IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE SYED AFZAL HAIDER

Jail Criminal Appeal No.93/I of 2007

Muhammad Arshad son of Muhammad Ali
R/o Dera Sanat Singh, Qila Didar Singh,
Tehsil and District Gujranwala. .... Appellant

Versus

The State .... Respondent

Counsel for appellant	....	Mr. Aftab Ahmed Khan Advocate
Counsel for State	....	Mr Shahid Mehmood Abbasi, Deputy Prosecutor General
FIR. No. Date & Police Station	....	146, 20.7.2003 Qila Didar Singh, Gujranwala
Date of judgment of trial court	....	21.1.2004
Date of Institution	....	19.3.2007
Date of hearing	....	15.4.2008
Date of decision	....	23-04-2008

JUDGMENT

SYED AFZAL HAIDER, JUDGE. This appeal is directed against the judgment dated 21.1.2004 passed by learned Additional Sessions Judge, Gujranwala whereby Muhammad Arshad, (herein after referred to as appellant) has been convicted and sentenced as under:-

1.	U/S.302(b)-PPC	Life imprisonment with fine of Rs. 200,000/- as compensation to be paid to the legal heirs of deceased
2.	U/S.377-PPC	10 years R.I. with fine of Rs.20,000/- in default whereof to further six months S.I.

Both the sentences have been ordered to run concurrently. Benefit of section 382-B, Code of Criminal Procedure has also been extended to the appellant.

2. Brief facts of the case are that one Ihsan Ullah son of Muhammad Yousuf, P.W.5 submitted a written application before S.I/SHO Qila Didar Singh, District Gujranwala on 20.7.2003 when he was on duty at College Road alongwith police escort. This information became the basis of FIR. No. 146 registered at Police Station, Qila Didar Singh on 20.7.2003 at 8.30.a.m. by Muhammad Saeed, ASI/ D.O.

3. The complainant stated that he resides in Nawan Pind. On 19.7.2003 his son Adnan aged about 8/9 years went to the northern side of the village to graze goats at 11.00.a.m. in his own fields while complainant was present in his house. After about one hour the goats returned back home while his son Adnan did not return. The complainant got worried and inquired from Iftikhar Ahmad, Muhammad Sarwar and Yaqoob about his son Adnan. All of them accompanied him to trace his son but did not find any clue. On the next day i.e. 20.7.2003 at about 6.00.a.m. the complainant in the company of other persons went in the jawaar field which was situated at a distance of 6-7 acres from the village. There he found the dead body of his son Adnan lying on the ground at a distance of 50/60 feet from the " WUT" i.e. the East-West brink of the field. It is further stated that his son Adnan was murdered due to strangulation by some one after having committed excesses (forced sodomy) with him.

4. An FIR was consequently registered formally by Muhammad Saeed A.S.I. PW.11 which is available on record as Ex.PE. The dead body was sent to DHQ Hospital, Gujranwala and the post-mortem was conducted by Dr. Muhammad Jamil, P.W.10 Investigation ensued. P.W.12

the Investigating Officer Shahid Mehmood after sending the written complaint for registration proceeded to the place of occurrence. He inspected the site, examined dead body in the crop of Jawaar. He prepared injury statement, Ex.P.H, inquest report, Ex.P.J. and sent dead body for post-mortem. He recorded supplementary statement of the complainant within 2/3 minutes of the presentation of the complaint. Accused was nominated in this second statement. He also recorded statements under section 161 of the Code. The appellant was arrested by him on 4th August 2003 who was medically examined for ascertaining his sexual competency. Ultimately the Investigating Officer submitted report in the form of an incomplete challan against the appellant on 10th August 2003 without the report of Chemical Examiner.

5. The accused was charge-sheeted on 12.12.2003 under section 12 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 377 and 302(b) of the Pakistan Penal Code. The accused did not plead guilty to the charge and claimed trial.

6. The prosecution in order to prove its case produced as many as 12 witnesses. Constable Muhammad Bashir appeared as PW1 to state that

Zulfiqar Hussain 104/M.H.C. handed over sealed phials along with envelopes for onward transmission to Chemical Examiner Lahore. Masood Ahmed Bhatti, P.W.2 is the draftsman who prepared site plan Ex.PA and Ex.PA/1 on 27.07.2003. Muhamamd Asghar PW3 escorted the dead body and produced last worn clothes of deceased to the Investigating Officer. Muhammad Afzal P.W.4 identified the dead body whereas Ehsan Ullah P.W.5 being the complainant laid the basis of prosecution. Iftikhar Ahmed P.W.6 accompanied Ehsan Ullah in search of his missing son. Zaka Ullah, P.W.7 brother of the complainant, on a visit to his village Nawan Pind saw the appellant coming out of the field of Jawaar on 19.7.2003 at 11.30 a.m. when he was proceeding to village Thatta Gaju Chak. Learned A.D.A. gave up Muhammad Sarwar, Muhammad Yaqoob and Muhammad Zafar as un-necessary on 13.01.2004. Zulfiqar Hussain, P.W.8 received envelops and phials on 20.7.2003 for safe custody. Doctor Ghulam Sarwar Cheema P.W.9 on 05.08.2003 examined appellant for potency test. Doctor Muhammad Jamil P.W.10 on 20.07.203 performed post-mortem of victim Muhammad Adnan. He observed early changes of putrefaction of the Brain and false rigidity due to the effect of putrefactive gasses. He also observed

blisters on trunk and thigh caused by putrefaction. It was in this background that this medical witness stated that time between death and post-mortem was 24-36 hours. In this view of the matter death took place some where on 18th July 2003 between 5.00 a.m. to 5.00 p.m. Muhammad Saeed A.S.I. appeared as P.W.11 to state that he registered the complaint formally as F.I.R. Ex.PE. The statement of Shahid Mehmood P.W.12 has already been referred to in para 4 above.

7. The accused was then examined by the learned trial Court on 19.1.2004 under section 342 Cr.P.C. His statement was recorded after the prosecution had closed its case on 16.1.2004. The appellant, in reply to question number 7 took up the plea as under:-

> "Some unknown person committed present occurrence in a blind and un-witnessed occurrence. As the police had to complete the investigation of a blind and un-witnessed occurrence, committed by unknown person, thereby I have been connected falsely with this case by the Investigating Officer of the case, on the pressure of the High Ups of the police and other authorities as they wanted to complete the investigation of a blind and un-witnessed occurrence. I tender Mark-A Office memorandum No.40337 dated 7.8.2003 by DPO Gujranwala sent to DIG Gujranwala Region and SHO

P.S. Qila Diddar Singh, Mark-B Press clipping (photo copy) of Daily Express dated 24.7.2003, sent by DPO Saood Aziz to SHO P.S. Qila Didar Singh, Shahid, I.O. of the case, Mark-C, a letter written by Haji Muhammad Nawaz, Additional Secretary to Chief Minister Punjab, to DPO Gujranwala vide diary No.20959 dated 2.8.2003 bearing a photo-stat copy of press clipping of Daily The Pakistan dated 21.7.2003 which was also sent to the SHO, Shahid Investigating Officer by the DPO Gujranwala. Mark-D progress Report dated 25.7.2003 prepared and sent by Shahid, SHO/I.O. of the case to Police High Ups which clearly indicate that this occurrence was committed by unknown person and I was later on made a scape goat by the police and I.O. of the case to kept me in illegal custody from 20.7.2003 to 04.8.2003 and all sorts of third degree methods were used to me and I was subjected to torture and later on by concocting a false supplementary statement of the complainant showing the even date and time of alleged FIR was concocted which even otherwise is not admissible in evidence and the I.O. also concocted false pieces of evidence against me to get rid of the investigation of a blind and un-witnessed occurrence committed by unknown person due to pressure of High Ups and other authorities. I never committed sodomy with Adnan deceased and I have also no and in his abduction and murder. The complainant and other PWs being interse related and co-villagers have falsely deposed against me due to pressure and asking of the police and to blackmail me and my family."

The appellant neither produced any evidence in his defence nor he made statement on oath under section 340(2) of the Code of Criminal Procedure. However he took exception to the production of photo copy of the report of Chemical Examiner Ex.P.F. An objection had already been raised by defence counsel during cross examination, which was duly recorded but not decided. We are of the opinion that photo copy of the report of Chemical Examiner is not admissible. Article 76 of Qanun-e-Shahadat is clear on this point. This means that the factum of swabs having been contaminated with semen has not been proved. We therefore, exclude Ex.P.F, the photo copy of the report of the Chemical Examiner, from consideration.

8. Learned trial Court on the basis of evidence produced before him came to the conclusion that the appellant was guilty. He was consequently convicted and sentenced as noted above. Hence this appeal which we propose to decide through this judgment.

9. We have read the evidence and perused the record with the help of learned counsel for the parties. After going through the record and listening to the preliminary arguments we asked learned counsel for the

appellant to formulate the points that he wishes to emphasize to challenge the conviction and sentence of his client. The learned counsel stated that the complainant has given three versions. Firstly he did not nominate any one for the offence of sodomy in his application Ex.P.C. addressed to the Police Officer P.W.12 for the purpose of registration of a very serious criminal case and secondly in his supplementary statement, made minutes after his written application was handed over to the Station House Officer, he nominated the appellant alleging that he had made attempts previously to commit sodomy with Adnan deceased. On the third occasion when he appeared as a witness for the prosecution, he improved the version by stating that the appellant had in fact committed sodomy with deceased Adnan previously on 2/3 occasions.

10. Learned counsel then argued that Zakaullah P.W.7, brother of complainant, states that he informed his brother Ehsan Ullah on 21.07.2003 that he had seen the appellant coming out of Jawaar field on 19.07.2003 at 11.30 a.m. On this statement the appellant was immediately arrested by police. We found that the complainant P.W.5 does not mention any where the existence of his own brother P.W.7 in the whole episode from 19th

through 21st July 2003 or even thereafter. Similarly P.W.6 Iftikhar Ahmed nowhere shows the presence of P.W.7 in the story set up by the prosecution. Moreover the date of arrest of the appellant lacks certainty.

11. Learned counsel for the appellant also took up the plea that notwithstanding the supplementary statement of the complainant, whereby he implicated the appellant and this imputation was made within minutes of the written application submitted to the Investigating Officer, the latter continued writing "Na Maloom" (unknown) accused in the inquest report and other documents prepared subsequently. We have perused carefully the cross examination of the Investigating Officer P.W.12. He admits that appellant was arrested by a special team which also recovered the "weapon of offence" from the place of occurrence. No one however knows as to what was the nature of weapon of offence said to have been recovered on the pointation of confessing appellant and for how long this weapon of offence remained invisible to a number of persons including prosecution witnesses and police officials who visited the place of occurrence. This weapon has neither been supported by a recovery memo nor does it form part of the police record. The Investigating also admits that the appellant

and one Billo were suspects and further that the supplementary statement of the complainant by which the appellant was nominated as the culprit was not referred to in various police reports. The Investigating Officer further admits that on 20th July2003 he made a report to the effect that notorious and suspicious persons have been associated with the investigation of this case and by the Grace of God the accused persons will be traced. Even in this report the supplementary statement was admittedly not mentioned. He also did not disclose that the nominated accused was already in his custody. The witness also acknowledges that he was in contact with senior police officers and even the Chief Minister because everyone in authority was deeply concerned that a young boy of eight years was strangulated after being subjected to sexual assault but no clue was forthcoming. We are therefore convinced in our mind that the evidence of P.W.12 the Investigating Officer, does neither inspire confidence nor advance the case of the prosecution which he was duty bound to build. There is, therefore, weight in the defence argument that the present case was un-witnessed and a blind occurrence. This aspect finds support even from the medical evidence. The opinion of medical officer PW 10, on the basis of the state of

dead body, is that the occurrence took place 24 hours to 36 hours before the post-mortem which means 18th July 2003 and not 19th July 2003 as alleged by the prosecution. There is therefore no corroboration of oral evidence as regards time of death.

12. Learned counsel for the State while formulating his points supported the judgment and stated that it is not possible to substitute a culprit. He also stated that the factum of sodomy and strangulation has been proved beyond doubt. He also pointed out that Zaka Ullah P.W.7, brother of the complainant, saw the appellant coming out of Jawaar field on 19.07.2003 at 11.30 a.m. while he was departing from village Nawan Pind. According to him this is a case of "last seen" and hence the guilt of appellant stands proved. It is now upon the appellant, learned counsel stated, to prove that he has been falsely implicated because he was last seen emerging from the field on 19th July 2003 at 11.30 a.m. According to him the element of last seen has shifted the onus upon the appellant.

13. Learned counsel for the State was confronted with the contention that the victim reportedly disappeared on 19th July at a time when his uncle P.W.7 also left the village but no effort was made to

ascertain whether the boy had accompanied him for a change and secondly why was not P.W.7 informed about the disappearance and subsequent murder of the young boy. It was only two days after the incident that the real uncle, PW 7, came to know through his "bhanja" about the murder. No satisfactory explanation was given by the learned counsel.

14. We are also conscious of the fact that notwithstanding the gravity of the occurrence the Investigator and Medical Officer did not deem it necessary to obtain semen sample of the appellant on 05.09.2003 when he was medically examined to determine his sexual potency. Anal swabs of the victim had been obtained and photo copy of positive report of the Chemical Examiner was made available to the prosecution team. Semen matching would have clinched the issue but the prosecution side opted to give up this aspect. It is regrettable that heinous offences are not attended to in a professional manner by the Investigators. They are either professionally incompetent or there is no skilled supervision by senior police officers. On another occasion, only recently, one of us had to decide a case Criminal Appeal No.209/I of 2007 in which a child of five years of age was subjected to the lust of a sex maniac but for lack of semen

matching and improper investigation the prosecution failed to fix liability upon the accused. The society as a whole suffers when criminal cases are not properly handled at the initial stage. No wonder that certain sections of society react violently due to unchecked injustice perpetrated on the weak and helpless victims. The basic purpose of police, apart from affording protection to citizens, is of course to collect evidence and collection of best possible evidence should be the aim of prosecution department of the Provincial Government because this preliminary job lays the foundation of the prosecution case. It is this function of the police which has a direct nexus with the administration of justice.

15. Before parting with this case we would like to say something about the "last seen" evidence. Both the learned counsel referred to this phenomenon. On behalf of the defence it was stated that P.W.7 is a witness of "last seen" phenomenon because he allegedly saw appellant coming out of the Jawaar field at 11.30 a.m. on 19th July. Learned counsel however proceeded to state that even this evidence does not connect the appellant with the offence of strangulation and sodomy. Many persons enter the fields to answer the call of nature particularly when the fields are near the

village abadi. On behalf of the State it was asserted that P.W.7 saw the appellant came out of Jawaar field from where the dead body was recovered and therefore, this evidence was sufficient to establish the guilt of the appellant.

16. In so far as last seen evidence is concerned, it is of course admissible under Article 20 of the Qanoon-e-Shahadat Order, 1984 but it is a weak type of circumstantial evidence for becoming the basis of conviction. In the instant case there is no probative evidence that the victim and the appellant were seen together before the occurrence. Article 20 of the Order reads as under:-

> "Facts which are the occasion cause or effect, immediate or otherwise, of relevant facts, or facts, in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.
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> Illustrations
>
> (a) The question is, whether A robbed B.
>
> The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third person, are relevant.
>
> (b) The question is, whether A murdered B.
>
> Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.
>
> (c) The question is, whether A poisoned B.

> The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

The evidence of P.W.7 that he saw the appellant coming out of the Jawaar field at 11.30 a.m. does not constitute last seen evidence. Fields in the proximity of village abadi are visited by residents every day. People are seen enter and emerge out of the fields with standing crops. The child allegedly disappeared before noon on 19.7.2003 and his body was discovered on 20.7.2003. During this period many people would have visited the adjoining fields. In order to appreciate the scope of last seen evidence reference may be made to certain reported cases:-

a). In the case of Besant Singh versus Emperor reported as AIR 1927 Lahore 541, a Division Bench held that the evidence of accused last seen with deceased while living and accused showing place where corpse of deceased was buried was not sufficient for conviction of murder.

b). In the case of Hayat versus emperor reported as AIR 1932 Lahore 243, a Division Bench in a murder case held that the burden of establishing guilt of the accused is throughout on the prosecution and they must prove every link in the chain of evidence against him from the beginning to the end. When two persons are seen together and shortly afterwards one of them is found to have been murdered no owns rests on the survivor to give an explanation as to how the deceased met his death.

c). In the case of Allah Ditto versus The State reported as 1968 S.C.M.R. 370 that in a case where there was no direct evidence the charge was held established on circumstantial evidence that (i) deceased was last seen with accused; (ii) accused had exclusive knowledge of place where body lay buried; (iii) recovery of articles of deceased were made it instance of accused and (iv) the clothes secured from the person of accused were stained with blood.

d). In the case of Rehmat versus The State reported as PLD 1977 Supreme Court 515 it was held that circumstantial evidence of last seen was not by itself sufficient to link accused with murder. Further evidence is required to link the accused with the murder of his companion. The apex court had examined the case of (i) Besant Singh reported as AIR 1927 Lahore 541, (ii) Siraj versus Crown reported as PLD 1956 FC 123 and the case of (iii) Karamat Hussain versus The State reported as 1972 S.C.M.R. 15 (iv) Abdus Samad versus The State reported as PLD 1964 SC 167, (v) The State versus Manzoor Ahmed reported as PLD 1966 SC 664 and (vi) the case of R. versus Nash(911) Cr. App. Rep.255.

e). Learned counsel for the appellant also relied upon the case of Ata Muhammad versus The State reported as 1995 S.C.M.R. 599 to state that repetition of the same version by a witness does not amount to corroboration and secondly when the evidence is partly reliable and partly un reliable conviction cannot be recorded unless such evidence is corroborated by oral or circumstantial evidence coming from distinct source.

f). In the case of Muhammad Amin versus The State reported as 2000 S.C.M.R. 1784 the apex court held that last seen evidence itself is not sufficient to sustain charge of murder and such evidence further requires to

link accused with the murder i.e. the incriminating recoveries at the instance of accused strong motive or proximity of time of last seen and the time of murder. An accused is required to explain the demise of the deceased only when such requirements are fulfilled. Last seen evidence, it was further held, carries weight depending upon varying degree of possibility and facts and circumstances of each case.

17. In order to arrive at this conclusion the Hon'ble Judges examined the following reports:-

> "1969 SCMR 558; 1969 PCr. LJ 1108; PLD 1991 SC 718; 1999 ALD 48(i); PLD 1991 SC 434; 1991 SCMR 1601; 1998 PCr. LJ 722; PLD 1959 SC (Pak.) 269; PLD 1978 SC 21; 1991 PCr. LJ 956; PLD 1964 Quetta 6; 1971 PCR.LJ 211; 1980 PCr. LJ 164; 1998 SCMR 2669; PLD 1971 Kar. 299; PLD 1977 SC 515; 1997 SCMR 1416; NLR 1987 Cr. 846; NLR 1988 Cr. 599; 1997 SCMR 1279; PLD 1978 BJ 31; 1977 SCMR 20; PLD 1997 SC 515; AIR 1927 Lah. 541; PLD 1956 FC 123; 1972 SCMR 15; PLD 1964 SC 167 and PLD 1966 SC 664 ref."

However, in the case of Muhammad Amjad versus State reported as PLD 2003 Supreme Court 704 held as under:-

> "This Court and Supreme Court of India while examining the evidence of last seen, have laid down certain dictums for determining the guilt or otherwise of the culprit/accused.
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> In the case reported as Rehmat alias Rehman alias Waryam alias Badshah v. The State PLD 1977 SC 515, it was held that in such cases the circumstance of deceased having been last seen in company of accused is not by itself sufficient to sustain charge of murder, but further evidence is required to link him with the murder charge i.e. incriminating recoveries at accused's instance etc.
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> In the case reported as Mst. Reshman Bibi v. Sheerin Khan and others 1997 SCMR 1416 it was held that last seen evidence for basing conviction thereon the circumstantial evidence must be

incompatible with innocence of the accused and should be accepted with great caution and to be scrutinized minutely for reaching a conclusion that no plausible conclusion could be drawn therefrom excepting guilt of the accused.

In the case reported as Jafar Ali v. The State 1999 SCMR 2669 it was held that chain of facts be such that no reasonable inference could be drawn except that accused had committed offence after victim was last seen in his company.

In the case reported as Mst. Robina Bibi v. The State 2001 SCMR 1914 it was held that where the deceased was last seen in the company of the accused shortly before the time he was presumed to have met his death near the place of occurrence, inference could easily be drawn that the accused was responsible for the death of the deceased.

In the reported case Charan Singh v. The State of Uttar Pradesh AIR 1967 SC 520 the view taken by the Court was that the evidence in the first instance be fully established and the circumstances so established should be consistent only with the hypothesis of the guilt of the accused, that is, the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved i.e. chain of evidence must be complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

In the case reported as Pohalya Motya Valvi v. The State of Maharashtra AIR 1979 SC 1949, it was held that in such cases each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence.

In the case reported as Kishore Chand v. State of Himachal Pradesh AIR 1979 SC 1949, it was held that in such cases each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence.

In the case reported as Kishore Chand v. State of Himachal Pradesh AIR 1990 SC 2140, it was held that all the facts so established should be consistent only with the hypothesis of the guilt of the accused.

In the case reported as Laxman Naik v. State of Orisa AIR 1995 SC 1387, above principles have been reiterated in the following manner:-

> "According to the stand of proof required to convict a person on circumstantial evidence, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as, not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime."

18. Last seen evidence alone is not at all strong piece of evidence. A weak piece of evidence cannot corroborate another enervated evidence. Weak evidence alone cannot become the basis of conviction. To sustain conviction the evidence must be unimpeachable. Best possible evidence must be produced by the prosecution. In un-witnessed occurrences strong circumstantial evidence may successfully implicate an accused person but such evidence must be incompatible with the innocence of accused. Circumstantial evidence should not be capable of explanation of any other

hypothesis save the guilt of accused. A judge however has to be vigilant and must be convinced before conviction is recorded. Conviction must be based upon solid evidence produced in Court and the inferences that can be validly drawn from such evidence. Surmises or conjectures or probabilities cannot legally substitute direct evidence.

19. In order to prove a case on the basis of circumstantial evidence four following principles were enunciated in the case of Muhammad Younus versus The State reported as 1996 Pakistan Criminal Law Journal 109:-

> "The conviction can only be made on the basis of circumstantial evidence, if it excludes all hypothesis of innocence of the accused. The circumstantial evidence must be incompatible with that of the innocence of accused. It should be incapable of any explanation of any other reasonable hypothesis than that of guilt of accused. For proving a case through circumstantial evidence following four essentials are required:-
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> (1) Circumstances from which conclusion is to be drawn should be fully established;
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> (2) All facts should be consistent with hypothesis;
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> (3) Circumstances should be of a conclusive nature;
>
> (4) Circumstances should lead to moral certainty and actually exclude every hypothesis but one proposed to be proved.
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> Rule as to quality of circumstantial evidence which can be sufficient for conviction is that facts proved must be incompatible with innocence of accused and incapable of explanation upon any reasonable hypothesis than that of guilty. Since failure of one link breaks chain, every link in circumstantial evidence must be proved,

if any link is not proved then the conviction cannot be maintained because it is the basis duty of the prosecution to prove all the links of chain of circumstantial evidence. Circumstantial evidence must be of such a nature that it should lead to one possible inference leading to the guilt of the accused. Failure of the one link would destroy whole links of circumstantial evidence. This view finds support from NLR 1983 (Crl.) 686 (sic)

20. We have not been able to understand the prosecution version that the child reportedly disappeared on 19.07.2003 and hectic search was made in the adjoining field but no one discovered the dead body from the Jawaar field on that day though the boy had taken the goats for grazing in these fields. The dead body was however discovered on 20.07.2006 at 6.00 a.m. The site plan Ex.P.A. discloses that the field from where the dead body was recovered belonged to one Muhammad Yousaf son of Boora and the field number is indicated as 120 but strangely enough neither the said owner of the field is associated in the investigation nor cited as a witness. Even his name or field number does not find mention in the evidence of witnesses. The place of occurrence is located on a public road emanating from the nearby village. Could the offence of sodomy, by force, be committed at such a place at 11.00 a.m. in summer time in close proximity to abadi Deh and a public road?

21. In this view of the matter we are not in agreement with the line of reasoning that prevailed upon the learned trial Court to record a verdict of guilty. We are therefore satisfied that the prosecution has not been able to saddle responsibility of the offence upon the appellant. Direct or circumstantial evidence does not support prosecution story. The evidence of last seen is not substantial. The investigation lacked seriousness. Medical opinion does not support ocular testimony. Even time of death is not fully proved. The burden of proof has not been discharged by the prosecution. Prosecution version has undergone improvements. The factum of arrest of the appellant is shrouded in mystery and notwithstanding alleged nomination of the appellant on 19.07.2003 through supplementary statement of the complainant, made within minutes of the complaint lodged with S.H.O., and the repeated reports of the Investigating Officer that the real culprit would be apprehended by grace of God and also the admission that another team had arrested the appellant and recovered weapon of offence make the prosecution story extremely doubtful.

22. Consequently we acquit the appellant by giving him benefit of doubt. Resultantly the conviction recorded by learned Additional Sessions

Judge, Gujranwala on 21.01.2004 under section 302 and 377 of the Pakistan Penal Code in Sessions Case No.54 of 2003 and Sessions Trial No.23 of 2003 whereby appellant Muhammad Arshad son of Muhammad Ali, aged about 18 ½ years (at the time of recording of his statement): was sentenced to imprisonment for life for the Qatl-e-Amd of Adnan and a compensation of Rupees two lacs or to further undergo simple imprisonment for six months in case of failure to pay the said compensation and further sentence of ten years rigorous imprisonment and a fine of Rs.20,000/-, failure to pay which would entail additional spell of six months simple imprisonment, is hereby set aside. The appellant shall be set at liberty forthwith unless he is required in some other case.

JUSTICE SYED AFZAL HAIDER

JUSTICE DR.FIDA MUHAMMAD KHAN

Announced in open Court
On 23rd April, 2008 at Islamabad
Mujeeb ur Rehman

Fit for reporting