1 and PW2 entered the house and saw Mst. Misbah lying in blood on a cot. They saw that a safa was tied up round the neck of Misbah and her vagina was bleeding. They also saw a bottle of oil present over there. The statements made by PW1 and PW2 are fully consistent in material particulars and are in line with the post-mortem report (Ex.PE), prepared by PW5 Dr. Nasreen Ishaq, who conducted her examination on 24.6.2001. She observed bleeding from vagina with fresh tear present on posterior vaginal wall extending upto the perineum. Hymen was seen freshly torn, with posterior tear, and two more fresh tears at 5 O' clock and 7 O' clock position. She also

observed 19 c.m ligature mark present at the back and sides of her neck. Regor mortis was present and genetalia and inner thighs were stained with fresh blood, coming out from the vagina. She deposed that all the injuries of ligature and external genetalia were anti-mortem and the cause of death in this case was interference of respiration at the level of neck by means of ligature after rape. She opined that this injury was sufficient to cause death in ordinary course of nature. It is pertinent to mention that the occurrence took place on 23.6.2001 at about 2.00 or 2.30 p.m. and the post-mortem examination was conducted at 11.45 a.m. on 24.6.2001. PW5 Dr. Nasreen Ishaq deposed that the time between death and post-mortem was 16-24 hours. Thus it lends full corroboration to the prosecution version as brought on record by PW1 and PW2. The dead body of Mst. Misbah was duly identified by Naseer Islam and Mauzam Islam. PW7 Ghazanfar Ali, S.I, after recording the statement (Ex.PA), made by the complainant, got it formally registered at police station and inspected the place of occurrence and prepared site plan (Ex.PF). He

took into possession three pieces of blood stained Niwar (P/1-3) from the cot on which the dead body of Misbah was lying. He also took one oil bottle (P4), one printed Safa (P6) and one broken lock (P5) into possession vide recovery memo (Ex.PI). He also took into possession Qameez (P7) and shalwar (P8) which were lastly worn by deceased and secured them vide memo (Ex.PC). Report of the Chemical Examiner (Ex.PJ) reveals that the pieces of Niwar were stained with blood. The other report (Ex.PR) of chemical Examiner conducted on the three vaginal swabs, taken by PW5 Dr. Nasreen, is positive and shows that they are stained with semen. Another report (Ex.PL) establishes the fact that poison was not detected in the contents taken from stomach, small intestine, spleen, kidneys, liver and gall-bladder of the deceased.

8. In view of the above we are fully convinced that the case of prosecution against the appellant/accused is established to the hilt. The defence plea taken by the appellant/accused is mere assertion by him and has not been substantiated by any cogent piece of evidence.

We don't find any substance in the contention that non-recovery of the key from appellant/accused has any adverse bearing on the case of prosecution. The circumstantial evidence coupled with the last seen evidence furnished by the PWs finds full corroboration from the post-mortem report and is further supported by the Chemical Examiner's reports. The depositions made by PWs Tallat Jabeen, complainant, and Mauzam Ali Islam, her brother, inspire confidence and are credible. They have made no exaggeration in their statements. They deposed what they saw with their own eyes. Had they any intention of false implication of the appellant/accused they could have made material improvements. However inspite of having been afflicted with a horrible scene of the deceased, lying in a very embarrassing position, on one hand, and involvement of the son, though step in relation, on the other hand they made credible statements. The promptly lodged FIR contains his name as the only accused and it does not indicate any premeditation. Though the statement of complainant was recorded at spot, by PW7, it cannot be considered to have been recorded after

consultation or deliberation. In circumstances of the case it was but natural for the police official to rush to the place of occurrence and record the statement over there. There is absolutely nothing on record to even show any enmity between the parties. It has not even been suggested to the PWs in cross-examination. Moreover this is an occurrence where even the possibility of mis-identification is completely ruled out. Substitution is also a very rare phenomena, particularly in the aforementioned circumstances, it is also out of question. The very fact that father of the appellant/accused, namely Abbas Ali, never appeared on behalf of his son and his paternal aunt also did not turn up to plead his innocence is also another strong circumstance that cannot be easily ignored.

9. We have also considered in depth, the case of appellant/accused, to see whether any mitigating circumstance exists to award him lesser sentence. However we could find no reason why the normal penalty of death be not awarded to him. It will be appreciated that this is not a case of simple murder committed by any

stranger. The appellant/accused is brother of the deceased and as such falls in the prohibited degree. He not only committed her murder but also subjected the tender aged 10 years old deceased, Mst. Misbah, to Zina-bil-jabr. At the time of occurrence, he had attained sufficient maturity to understand the consequences of his multiple heinous offences. The Islamic injunctions contained in Verse 2 of Sura 24 ordains that no compassion be shown to those who commit Zina, provided it is established beyond any reasonable doubt, as required.

The said verse reads as under:-

“Those who are found guilty of commission of Zina, whether female or male, must be flogged, each, with a hundred stripes, and let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the last day and let a party of the believers witness their punishment” (Al-Nur:2)

Therefore, we see no extenuating circumstance or mitigating reason whatsoever to alter the normal penalty of death awarded to the appellant/accused vide the impugned judgment.

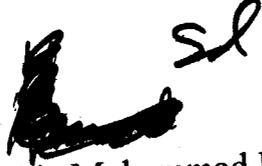
10. Consequently for the reason stated above, we maintain the conviction and sentences awarded to the appellant/accused by the

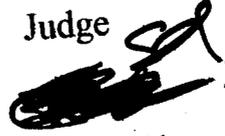
learned trial Court vide the impugned judgment and dismiss his appeal.

11. The death sentence is confirmed and murder reference No.13/I of 2002 is answered in affirmative.

12. These are the reasons for our short order passed on 16.9.2005.


(Saeed ur Rehman Farrukh)
Judge


(Dr. Fida Muhammad Khan)
Judge


(Zafar Pasha Chaudhry)
Judge

Islamabad, 16.9.2005
M.Arshad Khan

File for reporting

