

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

JAIL CRIMINAL APPEAL NO.02-K OF 2021

MUHAMMAD IRSHAD SON OF NABI HASAN, MUSLIM,
ADULT, PRESENTLY CONFINED IN CENTRAL PRISON AND
CORRECTIONAL FACILITY CENTRE, KARACHI.

APPELLANT

VERSUS

THE STATE.

RESPONDENT

CRIMINAL MURDER REFERENCE NO.01-K OF 2021

THE STATE.

VERSUS

MUHAMMAD IRSHAD SON OF NABI HASAN, MUSLIM,
ADULT, PRESENTLY CONFINED IN CENTRAL PRISON AND
CORRECTIONAL FACILITY CENTRE, KARACHI.

RESPONDENT

COUNSEL FOR THE APPELLANT	...	MRS. AFTAB BANO, ADVOCATE.
COUNSEL FOR THE STATE	...	SYED MEERAL SHAH BUKHARI, ADDITIONAL PROSECUTOR-GENERAL, SINDH.
COUNSEL FOR THE COMPLAINANT	...	MR. IBAD-UL-HASNAIN, ADVOCATE
FIR NO. DATE AND POLICE STATION	...	360, 11.10.2006, GULISTAN-E-JOHAR, KARACHI.
DATE OF JUDGMENT OF TRIAL COURT	...	21.12.2020

DATE OF INSTITUTION OF CRL. JAIL APPEAL ... 28.01.2021

DATE OF HEARING ... 03.04.2021

DATE OF JUDGMENT ... 30.04.2021

JUDGMENT:

DR. SYED MUHAMMAD ANWER, J: Consequent upon the conclusion of trial in case F.I.R. No.360 of 2006 registered under Section 365/34 of the Pakistan Penal Code, 1860, at Police Station Gulistan-e-Johar, Karachi, the learned Additional Sessions Judge-I, Karachi East, while concluding the proof of charge against the appellant-convict Muhammad Irshad awarded him death sentence on three counts under Section 364-A, Section 376 and Section 302(b) of the Pakistan Penal Code, 1860, and to pay compensation to the tune of rupees three million to the legal heirs of the deceased under Section 544-A Cr.P.C. in default whereof to further undergo six months simple imprisonment. The above-mentioned sentence of death was subject to confirmation by this Court.

2. The learned trial Court sent Reference under Section 374 of the Code of Criminal Procedure, 1898 for confirmation or otherwise of sentence of death awarded to the appellant.

3. The appellant-convict being aggrieved of the judgment dated 21st of December, 2020, assailed the legality and validity of said judgment

by way of Jail Criminal Appeal, which was erroneously filed in the High Court of Sindh at Karachi, wherefrom it was transferred to this Court vide order dated 20.01.2021 on the point of jurisdiction.

4. Crime-Report (Ex.12/A) was lodged by Barkat Shah, father of the victim deceased Tajjali (six years old girl), narrating the tragic and horrible incident in which one innocent girl, who was playing along with other kids, was sinisterly lured into believing that the culprit would bring toy for her. The culprit (accused Muhammad Irshad) took her away on 09th of October, 2006 in the evening in between 1700 to 1800 hours in the holy month of Ramdan from outside her house. She was lured into believing that the accused would bring her toy but that monster showed up animal instinct rather lower than the animals and sexually assaulted her from front and back. The monster did not show any mercy on the little angle when she fell unconscious, he strangulated her to death due to the fear that she might tell her parents. At the twilight of the day (09.10.2006) when she (Tajjali) did not return to her house there was uproar in the mohallah. Her parents started searching for her. Announcement was made in Masjid that Baby Tajjali was missing. Father of the ill-fated girl namely Barkat Shah remained in search of his daughter and it came to his knowledge that one Wali Muhammad who is residing in same line of his house along with one man with red hair were found there, who were last seen talking to his daughter in that evening time, just before she went missing. The

complainant lodged FIR against Wali Muhammad and his unknown accomplice for kidnapping his daughter.

5. The investigation ensued as a result of which SIP Zakaullah Sangi (P.W.8) was assigned the charge of investigation. He visited the crime scene, place from where the baby Tajjali went missing. He prepared map to the place of occurrence and recorded statements of PWs-Baby Shagufta, Imtiaz and Ismail on 11.10.2006. He arrested the accused persons namely Wali Muhammad and Muhammad Irshad on 12.10.2006. On 12.10.2006, during interrogation accused Muhammad Irshad confessed his guilt and got recovered the dead body of the deceased from near the boundary wall of *Mosamiate* department in the bushes and trees in Gulistan-e-Jauhar, Block-6. The Investigating Officer also made recovery of pair of *Chappal* of Tajjali upon pointation of Muhammad Irshad and prepared recovery memo (Ex.6/C). He also prepared memo of inspection of dead body and inquest report (Ex.6/D). He after postmortem, received last wearing clothes of the deceased in sealed condition. He handed over the dead body to the complainant. On 14.10.2006, identification parade of accused persons was conducted, who were duly and properly identified by PWs Shagufta and Muhammad Ismail before the Magistrate. The accused was brought to Civil Hospital for his medical examination to ascertain his male potency and after examination of accused Muhammad Irshad (Ex.11-A). On 20.10.2006, the Investigating Officer produced the accused

Muhammad Irshad before Judicial Magistrate for recording his confessional statement, which was recorded (Ex.9/C). After completion of investigation, the Investigating Officer submitted report under Section 173 of the Code of Criminal Procedure, 1898 against the accused requiring him to face trial.

6. Earlier, this case was tried by learned 2nd Additional Sessions Judge, Karachi East, and vide judgment dated 29.11.2012, the accused/appellant Muhammad Irshad was convicted under section 363 PPC and sentenced to five years R.I. and to pay fine of Rs.10,000/- as compensation to the legal heirs of the deceased Tajjali under section 544-A, Cr.P.C. in default whereof to further suffer S.I. for two months. He was also convicted under Section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 365-B PPC and sentence to imprisonment for life and to pay Rs.50,000/- as compensation to the legal heirs of deceased Tajjali under section 544-A Cr.P.C. or in default to further undergo six months S.I. He was further convicted under section 302 PPC and sentenced to imprisonment for life and to pay Rs.100,000/- as compensation to the legal heirs of deceased Tajjali under section 544-A Cr.P.C. in default whereof to further undergo six months S.I. All the sentences were ordered to run concurrently with benefit of Section 382-B Cr.P.C. However, during trial accused Wali Muhammad moved application under Section 265-K

Cr.P.C. and after hearing both sides, accused Wali Muhammad was acquitted under Section 265-K Cr.P.C. vide order dated 19.04.2010.

7. Being aggrieved with the judgment dated 29.11.2012, convict-accused Muhammad Irshad filed Jail CrI. Appeal No.05-K of 2018 before this Court and after hearing the said appeal vide judgment dated 10.10.2019, the case was remanded back by this Court to the learned Trial Court for conducting de-novo proceedings after framing of charge.

8. After conducting de-novo trial of both the convict/appellant Muhammad Irshad was convicted and sentenced as mentioned in opening para of this judgment. The other co-accused Wali Muhammad died during the trial of the case vide statement of Inspector, Qurban Hussain (C.W.1) dated 11.12.2019.

9. The charge was framed against the accused/appellant Muhammad Irshad under Section 364-A, 302 of the Pakistan Penal Code, 1860 and Section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 to which he pleaded not guilty and claimed trial.

10. The prosecution in order to prove its case, examined 08 witnesses.

The gist of the prosecution evidence is as under:

- i) Shad Ali appeared as P.W.1. He is neighbor of the complainant and witness to memo of site inspection (Ex.6-A), memo of arrest of accused persons (Ex.6-B), memo of recovery of dead body of deceased Tajjali (Ex.6-C) and witness to inquest report (Ex.6-D).

- ii) P.W.2 Imtiaz Hussain, is maternal uncle of deceased Tajjali whom he saw lastly talking to one person having red hairs on 09.10.2006 in between 17:00 to 17:30 hours.
- iii) Muhammad Ismail appeared as P.W.3. He had also seen the deceased Tajjali going in the company of one person having red hair towards the area of graveyard on 09.10.2006 at 17:15 hours. On 14.10.2006, he identified the person having red hair, which was later known to be as Muhammad Irshad in the court of Judicial Magistrate during identification parade.
- iv) P.W.4 was Shgufta Zehra. She deposed that on the day of incident, i.e., 9.10.2006, she was ten years old. On that day, she was coming after purchasing household articles. She stopped in front of Kako hotel to take his six years old younger brother when she saw one red hair person holding hand of baby Tajjali and heard telling her to come at open plot in the evening where he would give toys to her. She also identified the same red-haired person during the identification parade before the Judicial Magistrate.
- v) Judicial Officer, Ahsan A. Malik was P.W.5. During his posting as Magistrate on 14.10.2006, PW Shagufta and witness Muhammad Ismail identified accused during identification parade before him. He also recorded confessional statement of accused Muhammad Irshad under Section 164 Cr.P.C. after observing codal formalities.
- vi) WMLO Dr. Fareeda appeared as P.W.6. On 12.10.2006 at 6:00 a.m. to 7:00 a.m., she conducted postmortem of the dead body of deceased Tajjali.
- vii) Additional Police Surgeon, Qarar Ahmed was P.W.7. He was MLO in the year 2006. He recognized the signature of Dr. Ghulam Sarwar Channa on the certificate issued by the said doctor.
- viii) P.W.8 was Zakaullah Sangi, DSP (Investigation). When he was police Inspector, he was Investigating Officer of this case.

11. The accused/appellant in his statement recorded under Section 342 Cr.P.C. when confronted with the evidence led by the prosecution controverted the same, pleading innocence attributing malice to the police.

12. After hearing the parties, the learned Trial Court convicted and sentenced the accused as mentioned in opening paragraph of this judgment.

13. The learned counsel appearing on behalf of pauper accused argued that there is no eye-witness of the actual commission of rape and murder of the minor Tajjali in this case. She also argued that the accused/appellant has falsely been implicated by the police. She further contended that the confessional statement of the accused/appellant was the result of maltreatment at the hands of police, which was retracted during his statement under Section 342 Cr.P.C.

14. Contrarily, the impugned judgment is defended by the learned law officer assisted by the learned counsel for the complainant.

15. Heard. Record perused.

16. The learned defence counsel argued the case but could not forward any solid arguments. She mainly relied on the arguments that the appellant/accused was falsely implicated in this case by the police. She pointed out that in reply to a question; do you have anything else to say? Put to him while recoding his statement under Section 342 Cr.P.C., the accused replied:

"I am poor bread earner for my family. I was working at patrol pump at Lucky start as filler. I was arrested by police from patrol pump and falsely involved me in this case. Thereafter, they took me in front of Shagufta and her father but Shagufta did not identify me two times. I was falsely implicated in this case at the instance of the IO. I do not know why I was falsely implicated in this case by the IO, but I have no enmity with the IO. I am innocent and pray for justice." but this reply was not supported by any piece of evidence. The accused / appellant neither opted to be examined on oath under Section 340(2) Cr.P.C. nor produced any evidence in his defence rendering the above stated statement of the accused meaningless with no legal value.

17. The prosecution argued the case, elaborated the events of the case as they happened and their links inter-se. The murder of a six years old baby girl Tajjali after her rape happened on 09.10.2006 at between 1700 to 1800 hours in the month of Ramadan. The report of her missing was duly reported to the relevant Police Station without any delay by her father. Immediately, investigation started by the police. The unfortunate baby girl was lastly seen reported to be talking to a person of that *Mohallah* named Wali Muhammad along with a red-haired person; consequently, both the persons were arrested. The person with red hair firstly confessed before police and took the police to the place of incident. The dead body of the deceased baby girl was recovered on his pointation. The prosecution also relied upon the postmortem report (Ex.10/B), which states:

EXTERNAL EXAMINATION

Features were not identified due to decomposition. Abdomen distended with greenish area over flanks. Body was foul smelling and small maggot present. Tongue was between teeth.

SURFACE WOUNDS AND INJURIES

Ligature mark around the neck was present about 03 cm x 22 cm. injuries were antemortem in nature.

INTERNAL EXAMINATION**HEAD**

No mark of injury seen over scalp. No fracture or swelling seen.

NECK

Ligature mark around the neck. Knot over left and posterior side underlining tissues having glistening appearance. Fracture of thyroid cartilage present. Hyoid bone was intact.

THROAX

On opening the thorax cavity lungs found congested.

ABDOMIN

On opening the abdomen viscera looking normal. (Stomach and piece of intestine sent for chemical analysis).

VULVAL EXAMINATION.

Vagina admits two fingers easily. Hymen torn.

Anal examination: rectum protruding outside of the anal sphincter which was found ruptured.

SPINE AND SPINAL CORD

Normal

BONES AND JOINTS

Normal.

Time between injuries and death: Within 15 minutes.

Time between death and postmortem: 50 to 60 hours.

Following material handed over to IO for chemical examiner:

1. Stomach and piece of intestine.
2. Saline solution
3. H-vaginal slide
4. Anal swab
5. Orange printed frock
6. Off-white pajama used as a ligature.

CAUSE OF DEATH

She opined that cause of "death is asphyxia leading to cardio pulmonary failure due to constriction of neck by soft and flexible object. She was subjected to sexual assault from anal and vagina." She produced postmortem report Ex.10/B."

18. The postmortem report clearly explains how the heinous and inhuman act of zina-bil-jabr was committed brutally with the baby girl Tajjali before committing her murder. Subsequently, the accused/appellant confessed his crime before the Judicial Magistrate

(Ex.9/C). The events as narrated by the accused in his confessional statement are fully corroborated by the facts mentioned in the postmortem report (Ex.10/B) and MLR (Ex.11/A). The recording of his confessional statement under Section 164 Cr.P.C. after fulfilling all the necessary legal requirement before the Magistrate, makes the case of prosecution clear and strong. It is a settled principle of law that if the confession of accused is voluntary and true then it is itself sufficient to convict an accused, "GHULAM QADIR and others Vs. THE STATE" (2007 SCMR 782).

19. The identification parade of the accused was duly and properly conducted in which he was identified as the same person with whom the deceased girl was found moments before she went missing. He was identified by one Muhammad Ismail (P.W.3) and a girl named Shagufta (P.W.4) in the court of Magistrate. Both of them duly identified him and signed the certificate of identification parade as (Ex.4/A).

20. For what has been discussed above, we are of the considered view that chain of events are so well connected and flawlessly explained the prosecution case that there left no space of doubt. Hence, the appeal filed by the appellant Muhammad Irshad is dismissed. The conviction recorded and sentence of death awarded to the appellant Muhammad Irshad by the learned trial court vide judgment dated 21.12.2020 is maintained.

21. Resultantly, Criminal Murder Reference No.01-K of 2021 is answered in the AFFIRMATIVE and confirmed.

JUSTICE DR. SYED MUHAMMAD ANWER

JUSTICE MUHAMMAD NOOR MESKANZAI
CHIEF JUSTICE

JUSTICE KHADIM HUSSAIN M. SHAIKH

Announced in Open Court
On 30.04.2021 at Islamabad
*Mubashir**