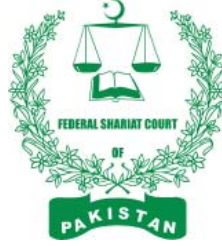


وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

النساء (۴:۵۷)



FEDERAL SHARIAT COURT



ANNUAL REPORT FOR THE YEAR - 2011

Phone: (051) 9203091, 9222525
Phone: (051) 9203448

Website:- (federalshariatcourt.gov.pk)
Email: (registrar@federalshariatcourt.gov.pk)



Mr. Justice Agha Rafiq Ahmed Khan
Chief Justice
Federal Shariat Court of Pakistan

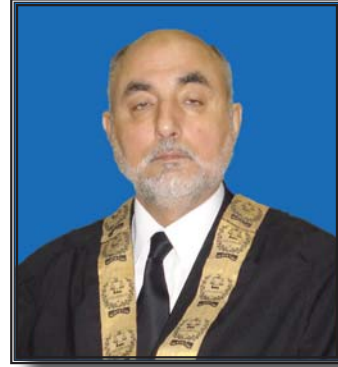
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**MR. JUSTICE AGHA RAFIQ AHMED KHAN,
CHIEF JUSTICE FEDERAL SHARIAT COURT**

Born on August 23, 1949

Mr. Justice Agha Rafiq Ahmed Khan was born on 23rd August, 1949 in Garhi Yasin, District Shikarpur in Royal Barakzai Pathan family. He is son of Late Agha Mohammad Anwer Khan, prominent figure of the said area. He got early education from D.C. High School Garhi Yasin and Graduation from C&S Government College, Shikarpur. He got LL.B Degree from University of Sindh in the year 1971.



Justice Agha was enrolled as Member of Sindh Bar Council in 1972. He joined Sindh Judicial Services as Civil Judge and First Class Magistrate in 1973 through Competitive Examination of Public Service Commission. He was promoted as Senior Civil Judge & Assistant Sessions Judge in 1978 and as Additional District & Sessions Judge in 1983. He was appointed as Additional Secretary, Sindh Assembly in 1985 and promoted as Secretary, Sindh Assembly in 1985. He attended Shariah Training Course in International Islamic University in Islamabad in 1984. He was appointed as Director Legal Services and Director Administration in PIA on deputation in 1989. He was promoted as District & Sessions Judge in May, 1990 and was appointed as Additional Secretary (Regulations) in Services and General Administration Department, Government of Sindh. He was appointed as Judge Sindh Labour Court No.1 Karachi in 1991. He was posted as Law Secretary Sindh in 1994-95. He was appointed Additional Judge Sindh High Court in 1995, and confirmed as Judge of Sindh High Court in 1996. He was appointed as Federal Secretary, Law and Justice Division, Government of Pakistan in 2008 and appointed as Permanent Judge of Sindh High Court on 14.12.2008 alongwith original seniority from 1995. He was elevated as Chief Justice, Federal Shariat Court of Pakistan on 05.06.2009.

Mr. Justice Agha Rafiq Ahmed Khan participated in Training Course on Judicial Ethics organized by Royal Institute of Public Administration (RIPA), London in June, 2009.

Ex-officio: Member, National Judicial (Policy Making) Committee, Member, Law & Justice Commission of Pakistan, Member, Advisory Board of the Al-Mizan Foundation, Member, Administration Committee of Al-Mizan Foundation, Member, Board of Governors, Board of Trustees, Council of Trustees and Selection Board of the International Islamic University, Islamabad. Member, Executive Council, Allama Iqbal Open University, Islamabad.

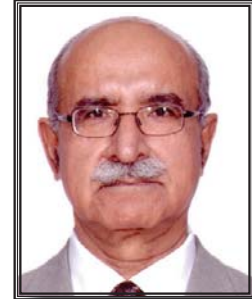
**MR. JUSTICE SHAHZADO SHAIKH,
JUDGE, FEDERAL SHARIAT COURT**

Born on September 1, 1947

(Appointed as Judge of Federal Shariat Court on 26.03.2010)

Pakistan Audit & Account Service

Service joined: 1971
Date of Retirement August 31, 2007



SOME OF SENIOR POSITIONS

- Registrar, Federal Shariat Court of Pakistan
- Secretary, Ministry of Population Welfare, Government of Pakistan,
- Organised/conducted: Unanimous Declaration: International Ulema Conference, 2005 & 2006
- International Ulema Conference, 2007, Bali, Indonesia
- Additional Auditor General of Pakistan:
- Served in senior positions in Prime Minister's Secretariat, Ministries of Finance, Commerce, and Agriculture
- SAARC Preferential Trade Agreement (SAPTA): chaired/concluded Agreement
- Senior Executive Director, Agriculture Development Bank of Pakistan, Government of Sindh:
- Additional Chief Secretary (Development),
- Chairman, Restructuring Committee on Devolution, Govt. of Sindh.
- Chairman, Karachi Water & Sewerage Board.
- Chairman, Sindh Industrial Trading Estate.
- Chairman, Coastal Development Authority.
- Secretary: Finance, S&GAD, Agriculture, Forests, Fisheries, Livestock, Wildlife Excise & Taxation, Board of Revenue
- Secretary to Chief Minister (Twice)
- Chairman, Sindh Road Transport Corporation

REPRESENTED GOVT. ON:

1. National Economics Council.
2. Executive Committee for National Economic Council.
3. Social Sector Co-ordination Committee of the Cabinet.
4. Industrial Development Bank of Pakistan.
5. Finance & Planning Committee of 5 universities of Sindh.
6. Export Promotion Bureau of Pakistan.
7. Sindh Sugar Corporation.
8. Fisherman's Cooperative Society, Karachi.
9. Sindh Employees Social Security Institution.
10. Federal/Provincial Bank for Cooperatives.

LECTURES

- Presentation on Environmental Audit in the international Seminar in Brasilia, Brazil, organized by international Supreme Audit Institute, Canada.
- Presentation on Kashmir in Germany
- Johns Hopkins University, Baltimore, USA
- Population Council (Pakistan)
- International Health Institute, Santa Cruz, USA
- Columbia University, New York.
- Packard Foundation; San Francisco
- Pakistan Staff College, Lahore
- National Defence College, Islamabad
- Air War College, Karachi
- National Institutes of Public Administration, Karachi, Quetta, Lahore
- Universities, Colleges, and Media

After Retirement:**Counsel/Legal Advisor:**

- Capital Development Authority, Islamabad
- Water and Power Development Authority,
- Zarai Taraqati Bank of Pakistan (Agriculture Development Bank of Pakistan)
- Federal Board of Revenue, Government of Pakistan

Honorary Member:

- Member Board of Governors:
Cadet College, Larkana
Radio Pakistan,
NESPAK,
STEVTA.
- Member, Executive Board, Population Association, Pakistan

Books/Publications

- Historiographic Glimpses of Federal Shariat Court of Pakistan (Pages 305)
- The Gateway to the Qur'an--Al-Faatihah (pages 425)
- The Pure Truth--Al-Ikhlaas. (pages 250)
- Know Your God (pages 1280)
- The Round Table-Issues & Perspectives (pages 200)
- Ad-duaa
- Quran aur Science (Urdu)
- Unto Light
- The Divine Dynamics - Surah Al-Fiil (Pages 200)
- Hikmat-e-Quran (Compilation of Speeches on Quran Subjects from Radio Pakistan, 2003-2009)
- Digest of Service Laws (1973-2010)

- Juris-diction of Shariah and Jurisdiction of Federal Shariat Court (Diagnostics & Dialectics)
- Shariat and its Structural Basis
- Political History of Muslim Law in Indo-Pak Sub-Continent
- The Protection of Women (Criminal Laws Amendment) Act, 2006 (A CRITICAL ANALYSIS)

Thesis

- National Logistics Policy (Thesis for Masters)
- Socio-Economic Aspects of Education Policies in Pakistan (Thesis for Postgraduate Diploma)

Articles

- Participatory Approaches to Poverty Alleviation
- Strengthening Supreme Audit Institution for Continued Accountability
- Enforcement of Recovery Laws against Defaulters
- Micro-Credit-Working for the Poverty Alleviation
- Women Rights- Human Rights
- Population and Environment
- Politics of Shortages
- Moon Sighting (Quranic Scientific approach)
- The Word of God (Kalimatullaah)

TRAININGS

S.No	Name of the Course	Year	Name of Institution / Country
1.	Capacity Building for Poverty Alleviation	2002	IDPM University of Manchester.UK
2.	National Defence Course	1995-96	National Defence College, Islamabad, (Including study visit to Saudi Arabia, Italy and Germany)
3.	Sustainable Agricultural Development	1991	Asian Development Bank, Manila Philippines
4.	Policy Evaluation	1990	Canberra, Australia
5.	Senior Crisis Management	1989	State Department, Washington U.S.A.
6.	Management	1989	Pakistan Audit and Accounts Institute Lahore.
7.	Advance Course in Administration	1985	National Institute of Public Administration Karachi.
8.	Computers	1981	Pakistan Administrative Staff College, Lahore

9.	National Economic Planning	1978-79	Central School of Planning & Statistics Warsaw, Poland
10.	Accounts	1975	Railway Accounts Academy, Quetta
11.	Probationer (Pakistan Military Accounts Services)	1972	Military Accounts Training Centre, Rawalpindi
12.	Probationers (Pakistan Military Accounts Services)	1972	Finance Services Academy, Lahore
13.	Probationers (Information Service of Pakistan)	1972	Civil Services Academy, Lahore
14.	Probationer (Information Service of Pakistan)	1971	Information Service Academy, Islamabad

EDUCATIONAL QUALIFICATIONS

DEGREE	INSTITUTE	MAIN SUBJECT
M. Sc.	NDC/Quid-e-Azam University, IBD	Defense & Strategic Studies
M. Sc.	Sindh University	Chemistry

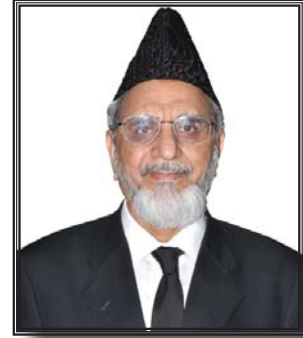
Post Graduate Diploma in Economic Planning	Central School of Planning & Statistics, Warsaw, Poland	Economic Planning [Socio Economic Aspects of Education Policies in Pakistan (thesis)]
L.L.B	Sindh University	Law
Certificate	Institute of Policy Development & Management, University of Manchester, UK	Capacity Building for Poverty Alleviation.

**MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN,
JUDGE, FEDERAL SHARIAT COURT**

Born on October 21, 1938

ACADEMIC QUALIFICATION

- B.A Ist class Ist Position in the University of Peshawar(with distinction) was awarded gold Medal and Merit scholarship.
- B.Sc. (War Studies).
- B.T.
- Diploma Course in German Language.
- M.A. (Islamiyat) Ist class (with distinction).
- M.A. (Arabic) Ist class (with distinction).
- M.A. (English) Ist position (with distinction).
- Ph.D. (Islamic Law and jurisprudence).



PUBLICATIONS AND EXPERIENCE

- Translated the Holy Quran (into English language).
- Remained Lecturer Islamiyat at Post-Graduate Level, University of Peshawar (about six years).
Remained on the list of Juris-consults and assisted the Federal Shariat Court on several occasions for about eight years (Prior to 1988).
Was appointed Judge and remained Senior Puisne Judge, Federal Shariat Court of Pakistan. (for twenty one years): (From 2nd October, 1988 to 1st October, 2009)
- Was appointed and served as Ad hoc Member Shariah Appellate Bench Supreme Court of Pakistan (From 25 March, 2010 till 4 July 2011).
- Served as Deputy Director of Education/Director of Motivation, PAF (about twenty years).
- Reappointed as Judge Federal Shariat Court Islamabad (w.e.f. 5 July, 2011 till date).
-

MEMBERSHIP VARIOUS ACADEMIC WELFARE BODIES

Chairman Shariah Board, State Bank of Pakistan
President, Quran Asaan Tahreek, Pakistan.
Patron-in-Chief Prevention of Blindness Society, Islamabad.

-
- * Member Board of Trustees International Islamic University (IIU) Islamabad.
 - * Member Board of Governors, (IIU), Islamabad.
 - * Member Council Dawah Academy, (IIU), Islamabad (several terms).
 - * Member Council Islamic Research Institute, Islamabad (several terms).
 - * Member Council Shariah Academy, (IIU), Islamabad (several terms).
 - * Member Council Institute of Islamic Economics (IIU), Islamabad.
 - * Former Chairman, Economic Reforms Commission NWFP.
 - * Member Advisory Board, World Jurists Council;
 - * Member Syndicate M.I. University Azad Kashmir
 - * Member Research Fund Supervisory Committee (IIU)
 - * Former Member, Syndicate, Agriculture University, Faisalabad.
 - * Former Member, Syndicate, Quaid-e-Azam University, Islamabad.
 - * Former Member Executive Council, Allama Iqbal Open University (AIOU), Islamabad.
 - * Former Chairman, Executive Council Committee, AIOU.
 - * Member Selection Board (IIU) Islamabad.

JUSTICE RIZWAN ALI DODANI
JUDGE, FEDERAL SHARIAT COURT

Born on July 17, 1964

Appointed as Judge in the Federal Shariat Court
on 5th July, 2011



PROFESSIONAL QUALIFICATION:

- i) Bachelor of Law (LL.B) from Karachi University in the year 1988.
- ii) Enrolments as an Advocate Sub-Ordinate Courts 25th September, 1989
- iii) Enrollments as an Advocate High Courts 16th October, 1991
- iv) Memberships
 - a) Islamabad High Court Bar Association.
 - b) Karachi High Court Bar Association

WORK EXPERIENCE:

- **August 1988 to March 1995:** Started practice as an Advocate with M/s Zaid & Co., Advocates (Muhammad Zaki Ahmed, Advocate). Area of practice was Trade Mark Patents Copy Rights, Corporate, Banking and Properties matters.
- **April 1995 to February, 2000:** As partner with M/s Musher Pesh Imam & Co. working assignments including conduct of courts cases in the High Courts and Tribunals. Area of practice was Banking, Trade Mark, Patents, Copy rights, service matters, Corporate & Customs matters.
- **March, 2000 to May, 2001:** Served as Additional District & Sessions Judge, Province of Sindh, Resigned from this post due to my personal preference.
- **August 2001-November 2004:** As an Associate with M/s. Khalid Anwer & Co. Area of practice mostly was Corporate, Banking, Fiscal Trade Marks, Patents, Copy Rights, Customs, Fiscal, Insurance, Commercial and contractual disputes and prosperous matters.
- **December, 2004 to date:** Practicing independently as an Advocate, Legal Consultant and Advisor. Area of practice mostly is Corporate, Banking, Trade Marks, Patent, Copy Rights, Commercial and Contractual disputes, Service matters, Customs and Properties matters.

- **Appointed as Standing Counsel for Pakistan from 28.02.2009 to April 2011:**
Work assignment for the said post is to appear on behalf of the Federation of Pakistan in High Court of Sindh, at Karachi in all the matters relating to Federal Statutes.
- Completed a Course in Tokyo, Japan on Intellectual Property Rights: I was selected by the Intellectual Properties Organization (I.P.O) Government of Pakistan for a Course held at Tokyo Japan on Intellectual Property Rights in December, 2009.
- Reported Cases: As per list attached.

LIST OF REPORTED CASES

- 1999 CLC Pages 1663
Muhammad Azhar Butt
Versus
Khawaja Anees Ahmad
- 2005 CLD Page 74
M/s. Pamcon International Constructor
Versus
Machinery Imports Corporation
- 2008 CLC Page 2010
State Life Insurance Corporation
Versus
M/s. Ahmad Brothers.
- 2010 SBLR Page---
Farooq Ahmad
Versus
The State
- PLD 2010 Karachi Page 400
Muhammad Akram Shaikh
Versus
M/s. Pak Libya Holding Co.Ltd.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

FOREWORD

The Rule of Law is the foundation of a civilized society. It establishes a transparent process accessible and equal to all. An independent and impartial judiciary, the right to fair and transparent trial without undue delay and equality of all before the law are the corner stone of the Rule of Law.

My first priority was to provide speedy justice to the helpless and wretched litigant public specially those prisoners who are confined in the jails since long. For this purpose efforts were made to clear the backlog of the oldest criminal cases. By the grace of Allah Almighty, many of these cases have been disposed of, and some are also underway.

During the year under report, I had the opportunity to undertake the visit of Kingdom of Morocco to attend the 2nd Conference of Chief Justices of Arab Countries held in September, 2011 and got the knowledge of judicial working system prevailing in the Arab Countries as well as challenges being faced by them and also glanced proposed remedial measures presented through recommendations by the participants in the conference. Indeed it was a great experience to interact with the brother Chief Justices of various Arab countries at one place.

The National Judicial Policy Making Committee in its meeting had assigned me the task for construction of model jail in Islamabad. After detailed deliberations with the concerned government functionaries, a suitable area has been earmarked in an acquired area of H-17 Sector Islamabad. The District Administration has also placed the pillars across the boundary for the purpose. The requisite funds have also been released for the project and proposal to initiate PC-II is in progress.

Undoubtedly, upholding the supremacy of Rule of Law, without any discrimination, religion, caste, sex, residence or place of birth has always been my prior consideration, and of-course, maintaining the constitutional values and dedicated services of justice to all cannot be ruled out.

In the end, I sincerely thank my learned brother judges and everyone who played a part in the institution's growth in the reporting year. Commitment and hardwork of staff; the lawyers and members of public who made use of our services and facilities, for their cooperation, understanding and support.

(Justice Agha Rafiq Ahmed Khan)
Chief Justice

INTRODUCTION

The dispensation of justice has been given pivotal importance in Islam. Allah Almighty ordains to do justice in all circumstances. The holy Quran says that: “O ye who believe! Stand out firmly for justice, as a witness to Allah, even as against yourself, or your parents, or your kin” (5:135). Another verse says, “O ye who believe! Stand out firmly for Allah, as witness to fair dealing and let not the hatred of others make you swerve to wrong and depart from justice. Be just that is next to piety.” (5:8) The Holy Prophet himself acted as a judge in addition to his other responsibilities and in this respect, Allah almighty directed him that: “We have sent down to you a book in truth that you may judge between men, as guided by God; so be not (used) as an advocate by those who betray their trust.”(4:105). The holy Prophet was known for his fair, impartial and high standard of justice. The non-Muslims used to prefer to file their cases before the Court of the Holy Prophet and there are instances where the holy Prophet decided cases in favour of Jews and against the Muslims.

In Islam, great public interest is attached with the appointment of Imam or Head of the State. The legal maxim pertaining to the appointment of Imam is that: "تصرف الامام على الرعيه منوط بالمصلحة" "The control of Imam over the subjects is based on expedience". In this respect, it is not out of place to refer the sayings of the third Caliph, Hazrat Usman Ghani that: "The objectives of Shariah in repelling mischief can be achieved through Sultan or Imam what cannot be achieved through Quran." Islam has given Imam an important role in implementing Quranic commandments and maintaining justice and equity on earth and protecting interests of the people. He enjoys powers to implement the commandments appearing in the holy Quran. That is why; primarily the Head of the State or Khalifa has been assigned the duty of dispensation of justice on earth. Allah Almighty says that: "يَا دَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَن سَبِيلِ اللَّهِ" “O David! We did indeed make you Viceroy on the earth; therefore, adjudicate between men with truth and justice and follow not the desire of your heart that will mislead you from the path of God.”(38:26).

2. Pakistan was established in the name of Islam and it was promised to be an Islamic welfare State protecting the rights of its citizens and maintaining justice and equity without any discrimination between the citizens of this welfare State. In this respect, the Objectives Resolution was made substantive part of the present Constitution wherein it has been laid down that: “Sovereignty over the entire universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within

the limits prescribed by Him is a sacred trust; and it had been affirmed that the Muslims of this country will be enabled to lead their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah of the Holy Prophet, peace be upon him". Likewise, Article 227 of the Constitution of Islamic Republic of Pakistan, provides that "All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet and no law shall be enacted which is contradictory to Islamic injunctions". In the light of these Constitutional references, the legislative bodies are duty bound not to enact laws in contravention of the Injunctions of Islam.

It is not out of place to refer an important Quranic verse, wherein it has been laid down that: **لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا**, "For every one of you we have ordained a divine law and an open road"(5:48). The divine law contains some outlines (the Shariah) with clear commandments regarding various issues. At the same time, the lawgiver has conceded to us an open road (Minhaj) for temporal legislation which would cover contingencies deliberately left untouched by the Nusus of Quran and Sunnah. Basically, it is the prerogative of legislative body or Parliament where Ahle al hall wal-aqd are supposed to be its members, to enact laws in matters where the divine law is silent or an issue has been left untouched.

3. The final order made by this Court under Article 203-D of the Constitution regarding any law or provision of law, the execution of the judgment, amendment in the impugned law, in line with the direction of the Court, is mandatory otherwise the impugned law cease to have effect on the day on which the decision of the Court takes effect. The duty assigned to these two Constitutional Institutions, i.e the Council of Islamic Ideology and Federal Shariat Court is the examination of laws and to provide complete guidance to the Parliament in terms of repugnancy of the laws, which are within the domain of this Court as laid down in the Constitution. These institutions have so far done commendable job in bringing all existing laws in conformity with the injunctions of Islam.

4. One of the distinctive features of the jurisdiction of the Federal Shariat Court under Article 203-D of the Constitution is the examination of laws either on its own motion or on a petition filed by any citizen of Pakistan challenging particular law or its provision being repugnant to the injunctions of Islam on the touch stone of Islamic injunctions and to provide practical solutions to all such recurring problems on which either direct verdict is discernible from the Holy Quran and Sunnah of the Holy Prophet or not. Where the direct verdict is not discernible from the Holy Quran and Sunnah, the principle of collective Ijtihad and Ijma is applied remaining within the general frame work of the Holy Quran and Sunnah of the holy Prophet, by calling the jurists of Islamic World and the Ulema of various schools of thought in Pakistan who are well versed in Islamic law. For this purpose, the Court maintains a list of jurists, Ulema and subject

specialists, representing various schools of thought. In this respect, the principles of Ijtihad formulated by our great orthodox jurists are also utilized to find out *Hukm Shar'i* (حکم شرعی) regarding any recurring issue of modern era.

5. In this respect, the important decisions of this Court on *Tasaduq Zawjain* (Testification of Marriage), testimony of women in *Hudood* cases, the inheritance of a predeceased son, the citizenship of a foreign man married to Pakistani woman, transplantation of human organ, compulsory retirement from service, *Qisas & Diyat* and decision on pre-emption, can be referred. We have also established a close relationship with the superior judiciary of the Muslim world and have agreed to cooperate with each other to meet the new challenges of present era, specifically in deriving *Ahkam*, (Islamic commandments) about new and emerging issues of modern era.

6. The high status that Islam accords to the judiciary has no parallel in the whole history of human civilization. In the Islamic legal system, Judiciary is completely free and independent from the executive. Secondly, in Islam, Justice is fundamental right of every citizen that must be quick, speedy and inexpensive. In the Federal Shariat Court, the criminal cases are normally disposed off within the period of two or three months. The Court, during the judicial year 2011, following the policy and directives of NJPMC, has succeeded in bringing the pendency and backlog in principal seat and Bench Registries of four provinces, to its lowest level. However, the examination of laws under original jurisdiction entails many procedural requirements and thus is time consuming in the sense that the process of deriving *Ahkam* from original and secondary sources, the basic requirements of inviting the views of jurists/Ulema of various schools of thought and hearing their arguments, and examining the statement of Provincial and Federal Governments inevitably takes considerable amount of time. However, the Court is performing its Constitutional responsibilities in deriving *Ahkam* from the original sources regarding the issues of new era to meet the challenges of modern world.

COURT AUTOMATION

Our world today has changed a great deal with the aid of information technology. Things that were once done manually or by hand have now become computerized operating systems, which simply require a single click of a mouse to get a task completed. With the aid of IT we are not only able to stream line our business processes but we are also able to get constant information in 'real time' that is up to the minute and up to date. Keeping in view the needs of modern world Federal Shariat Court has also started automation of all activities being carried out manually in 2008. In the first year Procurement of Hardware Infrastructure, LAN (Local Area Network) Establishments and Automation of some of business processes of FSC including Case Flow Management System and Human Resource Management were done. Some of the features of these Systems are as under:-

CASE FLOW MANAGEMENT SYSTEM

- 1 Computerized Case Institution
- 2 Searching case record
- 3 Bench Allocation
- 4 Date Fixation
- 5 Checking Case Status
- 6 Case proceedings
- 7 Finding Judgments
- 8 Proposed Cause List
- 9 Report generation regarding pendency, disposal, institution, and offence wise statistics.

In year 2011 following tasks were performed regarding Case Flow Management System

- (a) Record of cases for the year 2011 including more than 1500 cases have been computerized at Principal seat.
- (b) Reported Judgment from year 2000 to 2011 have made online.

HUMAN RESOURCE MANAGEMENT SYSTEM:

Computerized Information of any Employee of the Court

- ★ Leave Record of the employee
- ★ Seniority list of staff and officers

In year 2011 following tasks were performed

- ★ Promotion History of the court staff
- ★ ACRs of more than 100 personals were added.

The official website of FSC federalshariatcourt.gov.pk

Following information can be downloaded from FSC website.

- ☞ Brief history of establishment of Federal Shariat Court.
- ☞ Chapter 3-A of the constitution of Pakistan (This chapter consist articles of the constitution pertaining to the establishment of the Federal Shariat Court, appointment and qualification of judges, jurisdiction etc.
- ☞ Procedure Rules of the court.
- ☞ Profile of former and present judges.
- ☞ Profile of present and former Chief Justices.
- ☞ Leading Judgments of the court (Shariat Petitions and suo moto cases).
- ☞ A summary of reported criminal cases from 1980 up to date.
- ☞ Tenders
- ☞ Notifications
- ☞ Photo Gallery
- ☞ Articles
- ☞ Case Status

Projects under Progress

QURAN MOAJAM SOFWTARE

In this software a search Engine will provide details of each word user enters in the search engine and also display relevant verses from Holy Quran along with translation.

SMS ALERT SYSTEM

In this system Case Status will be sent to the litigants via sms(send message service) to their cell phones

LIBRARY

Library of the Court is under process of automation; data entry of about ten thousand books has been completed in a locally developed software "LIMS" (library information management system) acquired free of cost by the Court librarian. However, purchase of integrated library software (ILS) complying with the international standards is in the pipeline. Presently, Online Public Access Catalogue (OPAC) is available on LAN for the users. Search facility by author, title, subject and DDC No. is provided.

DIGITAL LIBRARY

Information technology has influenced every sphere of life; there is booming trend in the modern world to establish digital libraries by organizing scanned as well as born digital books. Federal Shariat Court Library has taken initiative and developed a collection

of digital books comprising of 1,5000 titles which is growing day by day. There are 336 Encyclopedias including Encyclopedia of Islam 13 volumes, Encyclopedia of Hinduism, Encyclopedia of Social Problems, Gale Encyclopedia of Everyday Law, Encyclopedia of Law and Higher Education, Encyclopedia of World Biography, Encyclopedia of Modern World 1900 to present, World Encyclopedia of Political System and Parties, Encyclopedia of Women and Islamic Cultures, McGraw-Hill Encyclopedia of Science & Technology 19 vols. and 91 dictionaries including Oxford Dictionary of English Language 20 vols. Ebooks on law, Islam, banking and finance, Seerat-un-Nabi (SAW) are also included. These books can be downloaded and print out of relevant / required pages can also be taken. Pakistan Library Automation Group (www.paklag.org) has provided digital library software free of cost. Federal Shariat Court library is the 1st one among the Court Libraries in Pakistan which is maintaining a digital library along with computerization of its physical collection.

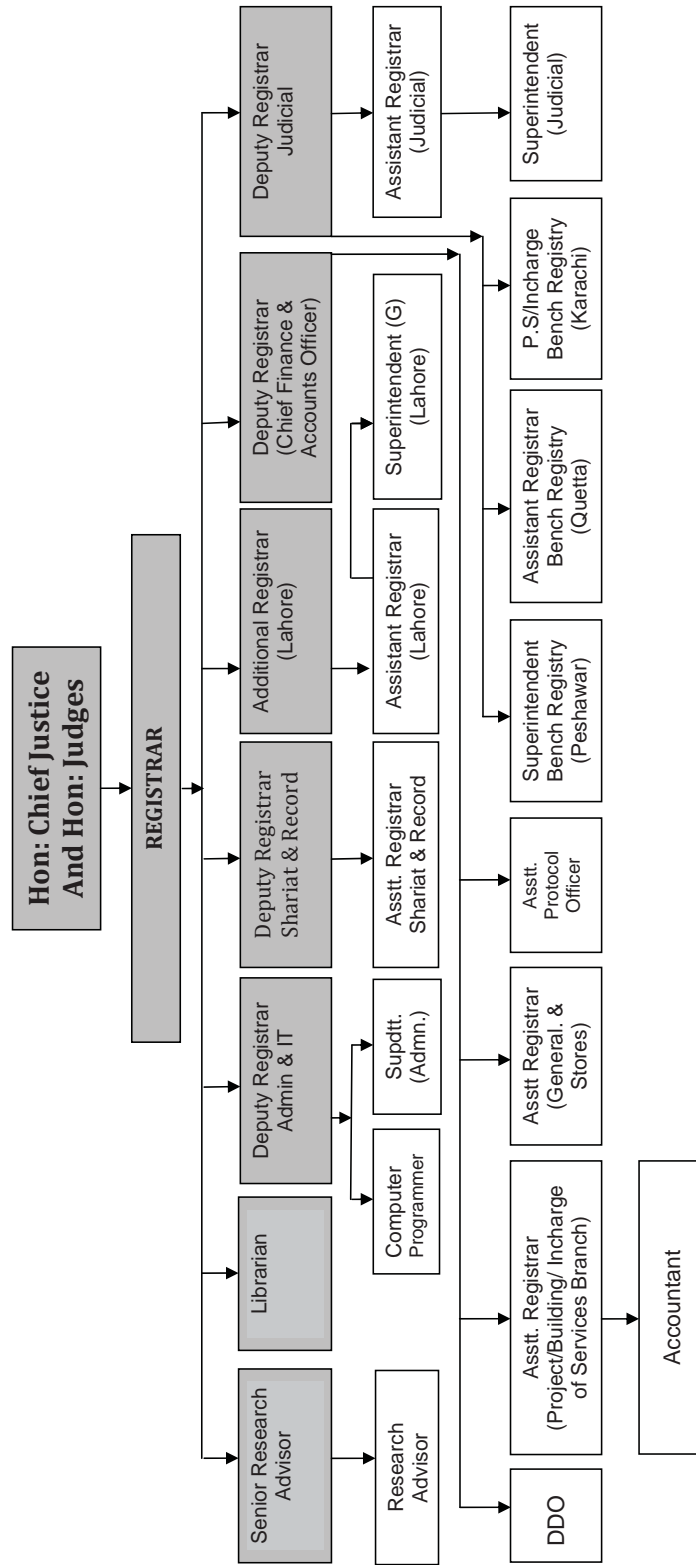
**FEDERAL SHARIAT COURT
COMPOSITION 2011****THE CHIEF JUSTICE:**

Name	Date of Assumption
Mr. Justice Agha Rafiq Ahmed Khan	05-06-2009

THE JUDGES OF THE FEDERAL SHARIAT COURT:

Name	Date of Assumption
Mr. Justice Shahzado Shaikh	26-03-2010
Mr. Justice Dr. Fida Muhammad Khan	05-07-2011
Mr. Justice Rizwan Ali Dodani	05-07-2011

Organisational Chart of the Federal Shariat Court of Pakistan

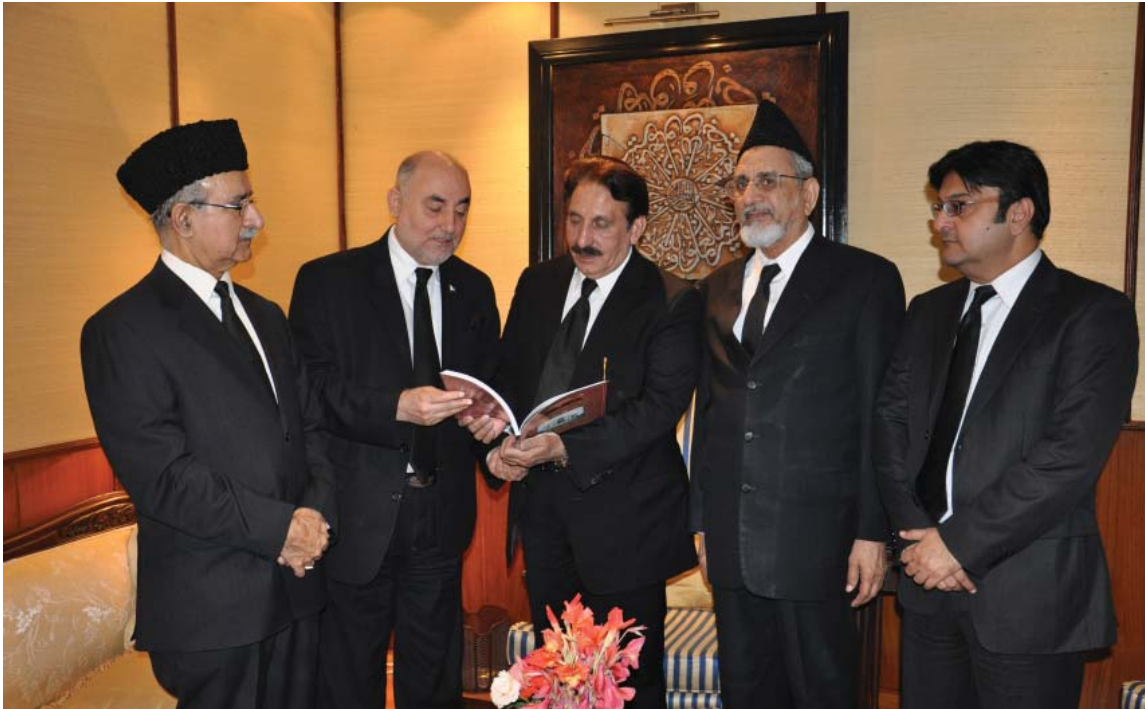


CEREMONIES, MEETINGS & GROUP PHOTOS



A group photo of National Judicial Policy Making Committee members taken on 14-5-2011.

Standing L to R: Mr. Justice Iqbal Hameed Ur Rahman, Chief Justice, Islamabad High Court, Mr. Justice Ejaz Afzal Khan, Chief Justice, Peshawar High Court, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry Chief Justice, Supreme Court of Pakistan, Mr. Justice Mian Shakaiullah Jan, Mr. Justice Mushir Alam, Chief Justice Sindh High Court, Mr. Justice Ijaz Ahmed Chaudhry, Chief Justice Lahore High Court, and Mr. Justice Qazi Faez Isa Chief Justice Balochistan High Court



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court, alongwith Judges of Federal Shariat Court presenting Annual Report 2010 to Mr. Justice Iftikhar Muhammad Chaudhry Chief Justice Supreme Court of Pakistan



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court taking oath from newly appointed Judges Mr. Justice Dr. Fida Muhammad Khan, and Mr. Justice Rizwan Ali Dodani on 5-7-2011



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with Chief Justice, Islamabad High Court, Mr Justice Iqbal Hameedur Rahman on 16-03-2011



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with Mr. Justice (R) Rana Bhagwandas on 12-5-2011



A group photo of participants of Judicial Conference of Arab Countries held at Morocco on 14-5-11.

Sitting L to R: Mr. Justice Galal Elden Mohammed Osman Goreshi, Chief Justice, Supreme Court of Sudan, Mr. Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan, Mr. Justice Sheikh Abdul Rahman bin Abdul Aziz, Chief Justice Of Saudi Arabia, Mr. Mustapha Fares, First President/ Chief Justice Supreme Court of Morocco, Mr. Masoud Mohamed Al-Ameri, The Chief Justice of the Court of Cassation and the President of the Supreme Judiciary Council of the State of Qatar, Mr. Justice Abdul Wahab, Chief Justice of the Federal Supreme Court of UAE.

Standing L to R: Mr. Justice Qudor Baraji, Chief Justice of Algeria, Mr. Justice Dr. Abdul Qadir Al-Tirgim, Judge Court of Cassation, Jordan,, Mr. Justice Fareed Sakka, Chief Justice of Tunisia, Mr. Justice Mohamed Hossam Elddin El Gheriany, Chief Justice, Supreme Court of Egypt, Mr. Justice Mastafa Hatem Madi, Acting Chief Justice of Lebanon and Mr. Justice Abdel Wahab Al- Samawe , Chief Justice of Yemen.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with His Excellency Mr. Masoud Al-Ameri, The Chief Justice of the Court of Cassation and the President of the Supreme Judiciary Council of the state of Qatar



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan presenting souvenir to Mr. Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman on 17-09-2011



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with Mr. Justice Galal Elden Mohammed Osman Goshi, Chief Justice, Supreme Court of Sudan on 17-09-2011



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with Mr. Justice Abdel Wahab Al- Samawe, Chief Justice of Yemen



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan presenting souvenir to Mr. Justice Fareed Sakka, Chief Justice of Tunisia

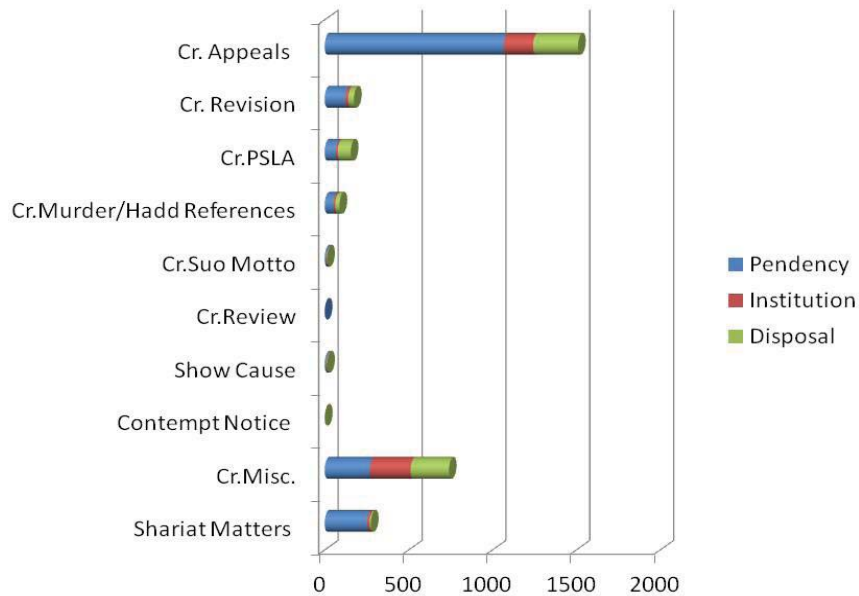


Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan meeting with Mr. Justice Dr. Abdul Qadir Al-Tirgim, Judge Court of Cassation, Jordan

Statistical Tables and Court Budget

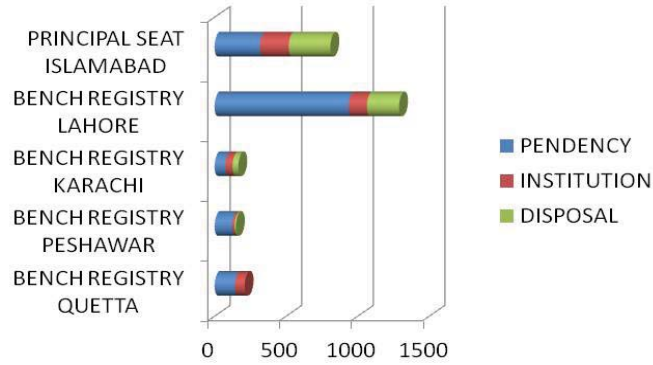
Judicial Activity and Statistics
Court Performance during the year 2011
Category Wise Consolidated position during the year 2011

Sr.No.	CATEGORY OF CASES	PENDENCY ON 31-12-2010	INSTITUTION FROM 1.1.2011 TO 31.12.2011	TOTAL	DISPOSAL FROM 1.1.2011 TO 31.12.2011	BALANCE ON 31.12.2011
1.	Cr. Appeals	1067	176	1243	268	975
2.	Cr. Revision	124	17	141	34	107
3.	Cr.PSLA	67	11	78	05	73
4.	Cr.Murder/Hadd References	53	10	63	26	37
5.	Cr.Suo Motto	09	04	13	02	11
6.	Cr.Review	01	-	01	-	01
7.	Show Cause	01	02	03	03	-
8.	Contempt Notice	-	01	01	01	-
9.	Cr.Misc.	269	244	513	228	285
10.	Shariat Matters	253	15	268	08	260
	Total	1844	480	2324	575	1749



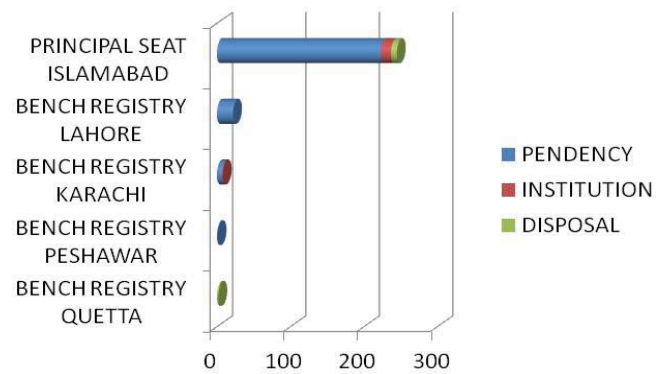
**Consolidated Position At Principal Seat
and Bench Registries for the period from 01-01-2011 to 31-12-2011
CRIMINAL MATTERS**

Sr.No.	PRINCIPAL SEAT/BENCHES	PENDENCY ON 31-12-2010	INSTITUTION FROM 1.1.2011 TO 31.12.2011	TOTAL	DISPOSAL FROM 1.1.2011 TO 31.12.2011	BALANCE ON 31.12.2011
1.	PRINCIPAL SEAT ISLAMABAD	316	202	518	291	227
2.	BENCH REGISTRY LAHORE	936	128	1064	225	839
3.	BENCH REGISTRY KARACHI	75	50	125	41	84
4.	BENCH REGISTRY PESHAWAR	123	16	139	10	129
5.	BENCH REGISTRY QUETTA	141	69	210	-	210
	TOTAL	1591	465	2056	567	1489



SHARIAT MATTERS

Sr.No.	PRINCIPAL SEAT/BENCHES	PENDENCY ON 31-12-2010	INSTITUTION FROM 1.1.2011 TO 31.12.2011	TOTAL	DISPOSAL FROM 1.1.2011 TO 31.12.2011	BALANCE ON 31.12.2011
Sr.No.	PRINCIPAL SEAT ISLAMABAD	223	14	237	08	229
1.	BENCH REGISTRY LAHORE	22	-	22	-	22
2.	BENCH REGISTRY KARACHI	07	01	08	-	08
3.	BENCH REGISTRY PESHAWAR	01	-	01	-	01
4.	BENCH REGISTRY QUETTA	-	-	-	-	-
	TOTAL	<u>253</u>	<u>15</u>	<u>268</u>	<u>08</u>	<u>260</u>



DETAIL OF BUDGET ALLOCATION AND ACTUAL EXPENDITURE
INCURRED DURING THE FINANCIAL YEAR 2010-2011

HEAD OF ACCOUNT	Sanction Budget 2010-11	Supplementary Grant	Re-appropriation		NET BUDGET ALLOCATION 2010-11	Expenditure
			(+)	(-)		
A01-Employee Related Exp	107,572,000	77,691,000	18,958,000	17,278,000	186,943,000	186,683,674
A01101-Pay of Officer	34,576,000		3,210,000	5,513,000	32,273,000	32,258,417
A01151-Pay of other Staff	13,633,000			764,000	12,869,000	12,820,002
A012-1 Regular Allowance	54,423,000	72,236,000	14,653,000	8,376,000	132,936,000	132,767,983
A012-2 Other Allowances	4,940,000	5,455,000	1,095,000	2,625,000	8,865,000	8,837,272
A01271-Over time Allowance	300,000			25,000	275,000	273,939
A1273-Honoraria	800,000	2,855,000		2,000,000	1,655,000	16,44,900
A01274-Medical Charges	2,000,000			400,000	1,600,000	1,585,713
A01277-Contigent Paid Staff	1,800,000	2,600,000	1,095,000	160,000	5,335,000	5,332,720
A012778-Leave Salary	40,000			40,000	000	000
A03-Operating Expenses	23,680,000	800,000	1,275,000	2,859,000	22,896,000	22,771,643
A032-Communication	2,600,000		100,000	8,000	2,692,000	2,688,038
A03201-Postage & Stamp	350,000				350,000	350,000
A03202-Telephone & Trunk Calls	2,200,000		100,000		2,300,000	2,296,182
A03205-Courier and Poilet Service	50,000			8,000	42,000	41,856
A033-Utilities	380,000		40000	370,000	50,000	49,489
A03301-Gas Charges	30,000			30,000	000	000
A03302-Water Charges	10,000		40,000		50,000	49,889
A03303-Electricity Charges	330,000			330,000	000	000
A03304-Hot & Cold Water Charges	10,000			10,000	000	000
A034-Occupency Costs	9,100,000			150,000	8,950,000	8,938,393
A03402-Rent for Office Building	50,000			50,000	000	000
A03403-Rent of Residence Building	9,000,000			100,000	8,900,000	8,889,876
A03407-Rate of Taxes	50,000				50,000	48,517
A036-Moter vehicles	150,000			20,000	130,000	129,770
A03603- Registration	150,000			20,000	130,000	129,770
A038-Travel & Transportation	7,950,000		60,000	1,115,000	6,895,000	6,822,383
A03805-Traviling Allowance	420,0000			250,000	3,950,000	3,939,878

A03806-Tranpotation of Goods	150,000		60,000	65,000	145,000	105,766
A03807-P.O.L Charges	3,200,000			700,000	2,500,000	2,487,104
A03808-Conveyance Charges	300,000				300,000	289,635
A03809- CNG Charges	100,000			100,000	000	000
A039-General	3,500,000	800,000	1,075,000	1,196,000	4,179,000	4,143,570
A03901-Office Stationery	700,000				700,000	689,903
A03902-Printing and Publication	450,000		180,000		630,000	628,540
A03905-News Papers Periodicals & Books	600,000			30,000	570,000	565,839
A-03906-Uniform/Liveries & Protective	150,000		75,000		225,000	217,979
A03907-Advertising & Publicity	250,000		35,000		285,000	282,068
A03912- Delegation Abroad	150,000	800,000	5,000	816,000	139,000	133,636
A03919-Payment to others for services	300,000			100,000	200,000	197,660
A03970-Others	900,000		780,000	250,000	1,430,000	1,427,945
A05 Grants Subsidies	400,000			400,000	000	000
A052- Grant Domestic	400,000			400,000	000	000
A05216- Family of Civil Servants	400,000			400,000	000	000
A06-Transfers	250,000		50,000	80,000	220,000	210,561
A06301-Entertainment & Gifts	250,000		50,000	80,000	220,000	210,561
A09-Physical Assets	8,800,000		2,168,000	1,831,000	9,137,000	9,123,007
A09501-Purchase of Transport	7,000,000			281,000	6,719,000	6,713,300
A09601-Purchase of Plant & Machineries	800,000		1,568,000	650,000	1,718,000	1,710,606
A09701-Purchase of Furniture & Fixture	1,000,000		600,000	900,000	700,000	699,101
A13-Repair & Maintenance	3,170,000		1,440,000	1,443,000	3,167,000	3,125,697
A13001-Repair of Transport	700,000				700,000	696,863
A13101- Repair of Machinery	300,000		190,000		490,000	482,505
A13201- Repair of Furniture & Fixture	250,000		450,000	550,000	150,000	146,435
A13301-Repair of Office Building	1,120,000			203,000	917,000	912,924
A137- computer Equipment	800,000		800,000	690,000	910,000	886,970
13701-Hardware	400,000		800,000	370,000	830,000	808,720
A13702-Software	400,000			320,000	80,000	78,250
TOTAL	143,872,000	78,491,000	23,891,000	23,891,000	222,363,000	221,914,582

STATEMENT SHOWING THE BUDGET ALLOCATION
FOR THE FINANCIAL YEAR 2011-2012

HEAD OF ACCOUNT	Sanction Budget	Supplementary Grant	SURRENDER	BUDGET ALLOCATION
A01-Employee Related Exp	225,704,000	2,000	6,143,000	219,563,000
A011-1-Pay of Officer	47,509,000			47,509,000
A011-2-Pay of other Staff	13,848,000		300,000	13,548,000
A012-1 Regular Allowance	155,957,000	2,000	5,380,000	150,579,000
A012-2 Other Allowances	8,390,000		463,000	7,927,000
A01271-Over time Allowance	350,000			350,000
A1273-Honoraria	800,000			800,000
A01274-Medical Charges	1,200,000			1,200,000
A01277-Contigent Paid Staff	6,000,000			6,000,000
A012778-Leave Salary	40,000			40,000
A03-Operating Expenses	26,480,000	1,000		26,481,000
A032-Communication	2,850,000			2,850,000
A03201-Postage & Stamp	400,000			400,000
A03202-Telephone & Trunk Calls	2,400,000			2,400,000
A03205-Courier and Polite Service	50,000			50,000
A033-Utilies	380,000			380,000
A03301-Gas Charges	30,000			30,000
A03302-Water Charges	10,000			10,000
A03303-Electricity Charges	330,000			330,000
A03304-Hot & Cold Water Charges	10,000			10,000
A034-Occupency Costs	9,100,000			9,100,000
A03402-Rent for Office Building	50,000			50,000
A03403-Rent of Residence Building	9,000,000			9,000,000
A03407-Rate of Taxes	50,000			50,000
A036-Motor vehicles	150,000			150,000
A03603-Registration	150,000			150,000
A038-Travel & Transportation	9,050,000			9,050,000
A03805-Traviling Allowance	5,000,000			5,000,000
A03806-Tranpotation of Goods	150,000			150,000
A03807-P.O.L Charges	3,500,000			3,500,000

A03808-Conveyance Charges	300,000			300,000
A03809-Gass Charges	100,000			100,000
A039-General	4,951,000	1,000		4,951,000
A03901-Office Stationery	800,000			800,000
A03902-Printing and Publication	500,000			500,000
A03905-News Papers Periodicals & Books	650,000			650,000
A-03906-Uniform/Liveries & Protective	200,000			200,000
A03907-Advertising & Publicity	300,000			300,000
A03912- Delegation Abroad	800,000			800,000
A03913- Contribution & Subscription	000	1,000		1,000
A03919-Payment to others for services	400,000			400,000
A03970-Others	1,300,000			1,300,000
A05 Grants Subsidies	400,000			400,000
A052- Grant Domestic	400,000			400,000
A05216- Family of Civil Servants	400,000			400,000
A06-Transfers	300,000			300,000
A06301-Entertainment & Gifts	300,000			300,000
A09-Physical Assets	12,500,000			12,500,000
A09201-Purchase of Hard ware	1,200,000			1,200,000
A09202-Purchase of Soft ware	400,000			400,000
A09501-Purchase of Transport	8,000,000			8,000,000
A09601-Purchase of Plant & Machinerics	1,900,000			1,900,000
A09701-Purchase of Furniture & Fixture	1,000,000			1,000,000
A13-Repair & Maintenance	3,250,000			3,250,000
A13001-Repair of Transport	700,000			700,000
A13101- Repair of Machinery	400,000			400,000
A13201- Repair of Furniture & Fixture	250,000			250,000
A13301-Repair of Office Building	1,200,000			1,200,000
A137- computer Equipment	700,000			700,000
13701-Hardware	500,000			500,000
A13702-Software	200,000			200,000
GRAND TOTAL FEDERAL SHARIAT COURT	268,634,000	3,000	6,143,000	262,494,000

Press Clippings

روزنامہ جنگ راولپنڈی
12 جنوری 2011ء

ناموس رسالت قانون کا اطلاق تمام انبیائے کرام پر ہوتا ہے

فیڈرل شریعت کورٹ نے 1991ء کے کیس میں اپنے فیصلے میں تمام باتیں واضح کر دی تھیں

اسلام آباد (رپورٹ: انصار عباسی) اگرچہ یکے بعد دیگرے آنے والی کسی بھی حکومت نے اس قانون کی ترمیم نہیں کی لیکن تعزیرات پاکستان کے توہین رسالت کے متعلق سیکشن 295-C میں اسلام کے تمام پیغمبروں کی بات کی گئی ہے۔ میڈیا میں عمومی طور پر اس معاملے پر بات نہیں کی جاتی لیکن یہ وفاقی شریعت کورٹ ہے جس نے 1991ء میں یہ قرار دیا تھا کہ اس مخصوص سیکشن کا اطلاق تمام انبیائے کرام پر ہوگا اور توہین رسالت کے جرم کی سزا موت ہوگی۔ سپریم کورٹ کے سینئر وکیل مذہبی سکالر اور توہین رسالت کے مرتکب کو سزائے موت دلوانے کیلئے طویل جدوجہد کرنے والے اعلیٰ ترین عدالت نے دی نیوز سے بات چیت کرتے ہوئے بتایا کہ فیڈرل شریعت کورٹ کے فیصلے کو اس وقت حتمی شکل مل گئی تھی جب اس وقت کی حکومت سپریم کورٹ میں دائر کردہ اپنی اپیل سے دستبردار ہو گئی تھی۔ ناک شوخ کے مباحثوں میں بھی چند دکھلائے گئے یہ کہتے ہوئے سنا گیا ہے کہ 295-C میں غلطی سے اور اس کا اطلاق تمام انبیائے کرام پر نہیں ہوتا۔ اعلیٰ ترین عدالت نے واضح کیا کہ فیڈرل شریعت کورٹ کے فیصلے کے بعد سیکشن 295-C مذکورہ عدالت کے فیصلے کی روشنی میں ہی پڑھا جائے گا۔ سابق چیف جسٹس آف پاکستان جسٹس (ر) سعید انام صدیقی نے رابہ کر کے پرائیمری تقریبی کے بیان کی توثیق کی اور کہا کہ اگر اعلیٰ عدلیہ کا فیصلہ تھی ہو تو اس کے بعد وہ قانون بن جاتا ہے اور اس سے کوئی فرق نہیں پڑتا کہ حکومت اس سلسلے میں کوئی ترمیم کر لے۔ فیڈرل شریعت کورٹ

کے فیصلے میں سیکشن 295-C میں دو اہم تبدیلیاں کی گئیں۔ پہلی تبدیلی عمر قید کی سزا ختم کرنا ہے جبکہ دوسری تبدیلی یہ تھی کہ اس کے دائرے میں تمام انبیائے کرام کو شامل کیا گیا۔ اعلیٰ ترین عدالت کے مطابق، ابتدائی طور پر نواز شریف کی حکومت نے فیڈرل شریعت کورٹ کے فیصلے کے خلاف اپیل دائر کی تھی لیکن بعد میں عدالتی فیصلے کی نوعیت معلوم ہونے کے بعد حکومت اس سے دستبردار ہو گئی۔ تعزیرات پاکستان (پاکستان پینل کوڈ) کے مطابق سیکشن 295-C میں اب بھی وہی بات درج ہے جو 1980 میں اس سیکشن میں شامل کی گئی تھی۔ اس سیکشن کے مطابق..... آنحضرت ﷺ کی شان میں توہین آمیز رائے کا استعمال کرنا: جو کوئی آنحضرت ﷺ کے مقدس نام کی بذریعہ زبانی یا تحریری دکھائی دینے والی اشکال کے ذریعے یا بذریعہ تہمت یا طعن آمیز اشارے یا درپردہ الزام کے ذریعے براہ راست یا بالواسطہ توہین کرے گا تو اسے سزائے موت یا عمر قید کی سزا دی جائے گی اور وہ جرمانے کا بھی متوجہ ہوگا۔ تاہم بعد میں 1991ء میں فیڈرل شریعت کورٹ نے محمد اعلیٰ ترین بنام پاکستان بذریعہ سیکرٹری قانون و پارلیمانی امور (پنل) ڈی 1991ء فیڈرل شریعت کورٹ (10) میں بتایا گیا ہے کہ کسی بھی پیغمبر اسلام کی توہین کی سزا موت ہوگی اور جج صاحبان نے اس سلسلے میں مختلف انبیائے کرام کے حوالے سے قرآن کریم کے حوالہ جات بھی پیش کئے تھے۔

روزنامہ ”آج“ پشاور
25 فروری 2011ء

وفاقی شرعی عدالت کی برانچ رجسٹریاں قائم کر نیکا فیصلہ

حدود و مقدمات کے دائرہ اختیار کا بھی فیصلہ ڈیرہ، لیٹ آباد اور سوات میں رجسٹریاں قائم ہوں گی

اسلام آباد (ثناء نیوز) وفاقی شرعی عدالت نے ملک بھر کے ڈویژنل ہیڈ کوارٹرز میں برانچ رجسٹریاں قائم کرنے کے منصوبہ کی منظوری دے دی۔ گزشتہ روز فیڈرل شریعت کورٹ کے چیف جسٹس آغا رفیق احمد کی سربراہی میں ہونے والے فل کورٹ اجلاس میں فیصلہ کیا گیا ہے کہ دکھلائے اور فریقین کی ہولت کے لئے ملک بھر کے مختلف ڈویژنل ہیڈ کوارٹرز میں سرکٹ بینچ

رجسٹریاں قائم کی جائیں گی۔ عدالت کی طرف سے جاری کردہ بیان کے مطابق پنجاب میں یہ رجسٹریاں ملتان، بہاولپور، سندھ میں سکھ لاکھانہ اور حیدرآباد، خیبر پختونخوا میں ڈیرہ اسماعیل خان، ایبٹ آباد اور سوات میں قائم کی جائیں گی تاکہ ان بینچ رجسٹریوں میں شہریوں کی جانب سے دائر کیے گئے اور ریفرنسز سنبھالیں۔

روزنامہ ”نوائے وقت“، راولپنڈی

روزنامہ جنگ راولپنڈی

روزنامہ ”جنگ“، راولپنڈی

12 اگست 2011ء

5 جولائی 2011

27 جون 2011ء

وفاقی شرعی عدالت نے دو بچوں کے قتل کے

صدر مملکت نے وفاقی شرعی عدالت

سلیم شہزاد قتل کیس، جوڈیشل کمیشن کا پہلا

ملزموں کو بری کر دیا

میں دو وجہ کی تقرری کر دی

اجلاس آج لاہور میں ہوگا

اسلام آباد (نمائندہ نوائے وقت) وفاقی شرعی عدالت نے دو بچوں کو زیادتی کے بعد قتل کرنے کے مقدمے میں ملوث کئے گئے دو ملزمان کو بری کر دیا۔ جہلم کے رہائشی مالک شاہ اور آفتاب علی کو 2005 میں پولیس نے گرفتار کیا۔ مدعی گل کدن خان نے ان کیخلاف مقدمہ درج کرایا تھا کہ دونوں نے اس کے پانچ سالہ بیٹے اور چھ سالہ نواسے کو اغوا کیا ان کے ساتھ زیادتی کی اور ان کو قتل کر کے لاشیں دریا کنارے جنگل میں پھینک دیں۔ ایڈیشنل سیشن جج جہلم نے ملزم مالک شاہ کو دو بار سزائے موت اور دس سال قید جبکہ آفتاب کو عمر قید کی سزا سنائی۔ ملزمان نے اپیل فیڈرل شریعت کورٹ میں دائر کی جہاں جسٹس شہزاد و شیخ کی سربراہی میں تین رکنی بینچ نے سماعت کی۔

اسلام آباد (این این آئی) صدر زرداری نے وفاقی شرعی عدالت میں ایک بچ اور عالم بچ کی تقرری کر دی ہے۔ وفاقی شرعی عدالت سے جاری اعلامیہ کے مطابق صدر مملکت نے رضوان علی دودانی کو وفاقی شرعی عدالت کا جج اور جسٹس ربنا ترڈ ڈاکٹر فدا احمد خان کو عالم بچ مقرر کیا ہے۔ دونوں کی تقرری تین سال کی مدت کیلئے کی گئی ہے جس کا اطلاق ان کے حلف اٹھانے کی تاریخ سے ہوگا۔ دونوں ججز کی حلف برداری کی تقریب (آج) پانچ جولائی کو وفاقی شرعی عدالت کی بلڈنگ کے آڈیٹوریئم میں ہوگی۔ شرعی عدالت کے چیف جسٹس آغا رفیق احمد خان ان سے حلف لینگے۔

اسلام آباد (وفاقی نگار) سلیم شہزاد کے قتل کی تحقیقات کرنے والے جوڈیشل کمیشن کا پہلا اجلاس کمیشن کے سربراہ جسٹس ثاقب ثار نے پیر کے روز لاہور میں طلب کر لیا۔ اجلاس میں کمیشن کے ارکان وفاقی شرعی عدالت کے چیف جسٹس آغا رفیق احمد خان، پاکستان فیڈرل یونین آف جرنلسٹس کے صدر پرویز شوکت، آئی جی پنجاب جاوید اقبال، آئی جی اسلام آباد بن یامین، وفاقی سیکرٹری اطلاعات تیمور عظمت شرکت کریں گے۔ تیمور عظمت کمیشن کے سیکرٹری کے طور پر خدمات انجام دینگے۔ کمیشن کے پہلے اجلاس میں سلیم شہزاد کے قتل کی تحقیقات کے لئے لائحہ عمل ترتیب دینے کے علاوہ کمیشن کے لئے سیکرٹریٹ کا فیصلہ کیا جائے گا جبکہ کمیشن کی رپورٹ کے لئے وقت کا تعین بھی کیا جائے گا۔

روزنامہ جنگ راولپنڈی

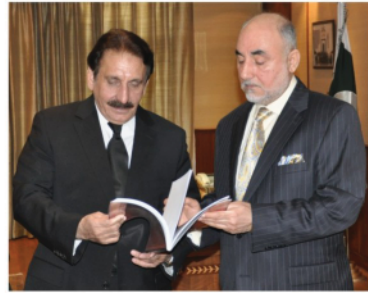
13 اکتوبر 2011

روزنامہ ”جنگ“، راولپنڈی

20 اگست 2011ء

شرعی عدالت نے ملزم کی قید کی سزا میں کمی کر دی

اسلام آباد (اے پی پی) وفاقی شرعی عدالت نے انخواہ اور عصمت دری کے مقدمہ کے ملزم کی قید کی سزا میں کمی کر دی۔ جج جسٹس (ر) شہزاد و شیخ کی سربراہی میں دور کی بینچ نے ملزم محمد انار کی سزائے قید سات سال کر دی۔ ضلع سرگودھا کے علاقہ بھیرہ کی پولیس نے ملزم کیخلاف مقدمہ درج کیا تھا اور ایڈیشنل سیشن جج سرگودھا نے اسے سزا سنائی تھی۔ ملزم کے وکیل سید طیب نے موقف اختیار کیا کہ ملزم نے خاتون کو اغوا نہیں کیا تھا بلکہ شادی کی تھی۔



اسلام آباد: چیف جسٹس افتخار چوہدری کو چیف جسٹس وفاقی شریعت کورٹ آغا رفیق سالانہ رپورٹ پیش کر رہے ہیں

روزنامہ ”آج“
20 اکتوبر 2011ء

جسٹس آغا رفیق سکاؤٹس ایسوسی ایشن کے چیف کمشنر مقرر

ڈاکٹر شاہین خان انٹرنیشنل کمشنر اور مقبول رضا خان سیکرٹری پاکستان بولے سکاؤٹس ایسوسی ایشن مقرر

پشاور (پ ر) پاکستان بولے سکاؤٹس ایسوسی ایشن کی قومی کونسل کا 65 واں اجلاس گزشتہ روز نیشنل ہیڈ کوارٹرز اسلام آباد میں غلام علی شاہ پاشا سینٹر ڈپٹی چیف کمشنر کی صدارت میں منعقد ہوا جس میں پاکستان بولے سکاؤٹس ایسوسی ایشن کی دس برانچوں پنجاب، سندھ، بلوچستان، خیبر پختونخوا، فانا، پی آئی اے، آزاد جموں و کشمیر، ریوے، گلگت بلتستان اور اسلام آباد کے قومی کونسل کے ممبران نے شرکت کی۔ اجلاس میں متفقہ طور پر آئندہ دو سال کیلئے جسٹس آغا رفیق احمد خان، چیف جسٹس فیڈرل شریعت کورٹ کو چیف کمشنر پاکستان بولے سکاؤٹس ایسوسی ایشن منتخب کیا گیا۔ اس موقع پر انہوں نے خطاب کرتے ہوئے کہا کہ آپ سب کا انتہائی شکر گزار ہوں کہ آپ نے ملک کے

نو جوانوں کی خدمت کیلئے میرا انتخاب کیا ہے۔ میں آپ کو یقین دلاتا ہوں کہ میں پاکستان میں سکاؤٹنگ کے فروغ کیلئے وقت بھی دوں گا اور خدمت بھی کروں گا۔ اجلاس میں متفقہ طور پر اسلام آباد بولے سکاؤٹس ایسوسی ایشن کی صوبائی سکاؤٹ کمشنر ڈاکٹر شاہین خان کو سکاؤٹنگ کے بین الاقوامی امور کیلئے انٹرنیشنل کمشنر پاکستان بولے سکاؤٹس ایسوسی ایشن منتخب کیا گیا اور مقبول رضا سیکرٹری پاکستان سکاؤٹس اینڈ گائیڈز فیوشپ کو خازن پاکستان بولے سکاؤٹس ایسوسی ایشن مقرر کیا گیا۔ اجلاس میں ممبران کی متفقہ رائے سے نوید اللہ بابر نے نیشنل سیکرٹری پاکستان بولے سکاؤٹس ایسوسی ایشن کا چارج سنبھال لیا۔

روزنامہ ”نوائے وقت“، راولپنڈی
21 اکتوبر 2011ء

ہم سب سکاؤٹس ہیں رضا کارانہ ملک کی خدمت کریں گے جسٹس آغا رفیق

پاکستان بولے سکاؤٹس ایسوسی ایشن کی قومی کونسل کے اجلاس میں ممبران کی شرکت

اسلام آباد (نوائے وقت نیوز) پاکستان بولے سکاؤٹس ایسوسی ایشن کی قومی کونسل کا 65 واں اجلاس آج نیشنل ہیڈ کوارٹرز اسلام آباد پر غلام علی شاہ پاشا سینٹر ڈپٹی چیف کمشنر پاکستان بولے سکاؤٹس ایسوسی ایشن کی صدارت میں منعقد ہوا۔ جس میں پاکستان بولے سکاؤٹس ایسوسی ایشن کی دس برانچوں یعنی پنجاب، سندھ، بلوچستان، خیبر پختونخوا، فانا، پی آئی اے، آزاد جموں و کشمیر، ریوے، گلگت بلتستان اور اسلام آباد بولے سکاؤٹس ایسوسی ایشن کے قومی کونسل کے ممبران نے شرکت کی۔ اجلاس میں متفقہ طور پر آئندہ دو سال کے لئے جسٹس آغا رفیق احمد خان، چیف جسٹس فیڈرل شریعت کورٹ کو چیف کمشنر پاکستان بولے سکاؤٹس ایسوسی ایشن منتخب کیا گیا۔

اس موقع پر آپ نے خطاب کرتے ہوئے کہا ہم سب سکاؤٹس ہیں اور اس غیر سیاسی رضا کارانہ اور تعلیمی تحریک کے ذریعے ملک کی خدمت کریں گے۔ اجلاس میں متفقہ طور پر اسلام آباد بولے سکاؤٹس ایسوسی ایشن کی صوبائی سکاؤٹ کمشنر ڈاکٹر شاہین خان کو سکاؤٹنگ کے بین الاقوامی امور کے لئے انٹرنیشنل کمشنر پاکستان بولے سکاؤٹس ایسوسی ایشن منتخب کیا گیا اور مقبول رضا سیکرٹری پاکستان سکاؤٹس اینڈ گائیڈز فیوشپ کو خازن پاکستان بولے سکاؤٹس ایسوسی ایشن مقرر کیا گیا۔ اجلاس میں ممبران کی متفقہ رائے سے نوید اللہ بابر نے نیشنل سیکرٹری پاکستان بولے سکاؤٹس ایسوسی ایشن کا چارج سنبھال لیا۔

Jail to be set up in H-16

The Newspaper | 26th May, 2011

By Our Staff Reporter

ISLAMABAD, May 25: The government has decided to establish a modern jail on a vast piece of land in Sector H-16 of Islamabad.

This was stated at a meeting held in the office of Chief Justice Federal Shariat Court Justice Agha Rafiq Ahmed Khan on Wednesday. The jail will be constructed in pursuance of the National Judicial Policy.

“The Capital Development Authority will provide 90 acres of land to the local administration on payment for construction of the jail,” said CDA member planning Tahir Shamshad.

The government had earlier decided that the jail would be established in village Malot at Kurri Road in Zone IV. However, as the area was specified for residential purpose, the new site has been selected for the project.

According to an official statement, the meeting was held to know reasons for non-implementation of Supreme Court orders regarding construction of a jail in the federal capital. The chief justice of the Federal Shariat Court said ‘unjustified’ delay in the launching of the project was a matter of great concern and warranted immediate attention and remedies.

The representatives of government departments explained their positions and assured the meeting that the project would be finalised within the shortest possible time. The meeting was informed that Sector H-16 had been found feasible for the project and the CDA had already acquired the land.

It was decided that officials from the finance, planning and interior divisions as well as the chief commissioner Islamabad and member planning of the CDA would hold another meeting to explore and manage immediate funding

for the project. A report in this regard will be submitted by the additional secretary finance division within three days to the Federal Shariat Court.

The meeting decided that the process of demarcation/selection of acquired land would be completed by the chief commissioner within 30 days and he would also make interim arrangements to keep prisoners in judicial lock-ups near G-11.

Two years ago, the government had planned to set up a jail in Islamabad at a cost of over Rs7 billion. Now the cost of the project is expected to be more than that.

At present, Central Jail Adiala in Rawalpindi is accommodating prisoners from Islamabad but is facing various problems due to crowding and mismanagement. About 10,000 to 11,000 prisoners are lodged in the jail against its capacity to accommodate 3,000 inmates.

Shortage of jails and lock-ups is one of the main problems being faced by the police authorities in Islamabad and Rawalpindi.

On several occasions, prisoners were assassinated by their rivals on their way to courts or back.

Such incidents have taken place even on the premises of courts.

In some cases, prisoners also managed to escape from police custody during their transportation between the jail and courts.

A suspected militant, Rashid Rauf, who at one point was blamed by the Pakistani and British authorities for having links with a London-based group that had allegedly planned to blow up some transatlantic flights disappeared from outside a local court where he was brought from the Adiala Jail.

SELECTED JUDGMENTS

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.

CRIMINAL APPEAL NO.47/I OF 2010.

Mujahid Hussain S/o Muhammad Iqbal
Resident of Chak No.8-A/8-R,
Tehsil and District Khanewal

....

Appellant.

Versus

The State.

....

Respondent.

Counsel for appellant.

....

Mehr Sardar Ahmed Abid,
Advocate.

Counsel for State

....

Ch.Muhammad Sarwar Sidhu,
Addl: Prosecutor General Punjab.

FIR No. date and
Police Station.

....

FIR No.67, dated 22.05.2006,
P.S, Makhdoom Pur,
District Khanewal.

Date of impugned
Judgment.

....

15.03.2010.

Date of Institution

...

10.05.2010.

Date of hearing

....

21.04.2011.

Date of decision

...

06.05.2011.

JUDGMENT

Justice Agha Rafiq Ahmed Khan, Chief Justice.—This Criminal Appeal filed by Mujahid Hussain son of Muhammad Iqbal is directed against the judgment dated 15.03.2010 delivered by the learned Sessions Judge/Juvenile Court, Khanewal, whereby the appellant has been convicted under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to above as ‘the Ordinance’) and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.25,000/-, or in default of payment of fine to further undergo three months simple imprisonment. He was also convicted under section 377 PPC and sentenced to seven years rigorous imprisonment with fine of Rs.25,000/-, or in default thereof to undergo three months simple imprisonment.

Both the sentences were ordered to run concurrently with the benefit of section 382-B, Cr.P.C extended to the appellant.

2. Brief facts of the prosecution case as revealed from the contents of FIR 67/06 registered at Police Station Makhdoom Pur, District Khanewal on 22.5.2006 on the basis of application (Ex.PC/1) submitted by complainant Khadim Hussain son of Ghulam Muhammad to the SHO Police Station Makhdoom Pur, District Khanewal are that his son namely Muhammad Waris (victim) aged about 7/8 years was passing by the house of appellant/accused Mujahid Hussain son of Muhammad Iqbal. The appellant/accused Mujahid Hussain enticed the complainant’s son Muhammad Waris and took him to his baithak on the pretext of listening of “deck”. He closed the door of the baithak and on pointation of a knife, threatened Muhammad Waris and committed sodomy with him. Muhammad Waris cried which attracted Zafar Iqbal, Muhammad Afzal and Zafar Ahmad, who witnessed the incident through the jharri of the door. They entered the baithak and rescued Muhammad Waris. They also admonished appellant/accused Mujahid Hussain. On his coming back to his house Muhammad Waris narrated the incident to complainant. Then the complainant alongwith the above witnesses went to the house of Mujahid Hussain, who confessed his guilt and requested the complainant for pardon but the complainant did not agree. He lodged the report against the appellant. After registration of the case the appellant/accused was arrested and after completion of the investigation, he was challaned under section 173 of the Code of Criminal Procedure. He was formally charged on 10.11.2009 to which he pleaded not guilty and claim trial.

3. At the trial prosecution examined twelve witnesses in all. The gist of their evidence is as under:-

- i. P.W.1 Muhammad Yaqoob, Head Constable was posted as Moharrir of Police Station Makhdoom Pur. On 23.5.2006 Muhammad Nawaz Sub-Inspector handed over to him one sealed envelope, which he kept in safe custody in the Malkhana and on 10.6.2006 he handed over the same to Muhammad Hussain constable for onward transmission to the Office of

Chemical Examiner, Multan.

- ii. PW.2 is Abdur Rasheed constable. In his presence, Muhammad Iqbal, father of appellant/accused produced a knife to Falak Sher, Assistant Sub-Inspector and stated that the same was in possession of the appellant/accused at the time of occurrence. The said knife was taken into possession, vide recovery memo Ex.PA.
- iii. PW.3 is Dr.Zahid Imran, Medical Officer. On 24.11.2007 he medically examined appellant/accused Mujahid Hussain for his potency. He found him fully fit for sexual act.
- iv. PW.4 Syed Zameer Hussain, Sub-Inspector was posted as Duty Officer Police Station Makhdoom Pur when Khadim Hussain complainant produced written application before him. On the basis of said application he formally registered the case, vide FIR Ex.P.C against the appellant/accused.
- v. PW.5 is Muhammad Hussain constable. On 10.6.2006 he took the sealed parcel containing swabs and deposited the same in the Office of Chemical Examiner, Multan, intact.
- vi. PW.6 is Dr.Mumtaz Ahmad Khan, Senior Medical Officer. On 18.5.2006 he medically examined Waris, aged about 8 years. He found no marks of violence on any part of body of Waris externally. On examination of anus and rectum, lacerations and tears were present at 5, 7 and 11 O' clock position. Lacerations were fresh and blackening was present all around the anus, which indicated penetration. He took rectum swabs, sealed and handed over to Zafar Iqbal maternal uncle of victim, for sending to the chemical examiner for detection of semen. According to the Chemical Examiner Report, the said swabs were found to be stained with semen.
- vii. PW.7 Muhammad Sadiq, constable was entrusted with the non-bailable warrant of arrest issued against the appellant/accused. According to him, he made every effort but the appellant/accused was untraceable. He was also entrusted with the proclamation notices issued against the appellant. He returned the same with his report.
- viii. PW.8 Khadim Hussain is complainant and father of victim Waris. He narrated the facts as mentioned herein above.
- ix. PW.9 Waris is the victim. He stated as under:-
"On 17.5.2006, at about 5.00 p.m. I was going in the street of my Chak.

Mujahid accused called me and offered to arrange the listening of songs at deck. He took me into baithak of his house. He closed the door, brought out knife, stripped off my shalwar, threatened to hit knife blow in my belly and then committed sodomy with me. Zafar s/o Allah Bakhsh, Zafar s/o Ghulam Akbar and Afzal were attracted to the spot due to my hue and cry as they were passing through the street. They pushed the door after seeing the occurrence by peeping through the door. All the three rescued me from Mujahid accused and took me to my father. My father had come to the house of the accused alongwith the witnesses. The accused party extended requests to my father but he did not consent. I was then brought to DHQ Hospital, Khanewal where I was examined medically”

- x. PW.10 is Muhammad Afzal. He stated as under:-
“On 17.5.2006, at about 5.00 p.m. I, Zafar Iqbal Qadri s/o Allah Bakhsh and Zafar Ahmad s/o Ghulam were passing through the street. We heard someone crying and went to the baithak of Iqbal/Mujahid accused. We saw through the steaks (jharries) of the door, that Waris was fallen on the ground and Mujahid accused was committing sodomy with him. We pushed the door which was opened. We rescued Waris and admonished accused. The shalwars of victim Waris and accused Mujahid were stripped off. Waris was injured, bleeding from anus. We lifted him to his house where his father was present. We narrated the matter to Khadim Hussain father of Waris victim. Khadim complainant took us to the house of the accused to furnish complaint. The accused party confessed its guilt and made requests for pardon. The complainant did not agree to it. We then went to P.S but the police did not redress our grievance. The case was registered on the order of Justice of Peace”.
- xi. PW.11 is Zafar Iqbal. He also stated the same facts as narrated by Muhammad Afzal, PW.10.
- xii. PW.12 is Falak Sher, Assistant Sub-Inspector. He verified the hand writing and signatures of Muhammad Nawaz, Sub-Inspector, the Investigation Officer of this case. According to him, Muhammad Nawaz Sub-Inspector is no more in this world.

4. The appellant/accused Mujahid Hussain made his statement under section 342 Cr.P.C wherein he denied the allegation and pleaded innocence. While responding to the question, “why this case against you and why the PWs have deposed against you?” he replied as under:-

“It is a false case and PWs deposed against me falsely. There had been dispute

between complainant party and ourselves due to neighbourhood. Present case was got registered with much delay and after due deliberation only to avenge the grudge and differences. No sodomy was committed by me with Waris, alleged victim. He was not competent to give evidence against me. The other private witnesses were his relatives and therefore, they deposed falsely against me. I am innocent.”

The appellant/accused did not produce any evidence in his defence. He also did not opt to record his statement on oath as provided under section 340 (2) of the Code of Criminal Procedure.

5. Mehr Sardar Ahmed Abid, Advocate for appellant has contended that there is inordinate delay of about four days in lodging the FIR. That all the witnesses are interested and relatives of victim. That the swabs taken, were sent to the Chemical Examiner, Multan after the delay of about 17 days. He further argued that under the circumstances and facts of the case, section 12 of the Ordinance is not attracted, therefore, conviction and sentences awarded to the appellant thereunder cannot be maintained. Ch.Muhammad Sarwar Sidhu, Additional Prosecutor General Punjab for the State has fully supported the impugned judgment and conviction of the appellant, and has stated that the victim was a minor boy who fully implicated the appellant in his deposition before the court. The medical evidence is also supportive to the statement of the victim. He was kidnapped from the street by the appellant to his baithak, therefore, he was rightly convicted under section 12 of the Ordinance as well as under section 377 of the Pakistan Penal Code.

6. I have given full consideration to the arguments advanced by the learned counsel and have gone through the entire evidence available on record. As far as delay in lodging the FIR is concerned, it has been fully explained in the application (Ex.PC/1) of complainant Khadim Hussain addressed to the S.H.O Police Station Makhdoom Pur, District Khanewal. Further from the evidence of PW.6 Doctor Mumtaz Ahmad Khan, S.M.O, it appears that the victim was examined by him on 18.5.2006 on the order of Special Judicial Magistrate, Khanewal on the next day of the incident, which means that police had not lodged the FIR, but same was registered after the medical certificate of the victim was received. Under the circumstances, the delay in registration of the case cannot be fatal as the same has been explained satisfactorily. Victim Waris (PW.9), who was about eight years old at the time of incident, in his deposition before the court has fully implicated the appellant by stating as under:-

“On 17.5.2006, at about 5.00 p.m. I was going in the street of my Chak. Mujahid accused called me and offered to arrange the listening of songs at deck. He took me into baithak of his house. He closed the door, brought out knife, stripped off my shalwar, threatened to hit knife blow in my belly and then committed sodomy with me. Zafar s/o Allah Bakhsh, Zafar s/o of Ghulam Akbar and Afzal were attracted to the spot due to my hue and cry as they were passing through the street.

They pushed the door after seeing the occurrence by peeping through the door. All the three rescued me from Mujahid accused and took me to my father. My father had come to the house of the accused alongwith the witnesses. The accused party extended requests to my father but he did not consent. I was then brought to the DHQ Hospital, Khanewal where I was examined medically”.

Muhammad Afzal (PW.10) and Zafar Iqbal (PW.11) have fully corroborated the evidence of the victim.

7. The incident had taken place in the evening of 17.5.2006 and the victim was examined immediately on the next day on the orders of Special Judicial Magistrate by Doctor Mumtaz Ahmad Khan, S.M.O, who deposed in court that the victim was a child of about eight years and on examination of his anus and rectum, lacerations and tears were present at 5, 7 and 11 - O - clock position. Lacerations were fresh and blackening was present all around anus. Those indicated penetration. Three rectum swabs were taken and sealed for sending to the Chemical Examiner for detection of semen. The report of Chemical Examiner (Ex.PE) indicates that the swabs were found to be stained with semen and in the opinion of the doctor sodomy was committed with the victim.

8. The defence plea taken by the appellant in his statement under section 342 of the Code of Criminal Procedure, that the complainant party had a dispute with them due to neighbourhood, therefore, the present case was registered against him, does not appeal to mind and appears to be after thought in view of the above evidence on record.

9. Mere relationship of witnesses with the victim cannot be ground for disbelieving eight years' minor, when his evidence is corroborated by the doctor who examined him. From the evidence on record, it is fully proved that the present appellant and none else had committed sodomy upon the victim, therefore, he has committed an offence punishable under section 377 of the Pakistan Penal Code.

10. As far as the allegation of kidnapping of the victim by the appellant/accused, is concerned it has been alleged that the victim Waris was passing near the house of appellant, when he took him to the baithak on the pretext of listening 'Deck'. In my humble view, provision of section 12 of the Ordinance is not attracted because taking Waris victim from adjacent street to the baithak by the appellant would not constitute offence of kidnapping as contemplated by section 12 of the Ordinance. This view has also been taken in several reported cases such as i. PLD 1967 SC P.363 (Muhammad Razzaq and Munir Ahmad..Vs..The State), ii. PLD 1985 F.S.C P. 404 (Zulfiqar..Vs..The State) and iii. PLD 1984 F.S.C P.23 (Muhammad Tufail..Vs..The State).

11. The upshot of above discussion is that the conviction and sentences passed by the learned trial court under section 12 of the Ordinance are set-aside and the appellant is

acquitted from the charge thereunder. His conviction under section 377 of the Pakistan Penal Code is however maintained. Since the appellant was of tender age and it was his first offence, therefore, the sentence is reduced from seven years rigorous imprisonment to three years rigorous imprisonment. The fine of Rs.25,000/-, on in default thereof to suffer three months simple imprisonment, is maintained. The benefit of section 382-B, Cr.P.C, extended to the appellant, shall remained intact.

12. Above are the reasons for my short order of even date.

Approved for reporting.

Islamabad the
May 06, 2011.
F.Taj/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.

CRIMINAL APPEAL NO.53/L OF 2010.

1. Sabir Hussain son of Allah Yar,
R/o Mauza Jarh Rathaib,
Tehsil & District Muzaffargarh.
 2. Tufail Hussain son of Muhammad Yameen,
R/o Manak Pur, Tehsil & Distt: Muzaffargarh.
- Appellants.
- Versus
- The State. Respondent.
-
- Counsel for appellants. Mehr Tanvir Ahmad Jangla,
Advocate.
- Counsel for State Ch.Muhammad Sarwar Sidhu,
Addl: Prosecutor General Punjab.
- FIR No. date and FIR No.284, dated 14.08.2006,
Police Station. P.S. Shah Jamal,
District Muzaffargarh.
- Date of impugned 31.03.2010.
Judgment.
- Date of Institution ... 29.04.2010.
- Date of hearing 02.05.2011.
Date of decision ... 02.05.2011.
-

JUDGMENT:

Justice Agha Rafiq Ahmed Khan, Chief Justice.- Appellants Sabir Hussain son of Allah Yar and Tufail Hussain son of Muhammad Yameen have filed this criminal appeal against the judgment dated 31.03.2010 delivered by the learned Additional Sessions Judge, Muzaffargarh, whereby appellants have been convicted Under Section 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as 'the Ordinance') and sentenced them to five years Rigorous Imprisonment each with the benefit of section 382 (b) of the Code of Criminal Procedure, extended to them.

2. The brief facts of the prosecution case as arises from the contents of FIR Ex.PB/1 registered on the basis of application (Ex.PB) submitted on 11.8.2006 by Mst.Zarina Bibi complainant are that on the night between 8 & 9 August 2006 early in the morning she came out of the Haveli and went to ease herself in the nearby field. She saw the appellants/accused Sabir Hussain and Tufail Hussain alongwith two other unknown persons, they were armed with sotas. They over powered her. She tried to raise alarm but the appellants/accused put their hands on her mouth and threatened her that if she raised noise she would be killed. They took her to a nearby cotton crop field. Firstly Sabir Hussain and thereafter Tufail Hussain, appellants/accused, committed Zina-bil-jabr with her. During the scuffle the hand of the appellants/accused removed from her mouth and she raised alarm on which her brother Ghulam Yaseen and Allah Razi, PWs attracted to the place of incident. On seeing them, the appellants/accused left her in naked condition and fled away from the spot. They while decamping from the spot, were seen and identified by the said PWs. She then put on her shalwar. She further stated that the parents of the appellants beseeched her parents for compromise but they did not agree and due to this reason report could not be lodged promptly. She prayed for legal action against the appellants/accused for committing the offence. After registration of the case and completion of the investigation, the appellants/accused were challaned under section 173 of the Code of Criminal Procedure. They were charged on 12.1.2009, to which they pleaded not guilty and claimed trial.

3. The prosecution in order to prove its case examined seven witnesses. The gist of prosecution evidence is as follows:-

- (i) PW.1 Lady Doctor Munzah Farhan, WMO examined Mst.Zarina Mai on 11.8.2006. She observed as under:-
"A contusion 5 cm X 1 cm present on the lower middle back.
Vulva/vagina-healthy.
Hyman shown fresh tears.
Vagina admits one finger easily.
H/O start of menstruation two years back."
Three primed high vaginal swabs were taken and sent to the chemical examiner for detection of semen if any.
- (ii) P.W-2 is Mst.Zarina Bibi, complainant/victim. She narrated the same facts

- as stated by her in the FIR, mentioned above.
- (iii) PW.3 Dr.Naseer Ahmed Rana, Medical Officer examined Sabir Hussain, appellant/accused for his potency, who found him fit for performing sexual act.
 - (iv) PW.4 Ghulam Yasin is brother of the victim. He supported the complainant and corroborated her statement.
 - (v) PW.5 is Talib Hussain, Inspector. He investigated the case. On 20.4.2007 he got medically examined the appellant/accused Sabir Hussain who was on his pre-arrest bail. He arrested him on 19.7.2007 when his bail was not confirmed. He also arrested the appellant/accused Tufail Hussain who join the investigation on 16.8.2007 and on the same day he got him medically examined through the doctor for his potency. On 18.8.2007 he arrested the appellant/accused Tufail Hussain when his bail before arrest was not confirmed.
 - (vi) PW.6 is Muhammad Akbar, Sub-Inspector. He stated that on 11.8.2006 Mst. Zarina Mai appeared before him and made her statement Ex.PB, on the basis of which he registered the case vide case FIR Ex.PB/1. He inspected the place of incident and prepared the site plan Ex.PF. He further stated that on the application of the appellants the parties appeared before the DSP Investigation. The appellants/accused were however declared innocent, therefore, he recommended for cancellation of the case.
 - (vii) PW.7 is Shah Aalam Khan Gashkori, DSP. He stated that on 16.3.2007 he summoned both the parties. On 20.3.2007 he visited the place of incident and inspected the same in presence of both the parties. He, after conducting the investigation in the case, held guilty the appellants/accused, however, according to him, as the report of chemical examiner was in negative, therefore, he altered the section of law to section 18 of the Ordinance and sent back the case file to the police station.

4. After closing prosecution evidence, the appellants/accused were examined under section 342 of the Code of Criminal Procedure. They did not record their statements under section 340 (2) of the Code of Criminal Procedure nor produced any witness in their defense. However, while answering to Question No.8 “Why this case against you and why the PWs have deposed against you” the appellant/ accused Sabir Hussain replied as under:-

“I am running a grocery shop and my house is at a distance of about 2/3 kilometer from the alleged place of occurrence. Earlier I purchased land measuring 11 beghas, which is situated 2/3 acres from the house of the complainant. My friends Fida Hussain also purchased the land from the father of my co-accused Tufail. The complainant party was also interested in the said land. Later on they started stealing my water and grass and so many times, the matter went up to police station. The father of accused Tufail had been helping me against the complainant party. Before

the alleged occurrence, my relatives abducted the mother in law of Allah Razi PW. I have deep enmity with the complainant party. A week prior to the alleged occurrence Allah Razi PW and Muhammad Shafi, the father of the complainant let their cattles in my fields and also cut away the grass where a quarrel took place between me and Allah Razi etc. The complainant party attempted to get register a dacoity case against me. They failed and thereafter involved me and my co-accused in present false case. During investigation the SHO as well as the DSP declared us innocent. The PWs have deposed against me due to facts mentioned above”

5. After hearing both the parties the learned trial Court convicted and sentenced the appellants as mentioned in opening para of this judgment.

6. I have heard Mehr Tanvir Ahmad Jangla Advocate for appellants and Ch. Muhammad Sarwar Sindhu, Addl: Prosecutor General Punjab for State and have gone through the material available on record.

7. There is inordinate delay of about five days in lodging the report. The offence is said to have taken place during the night in between 8/9 August 2006 but the matter was reported to Muhammad Akbar, Sub-Inspector at Police Station Shah Jamal on 14.8.2006 at 11.00 a.m. The explanation given by the complainant/victim in the FIR that the legal heirs of the appellants beseeched the parents of the complainant/victim for compromise, appears to be unnatural and after thought. How is it possible that after the tragedy of gang rape by two persons, the victim and her parents would keep mum for so many days and could not report the matter immediately to the police.

8. In the FIR, victim/complainant has stated that after committing Zina when the witnesses came to the spot, the culprits fled away and then she got and put on her shalwar. In her deposition also she has stated the same facts but her real brother Ghulam Yasin (PW.4) has given different version by deposing that his mother and brother's wife came at the place of incident and they put the clothes on the body of the victim.

9. In this case, no independent witness has been cited though in cross-examination the victim has stated that there were several houses around their house but no person from the nearby has come forward to support the version of the complainant which is very astonishing.

10. After the registration of the case the matter was investigated by Talib Hussain, Sub-Inspector as well as Muhammad Akbar, Sub-Inspector. They found the appellants/accused innocent and recommended for the disposal of the case under “C” clause. Shah Alam Khan Gashkori, DSP Circle had also investigated the matter and agreed with the report of both the above officials. In spite of this, on the basis of some evidence the appellants were challaned under section 18 of the Ordinance subsequently by PW.5 Talib Hussain, Inspector.

11. Lady doctor Munzah Farhan, WMO who had examined the victim, had taken vaginal swabs and had sent the same to Chemical Examiner but the report indicates that no semen was found in those swabs. The trial court did not believe the story of victim regarding the gang rape but convicted the appellants under section 18 of the Ordinance for attempt to commit Zina.

12. The oral and ocular testimony had been totally belied by the medical evidence of not only the lady doctor but by Chemical Examiner also, whose report is in negative. It appears that single injury, i.e. a contusion 5 c.m. X 1 c.m present on the lower middle back of the victim was considered by the learned trial judge as evidence of attempt to commit rape. The prosecutrix herself no where in the FIR or in the court stated that the appellants had made any attempt to commit rape upon her but on the contrary her contention through was that she was gang raped by both the appellants and this version has not been believed by the court and the appellants have been acquitted under section 10 (4) of the Ordinance from the charge of gang rape.

13. In view of the above discussed evidence and reasons I am of the firm opinion that the prosecution evidence was not sufficient to bring home the guilt of the appellants for the above offence, for which they have been convicted. Hence this appeal is accepted, the conviction and sentences awarded to the appellants Sabir Hussain and Tufail Hussain by the learned Additional Sessions Judge, Muzaffargarh, vide the impugned judgment dated 31.03.2010, are set-aside and the appellants/accused are acquitted of the charge. The appellants are in jail. They shall be released forthwith, if not required in any other custody case.

14. These are the reasons for my short order of even date.

Islamabad the
May 02, 2011.
F.Taj/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE AGHA RAFIQ AHMED KHAN CHIEF JUSTICE
MR.JUSTICE SHAHZADO SHAIKH

JAIL CRIMINAL APPEAL NO.14/I OF 2008

Al-Ameer s/o Agha Muhammad Caste Pathan r/oAfghanistan, Presently Shumali Mohallah, Jhelum	...	Appellant
	Versus	
The State	...	Respondent
Counsel for the appellant	...	Mr.Javed Aziz Sindhu, Advocate
Counsel for the State	...	Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General
FIR No., date & Police Station P.S. City Jhelum	...	No.184/2006 dated 22.08.2006
Date of Trial Court	...	30.01.2008
Date of Institution	...	08.02.2008
Date of Hearing	...	10.01.2011
Date of Decision	...	10.01.2011

JUDGMENT

JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE:-

:- This jail appeal filed by appellant Al-Ameer is directed against judgment dated 30-01-2008, delivered by learned Additional Sessions Judge, Jhelum whereby he was convicted under Section 12 of the Offence of Zina (Enforcement of Hadd) Ordinance, 1979 and sentenced to Life Imprisonment and a fine of Rs.50,000/- or in default of payment to further undergo 6 months Rigorous imprisonment. He was further convicted under section 377 Pakistan Penal Code and was sentenced to Rigorous Imprisonment for ten years with a fine of Rs.10,000/- or in default of payment to further undergo 6 months Rigorous imprisonment. Accused was given benefit of Section 382-B Code of Criminal Procedure.

2. Precisely stating facts of the case as given in the complaint Exh. PB are that the complainant Mohammad Sarfraz stated before the police that he is tailor by profession and used to live in machine Mohallah No.1 Jhelum. On 22.09.2006 at about 9.30 a.m. when he was present outside his house for going to his shop, he heard sound of weeping of a child coming from an under construction house, situated in front of the complainant house. The complainant along with Muhammad Shahbaz and Waqar Ahmad went inside the house and saw that one Pathan namely Al-Ameer son of Agha Muhammad Afghani presently living in Shumali Mohallah, Jhelum was committing sodomy with the son of complainant, namely Noman Sarfraz. On this statement of complainant FIR No.184 of 2006 dated 22.08.2006 under section 377 Pakistan Penal Code and 12 of the Offence of Zina (Enforcement of Hadd) Ordinance, 1979 at the police station City, District Jhelum was registered and after due investigation the above named accused was found guilty and challan against him was submitted in the Court of competent jurisdiction. Charge was accordingly framed against the accused on 13-11-2006 to which he pleaded not guilty and claimed trial.

3. During the trial, the prosecution in order to prove the charge and substantiate the allegation leveled against the accused produced ten witnesses:-

- i. P.W-1, Muhammad Siddique, took the victim to hospital for Medical Examination. After the medical examination, the doctor handed over to him sealed envelope which he delivered to Investigation Officer who took the same into possession vide recovery memo Exh.PA.
- ii. PW-2 Mohammad Sarfraz is the complainant of this case. He stated the same facts as narrated in his complaint Exh.PB.
- iii. PW-3 Noman Sarfraz is victim of this case. He deposed that after taking the breakfast he went to the street. The accused, who was Pathan, caught hold of him and took him to the room which was situated in the front of victim's house. The appellant committed sodomy with him. He cried and on listing his father, his brother Shahbaz and his uncle came there. The appellant ran

away after taking his shalwar.

- iv. PW-4 Ahmad Raza, constable deposited the sealed envelope in the office of the Chemical Examiner, Rawalpindi on 4.9.2006. The envelope was handed over to him by the Moharrir of said police station.
- v. PW-5 Waqar Ahmad is an eye witness of the occurrence. He narrated the same facts as narrated by the complainant in his application Exh.PB .
- vi. PW-6 Mohammad Tufail, constable who received the sealed parcel from Bahli Khan sub-Inspector, for safe custody on 22.8.2006. He kept the same in Malkhana and later on handed over the same to Ahmad Raza, constable PW-4 for its deposit in the office of chemical examiner, Rawalpindi.
- vii. PW-7 Muhammad Asghar, chalked out formal FIR Exh.PB/1 on the receipt of complaint Exh.PB.
- viii. PW-8 Dr.Hafiz Abdul Rehman, Medical Officer who conducted the medical examination of Noman Sarfraz victim. He issued the MLR Exh.PC and also received the report from the office of chemical examiner Exh.PD which was positive.
- ix. PW-9 Dr.Shabbir Shah, Medical examined the appellant Al-Ameer and found him fit to perform sexual act.
- x. PW-10 Bali Khan, Inspector is Investigation officer of this case.

4. After the close of prosecution evidence in the trial under consideration, the statement of the accused was recorded under Section 342 Code of Criminal Procedure in which he denied the allegations and professed his innocence. The accused did not record his statement under section 340 (2) Code of Criminal Procedure on oath nor produced any witness in his defence.

5. After hearing the arguments of the learned counsel for the parties the learned trial Judge convicted and sentenced the appellant vide judgment dated 30-01-2008, which was assailed before this Court.

6. We have heard, learned counsel for the appellant and, learned Additional Prosecutor General for the State and have also perused the entire record with their assistance, carefully.

7. Learned counsel for the appellant contended that no evidence was available to

believe that the appellant ever intended to abduct Noman Sarfraz victim forcibly and commit an offence of sodomy with him. Hence, section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is not attracted in present circumstance of the case since there is no abduction. As regard of Section 377 Pakistan Penal Code is concerned, the same is also not proved as the penetration was necessary for this act as described in this section which is not proved as per MLR Exh.PC. Lastly, the learned counsel prayed for reduction in the sentence. The following cases were cited at the bar during the course of hearing of the above appeal:-

1. 1985 SCMR 1822 (Shams Saeed Ahmad Khan Vs. Saifullah)
2. 1986 SCMR 533 (Muhammad Akhtar Vs. Muhammad Shafique and another)

8. Learned counsel for the State on the other hand opposed this appeal on the ground that it had been proved on the record through the statements of the witnesses that the appellant Al-Ameer forcibly took the victim Noman Sarfraz in the under construction house in order that the victim be subjected to un-natural lust as such section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is fully proved. So far as section 377 Pakistan Penal Code is concerned. as per record of the case the appellant has committed sodomy with Noman Sarfraz as all the eye witnesses heard sound of weeping of victim from under construction house, they went inside the house and saw that the appellant was committing sodomy with victim Noman Sarfraz and there is no contradiction in their statement so far as the commission of offence is concerned. The medical evidence is also a conclusive proof as the doctor sent the swabs and shalwar of the victim to the chemical examiner and the report thereof Exh.P.D. is positive and the victim has fully supported the prosecution case. The witnesses had no enmity or grudge to falsely implicate the appellant in the present case.

9. After taking everything into our full consideration and studying the case from all angles, we are fully satisfied with the guilt of the appellant, who committed sodomy with the victim. Both the eye-witnesses had provided a true and undiluted account of the occurrence and their evidence has inspired in our confidence. We have not found any material contradiction between the eye-witnesses. The prosecution to prove its case produced Muhammad Sarfraz as PW-2 who was also complainant of this case. He is real father of the victim Noman Sarfraz. He has no enmity or strong motive to falsely implicate the appellant in this case. It is rare phenomenon that a father of the victim would substitute the culprit of the case. He has reasonably explained the presence of the appellant at the place of occurrence in objectionable condition with the victim and we see no reason not to accept the statement of this eye-witness, which has not been shattered. There is yet another eye-witness of the case, namely Waqar Ahmad, PW-5, who appeared before the learned trial Judge in support of the prosecution case. He is an independent witness and he has also no animosity with the appellant to falsely depose against him. He also remained consistent on testimony despite his cross-examination to which he was subjected during the trial. He corroborated the statement of the above eye-witness on the main points. He has also reasonably proved the presence of appellant at the spot, which is neither particularly denied

by the appellant, nor any defence witness was produced in support of his defence plea. This Court sees testimony of the prosecution witnesses to be worthy of credence.

10. The analysis of the entire record of this case coupled with anxious consideration given to the submission made at the bar by the learned counsel for the respective parties and application of independent judicial mind would lead us to an irresistible conclusion that the prosecution has proved its case against the appellant through independent and unimpeachable evidence. The result of the above discussion is that the case against the appellant stands fully proved in the most convincing and logical order. Even single ambiguity or doubt could not be convincingly urged in the entire prosecution version in the trial. However, as far as section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is concerned it comprises of two parts, first part pertains to kidnapping or abduction for commission of offence of unnatural lust. Offence under section 12 of the offence of Zina (Enforcement of Hudood) Ordinance, 1979 would not be covered when the first part, i.e. kidnapping or abduction is not satisfied. Use of force has not been alleged in taking the victim for the offence of unnatural lust. There is no evidence at all as far as the alleged kidnapping or abduction is concerned.

11. The learned counsel for the appellant's plea that the appellant had no intention or planning and that the victim was not removed away from the vicinity of his house at any distance which could amount to removing him away by use of force, or even show of weapon, or keeping him in confinement for the purpose of the alleged commission of offence of unnatural lust, rests squarely on the judgment of the honourable apex court, cited in para 7 above.

12. In this view of the matter, it was not safe to convict the appellant under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 in absence of direct and concrete evidence qua kidnapping and abduction. Conviction/sentence under this section of law recorded by trial Court against the appellant, without satisfying as to the proof beyond any shadow of doubt about kidnapping or abduction, is not sustainable in law. Charge against appellant under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is not proved. Therefore, conviction and sentence recorded by trial Court under this section of law is set-aside. However, conviction passed by the learned trial Court under section 377 Pakistan Penal Code is fully proved against the appellant. However it is considered that sentence of seven years R.I. with fine of Rs.10,000/- or in case of default to further 6 months S.I. will meet the ends of justice. The benefit of section 382-B Code of Criminal Procedure, is already extended to the appellant, which shall remain intact. With above modification in the conviction and sentences, the appeal is partly allowed accordingly. These are the reasons of our Short Order dated 10.01.2011.

Approved for reporting.

Islamabad the
January, 10, 2011
Abdul Majeed/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.
MR. JUSTICE SYED AFZAL HAIDER.
MR. JUSTICE SHAHZADO SHAIKH.

JAIL CRIMINAL APPEAL NO.73/I of 2010.

Muhammad Bilal son of Muhammad Ramzan, Caste Gurmani,
R/o Mauza Gulab Gurmani, Police Station Qureshi, Tehsil & District
Muzaffargarh. Appellant.

Versus

The State. Respondent.

CRIMINAL MURDER REFERENCE NO.06/I OF 2010.

The State Respondent.
Muhammad Bilal

Counsel for appellant. Mr. Nazir Ahmed Bhutta,
Advocate.

Counsel for State Ch.Muhammad Sarwar Sidhu,
Additional Prosecutor General.

FIR No. date and 121/2004, 23.05.2004
Police Station. Kot Addu, Muzaffargarh

Date of judgment 21.12.2004.
Of trial court.

Date of Institution ... 07.07.2010

Date of hearing 15.03.2011.

Date of decision ... 18.03.2011.

JUDGMENT

AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.- This appeal has been preferred by appellant Muhammad Bilal through jail Superintendent against judgment dated 21.12.2004 delivered by learned Additional Sessions Judge, Kot Addu, District Muzaffargarh whereby he was convicted and sentenced as under:-

- i Under Section .302(b) PPC Death sentence and to pay a sum of Rs. 100,000/- as compensation to be paid to the legal heirs of the deceased or suffer six months simple imprisonment
- ii. Under section 377 of PPC 10 years rigorous imprisonment with a fine of Rs. 10,000/- and in default whereof to further suffer three months simple imprisonment.

2. Benefit of section 382-B of the Code of Criminal Procedure was granted to the appellant to the extent of Section 377 of Pakistan Penal Code.

3. Brief facts of the case as given out in the oral crime information laid before Yousaf Ali Inspector S.H.O. P.W.10 by Khadim Hussain complainant/ P.W.1 are that he was a shopkeeper by profession. There was a mango garden in Chah Budhey Wala village Kotla owned by Mian Ghazanfar Ali who sold its fruit to Bilawal Khan Gurmani. Accused Muhammad Bilal was employed as Chowkidar by Bilawal Khan Gurmani. The complainant further stated that he had purchased "Bhoosa" from the said landlord Ghazanfar Ali. That on 23.05.2004 he alongwith Ghulam Akbar, Bashir Ahmed P.Ws and his "Bhanja" Muhammad Javed Iqbal (deceased) aged 12 years went to the garden on a bull cart to collect Bhoosa. The complainant alongwith Ghulam Akbar and Bashir Ahmed, P.Ws moved after loading Bhoosa when Muhammad Bilal accused appeared at the scene. The complainant left his Bhanja under the shade of tree due to hot weather. At Asar Wela the complainant alongwith the P.Ws again went to the garden to collect Bhoosa but they neither found Muhammad Bilal nor Muhammad Javed Iqbal at the spot. The complainant and the P.Ws went toward sugar cane field in search of the latter. They saw Muhammad Bilal accused emerging out of the sugarcane field who, having spotted them, took to his heels. The complainant along with the companions went in the sugarcane field and at some distance they saw Muhammad Javed Iqbal lying on the ground facing downward. His shalwar had been removed and string of his shalwar was tied around his neck and he was lying dead on the ground. The complainant further alleged that Muhammad Bilal accused caused his Qatl-i-Amd after committing sodomy with Muhammad Javed Iqbal. It was in this background that the oral complaint was registered with Police Station Kot Addu on 23.05.2004 at 6.10 p.m. The document is Ex PA on record.

4. The investigation was conducted by Yousaf Ali, Inspector/SHO, P.W.10. He visited the place of occurrence, inspected the same and also inspected the dead body of deceased Javed Iqbal. He prepared injuries statement Ex.PD and inquest report Ex.PF and sent the dead body to the mortuary through PW.7 Ghulam Qadir, Constable No.888. He prepared rough site plan Ex.PJ including all the drawing and marginal notes thereon. He also recorded statements of witnesses under section 161 of the Code of Criminal Procedure. After postmortem report the last worn clothes were produced before him by PW.7 which were taken into possession vide memo Ex.PC. He also received postmortem report, one sealed envelope and also one sealed vial which was taken into possession vide the said memo. He arrested accused on 06.06.2004 who had been produced by Mian Ghazanfar Ali Qureshi at the police station. He got the accused medically examined on 07.06.2004. During interrogation the accused disclosed that he could point out the place where he committed sodomy and murder of Javed Iqbal deceased. After completion of all legal formalities the local police submitted a report under section 173 of the Code of Criminal Procedure in the court requiring the accused to face trial.

5. The learned trial court framed charge against the accused under section 12 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979, under sections 377 and 302(b) of Pakistan Penal Code on 23.08.2004. The accused did not plead guilty and claimed trial.

6. The prosecution in order to prove its case produced 10 P.Ws. at the trial. The gist of deposition of witnesses is as under:-

- i. Khadim Hussain, complainant appeared as P.W.1. He reiterated the facts recorded by police on his statement prior to the registration of FIR;
- ii. Ghulam Akbar appeared as P.W.2 and corroborated statement of complainant Khadim Hussain P.W.1;
- iii. Khadim Hussain son of Ali Muhammad deposed as P.W.3. He and Kaloo (given up P.W) had identified dead body of Javed Iqbal at the time of post-mortem. He also signed recovery memo through which the I.O. took into possession the various articles of the deceased;
- iv. Ghazanfar Ali P.W.4 stated that on 06.06.2004, while he was present at his dera, Muhammad Bilal accused confessed about the murder of Javed Iqbal. He further stated that he apprehended the accused and produced him before the SHO for further proceedings against the accused.
- v. Haji Khuda Bakhsh, as P.W.5 corroborated the statement of Ghazanfar Ali Qureshi. He stated that he was present at the dera of Ghazanfar Ali Qureshi when accused Bilal made confession regarding the murder of Javed Iqbal.

He also accompanied P.W.4 to the police station;

- vi. Muhammad Akbar, Head Constable No.221, P.W.6, stated that on 23.05.2004 the Investigating Officer handed over to him one parcel of shalwar, Kameez, Azarbad, sealed envelope and a sealed vial for keeping in safe custody in the Malkhana. On 31.05.2005 he handed over the said articles to Sajjad Hussain, Constable No. 160 PW.11 for onward transmission to the Office of the Chemical Examiner;
- vii. Ghulam Qadir, Constable No.888 appeared as P.W.7 to state that on 23.05.2004 he escorted the dead body of Javed Iqbal to the hospital for postmortem and on the same day he handed over various articles belonging to deceased to the Investigating Officer;
- viii. Dr. Munir Aftab, Medical Officer had conducted postmortem of deceased on 23.05.2004. He appeared as P.W.8 to state about the steps taken by him regarding the postmortem. He also issued postmortem report;
- ix. Tariq Munir Patwari appeared at the trial as P.W.9 to state that on call by the police he, on 12.06.2004, visited the place of occurrence. He prepared scaled site plan Ex.PH and Ex.PH/1 on pointation of P.W.s and handed over the same to the police; and
- x. Yousaf Ali, Retd. Inspector appeared as P.W.10. He gave the detail of investigation in the case conducted by him. The detail of which has already been mentioned in earlier paragraph of this Judgment.
- xi. Sajjad Hussain 160/C-1 appeared at the trial as PW.11 to State that on 31.05.2005 he received parcels from Muharrar Muhammad Akbar for onward transmission to the office of Chemical Examiner. Both the parcels were deposited intact on the same day in the requisite office.

7. The learned trial court after close of the prosecution evidence recorded statement of accused under section 342 of the Code of Criminal Procedure wherein he claimed innocence, denied the occurrence and deposed that P.Ws are interse related and he has been falsely implicated in the case. He opted to make statement on oath under section 340(2) of the Code of Criminal Procedure and produce evidence in his defence but on 09.12.2004 he stated that he will neither make a statement on oath nor produce evidence in his defence. The learned trial court after completing legal formalities of the trial found the accused guilty under sections 302(b) and 377 of Pakistan Penal Code. The convictions and sentences ensued as mentioned in the opening paragraph of this Judgment. Hence the present appeal.

8. We have examined the file. The evidence brought on record as well as the statement of the accused recorded under section 342 of the Code of Criminal Procedure has been perused. The relevant portions of the impugned judgment have been examined.

9. The arguments that prevailed upon the learned trial court to return a verdict of guilt have been elaborated in paragraphs 23 through 28 of the impugned judgment which may be summarized as follows:-

- i. That the first information report was lodged promptly;
 - ii. That the prosecution produced strong circumstantial evidence of last seen;
 - iii. That the evidence of the prosecution is supported by medical evidence;
 - iv. Further corroboration is provided by the positive report of the Chemical Expert Ex.PG;
 - v. The presence of P.W.1 Khadim Hussain and Ghulam Akbar at the spot immediately after the occurrence is established on record;
 - vi. That P.W.1 and P.W.2 had seen Muhammad Bilal accused emerging out of the sugarcane field;
 - vii. That the accused pointed out the place where he committed sodomy and Qatl-i-Amd of Muhammad Javed Iqbal;
 - viii. Fard "Nishan Dehi" Ex.PB was prepared by police and this fact has not been challenged in the cross-examination;
 - ix. The prosecution produced strong evidence of extra judicial confession made before PWs.4 and 5;
 - x. That the extra judicial confession made by the accused is corroborated from the last seen evidence made by P.W.1 and P.W.2; and
 - xi. Lastly, the post-mortem examination confirmed commission of sodomy and murder of Muhammad Javed Iqbal. The learned trial court also found that the accused was a chowkidar of the garden where the crime was committed and that it was not possible for the complainant to ignore the real culprit and to falsely implicate the accused in a murder case.
10. Learned counsel for the appellant raised the following points in the defence

of appellant:-

- i. That there is no direct evidence in this case and the case depends entirely upon circumstantial evidence;
- ii. That the first information report does not contain details of the incident;
- iii. That the FIR does not clearly state as to whether the shalwar of the victim was removed fully or partly;
- iv. The FIR does not mention that there was semen on the buttock of the victim. This fact has been stated in evidence and it amounts to dishonest improvement;
- v. That suggestions were put to the witnesses for the prosecution that it was a blind murder;
- vi. That the accused in his statement under section 342 of the Code of Criminal Procedure had stated that the real culprit was Ghazanfar Ali the landlord of the area;
- vii. That the witnesses for prosecution are related interse; and
- viii. Lastly the learned counsel relied upon the case of Zia-ur-Rehman Vs. The State 2001 SCMR 1405 to put forward the proposition that evidence of extra judicial confession alone without any corroboration was not sufficient to maintain any conviction. Learned counsel also relied upon the case of Wazir Muhammad and another Vs. The State 2005 SCMR 277 wherein it is held that extra judicial confession around which the entire case revolved was made by the accused while being investigated by the police at the police station before a stock witness which was not worth of credence and the question of its corroboration was immaterial.

11. Learned Additional Prosecutor General on the other hand urged that the convictions and sentences recorded by the learned trial court should be maintained as they are based upon cogent reasons. It was urged that the appellant had committed gruesome acts of murder after committing unnatural offence. Learned counsel in support of his contentions raised the following points for our consideration:-

- i. That the prosecution has successfully shown that the accused was last seen with the deceased and the accused had not given any explanation about his movement before or immediately after the occurrence;

- ii. That the first information report was lodged promptly;
- iii. The FIR is not required to be a detailed as exhaustive narration of the incident as urged by the learned counsel for the appellant;
- iv. The extra judicial confession is not only voluntary but is duly corroborated; and lastly
- v. That there was no earthly reason on the part of complainant to falsely implicate the appellant and the appellant has not established any grudge or enmity on the part of complainant group.

12. We have considered the case from various aspects. Our observations in this matter are as follows:-

- i. We are conscious of the fact that no direct evidence either of commission of unnatural offence or of strangulation of minor Muhammad Javed Iqbal is available on record. In fact the prosecution has not alleged having seen any one or both the offences. The prosecution case rests upon the following factors:-
 - a. The place of occurrence is a garden and the appellant was employed there as a Chowkidar. Complainant had visited the garden to collect Bhoosa along with PW.2 and his nephew Muhammad Javed Iqbal deceased. The presence of all at the given time is established on record;
 - b. Deceased and accused were last seen by complainant PW.1, Khadim Hussain complainant PW.2 Ghulam Akbar and Bashir together in the garden at about 2.00 p.m. on the fateful day;
 - c. The complainant returned for the second load of Bhoosa after about an hour and did not find the deceased under the tree where they had left him. The appellant was also not seen there;
 - d. They looked around and proceeded towards the nearby sugarcane field. They called out minor Muhammad Javed Iqbal but no one responded. However the appellant, on hearing the call, stood up and rushed towards East Southern side;
 - e. This manner of escape of the appellant after he got up from under a mango tree, made the complainant party suspicious. They rushed towards the spot only to find half naked strangled dead body of minor Muhammad Javed Iqbal.

- f. Police station was at a distance of 05 k.m. from the place of occurrence. The complainant reached the police station and laid the crime information. Appellant was nominated. The FIR was registered at 6.10 p.m.
- ii. We are also aware that in cases depending upon circumstantial evidence the court has to be very cautious because a reasonable inference of guilt has to be determined on the basis of indirect evidence. Conviction in such circumstances can be based if the facts and circumstances from which the conclusion of guilt has to be inferred must be established on record. The circumstantial evidence visualizes a chain of events. All the links of the chain must be connected and should lead towards the accused.
- iii. In the instant case a strong chain of events is not only established but there is direct evidence of PW.1 and PW.2 to the effect that during the search of deceased his name was called. This noise alerted the appellant who stood up and made good his escape. Within minutes of his flight the search party found the corpse of minor from where the appellant defected. The accused did neither explain as to where he went from the place where deceased was sitting with him under the tree nor gave any reason why he took to his heels from the place where the corpse of victim was lying.
- iv. The period between the death of the minor and his being last seen with the appellant is very short. The appellant is a Chowkidar of that area. His presence at the place of occurrence is not only normal but has been established by oral evidence. The trend of cross-examination confirms that the appellant was employed as a Chowkidar.
- v. The medical evidence by way of post mortem report Ex.PE establishes not only commission of un-natural offence but also murder due to “chest and abdominal pressure along with ligature,” both resulting in cardiac respiratory failure and instantaneous death. The positive report Ex.PG of the Chemical Examiner further corroborates the medical evidence;
- vi. The extra judicial confession of the appellant made before Ghazanfar Ali PW.4 and Haji Khuda Bux PW.5 rings true because both of them immediately nabbed him and produced before the police. PW.4 had leased out his garden to one Bilawal Khan who had employed the appellant as a guard in the garden. PW. 4, being the owner of garden where the appellant was employed and also being an influential landlord was the correct person to be taken into confidence by the appellant;
- vii. The pointation of place of occurrence is also a factor which supports the

direct evidence of last seen and running away of the appellant from the place of occurrence;

- viii. The circumstantial and direct evidence noted above leads to the hypothesis of the guilt of appellant and nothing else. The entire evidence on record has to be seen. Under the circumstances the prosecution has brought on record the best possible evidence. Nothing material has been suppressed by the complainant side. There is no motive to involve the appellant falsely in a murder case. An aggrieved person may forgive a killer and in that event he may not pursue the case but that does not mean that he would perforce implicate an innocent person. The chain of circumstantial evidence produced by prosecution evidence leads to the hypothesis of guilt of appellant. Corroboration is available on record. In such cases indirect as well as direct evidence put together prove the guilt in a satisfactory manner. Judicial mind has to be morally convinced of the hypothesis of guilt. Law does not prohibit maintaining conviction and sentence of death when circumstantial evidence establish culpability of accused;
- ix. The reasons relied upon by learned trial court in recording convictions of the appellant are based upon evidence legally proved on record. It cannot be said that the inference of guilt was not borne out by the evidence. There is no technical defect in the trial either;
- x. The two reports relied upon by learned counsel for the appellant do not advance the case of defence. In the case of Zia-ur-Rahman, supra, the Hon'ble Supreme Court held that extra judicial confession alone, without any corroboration, was not sufficient to maintain conviction which is not the position in this case. In this appeal there are other factors which corroborate the fact of extra judicial confession. In the second case of Wazir Muhammad relied upon by learned counsel for the appellant, the extra judicial confession was made by accused during investigation by police at the police station in the presence of a stock witness. That position is also not available in the present appeal.
- xi. It may be seen that according to Article 21 of Qanoon-e-Shahadat Order, 1984, the conduct of an accused person is a relevant fact. The failure of accused to furnish plausible explanation that on which point, time and place where the deceased got separated from him has to be considered judicially because the accused could not be said to have discharged the onus which lay upon him in view of the provisions of Article 21 *ibid*. Similarly the fact that the accused ran away from the place of occurrence on hearing the voice of the complainant party amounted to intentional avoidance.

Running away from the scene of occurrence can be considered a pointer to the guilt of accused. However the value of such conduct depends upon facts and circumstances of each case. It may also be noted that the prosecution produced PW.4 to prove extra judicial confession who admitted the presence of an other person at the time of extra judicial confession. The other person was also produced by the prosecution as PW.5.

13. This confession made before PW.4 and PW.5 was not made while the appellant was in custody. Independent corroboration is the rule of prudence for the safe administration of criminal justice. As stated earlier the extra judicial confession has been duly corroborated. The proximity of time between the last seen together and the time of death and escape of appellant from the place of occurrence coupled with his voluntary confession made before PW.4 and PW.5, his total silence about his presence at the spot, and the cause of death of Muhammad Javed Iqbal and the commission of un-natural offence with the deceased are un-rebutted facts. The presence of accused at the place of occurrence alongwith the deceased is fully established. All these factors put together are clear pointers towards the culpability of appellant.

14. In view of what has been stated above we are not persuaded to interfere in the convictions recorded by the trial court. The appellant, a strong young man of 25 years, played havoc with a minor of 10/12 years. He deserves neither sympathy nor leniency.

15. Resultantly Jail Criminal Appeal No.73/I of 2010 filed by appellant Muhammad Bilal against the impugned judgment dated 21.12.2004 delivered by learned Additional Sessions Judge, Kot Addu in Sessions Case No.9-7 of 2004 Sessions Trial No.2-7 of 2004 is dismissed. Convictions and sentences are maintained with the consequence that Criminal Murder Reference No.06/I of 2010 is answered in the affirmative.

Fit for reporting

Announced in open Court
on 18-03-2011 at Islamabad
Mujeeb-ur-Rehman/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR.JUSTICE SHAHZADO SHAIKH
MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN
MR.JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO.213/L OF 2006

Muhammad Arshad son of Mansha, Caste Varbu, resident of Chak No.158/9-L, Tehsil Chichawatni, District Sahiwal.	---	Appellant
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Versus

The State	---	Respondent
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CRIMINAL APPEAL NO.238/L OF 2006

Murtaza alias Murti son of Akbar, Caste Haraj, resident of Chak No.158/9-L Tehsil Chichawatni, District Sahiwal.	---	Appellant
--	-----	-----------

Versus

The State	---	Respondent
-----------	-----	------------

Counsel for the appellant Muhammad Arshad	---	Mian Shah Abbas, Advocate
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Counsel for appellant Murtaza alias Murti	---	Ch. Saleem Akhtar, Advocate
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Counsel for the complainant	---	Mr. Muhammad Anwar Sipra, Advocate
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Counsel for the State	---	Ch. Muhammad Ishaque D.P.G.
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FIR No., date & Police Station	---	202/05 dated 10.07.2005 Ghaziabad, District Sahiwal
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Date of Judgments of Trial Court	---	26.07.2006
Date of Institution of Appeals	---	07.08.2006 & 08.09.2006 respectively
Date of Hearing	---	25.07.2011
Date of Decision	---	25.07.2011

JUDGMENT:

SHAHZADO SHAIKH, JUDGE: By this common Judgment, two connected criminal appeals bearing 1) Criminal Appeal No.213/L of 2006 moved by Muhammad Arshad, and 2) Criminal Appeal No.238/L of 2006 moved by Murtaza alias Murti, both against conviction and sentence, are being disposed of as they arise out of the same F.I.R No.202/2005, Police Station Ghaziabad, District Sahiwal. Since accused Muhammad Arshad was declared juvenile, he was tried separately under the Juvenile Justice System Ordinance, 2000. Both the accused were convicted and sentenced vide separate Judgments of same date i.e. 26.07.2006 delivered by learned Additional Sessions Judge, Chichawatni in Sessions Case No.26/ASJ-CCI of 2005, Sessions Trial No.14/ASJ-CCI of 2005 and Sessions Case No.9/ASJ-CCI of 2005, Sessions Trial No.13/ASJ-CCI of 2005.

Their conviction and sentence are as follows:-

Accused Muhammad Arshad:

Under section 10(4) of the Offence of Zina
(Enforcement of Hudood) Ordinance VII of 1979. .

Life imprisonment each

Under section 302 (b) of the Pakistan Penal Code

Life imprisonment with fine of Rs.50,000/- to be paid to legal heirs of the deceased as compensation, in default whereof to further undergo 6 months' simple imprisonment

Accused Murtaza alias Murti:

Under section 10(4) of the Offence of Zina
(Enforcement of Hudood) Ordinance VII of 1979.

Life imprisonment each.

Under section 302 (b) of the Pakistan Penal Code

Life imprisonment with fine of Rs.50,000/- to be paid to legal heirs of the deceased as compensation, in default whereof to further undergo 6 months' simple imprisonment

All the sentences were ordered to run concurrently with benefit of section 382-B of the Code of Criminal Procedure.

2. The distance between the place of occurrence and the Police Station is 23 kilometers

and the place of occurrence is towards east from the Police Station. The occurrence took place on 09.07.2005 at 11.00 a.m in the area of Chak No.158/9L whereas it was reported on 10.07.2005 at about 12.00 noon. The complainant Muhammad Jahangeer PW-7 got recorded his statement Ex.PB to Liaqat Ali, Sub Inspector, who sent the same to the Police Station through Constable Abdul Ghafoor on the basis of which F.I.R Ex.PB/1 was recorded.

3. Brief facts of the prosecution case as narrated in the statement of complainant Muhammad Jahangeer Ex.PB are that on 09.07.2005 at about 11.00 a.m, his wife Mst. Nooran Bibi prepared meal for him and sent the same to the complainant in the fields through his daughter Mst.Haleeman aged 8 years but the latter did not reach the destination. When the complainant came back to his house and asked his wife about the food, she told him that she had sent it through Mst.Haleeman Bibi. The complainant got perturbed and started search of Mst.Haleeman Bibi alongwith Muhammad Ismail and Zahid. Next day i.e. on 10.07.2005 at about 10.00 a.m, dead body of Mst.Haleeman Bibi was found lying in Killa No.7, square No.31 belonging to one Riaz. The complainant expressed a strong suspicion that accused Murtaza alias Murtee and Muhammad Arshad had murdered Mst. Haleeman Bibi after having raped her.

4. Police investigation ensued as a consequence of registration of the crime report. After conclusion of the investigation, the local Police submitted in the Court a report under section 173 of the Code of Criminal Procedure requiring both the accused Muhammad Arshad and Murtaza alias Murti to face trial. Learned trial Court framed charges against both the accused separately on 20.12.2005, under sections 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and 302 read with 34 of the Pakistan Penal Code.

5. Prosecution, in addition to documentary evidence produced 12 witnesses at the trial in support of its case. The gist of the deposition of the prosecution witnesses is as follows:-

- i) PW-1: Dr.Muhammad Saleem Akhtar, stated that on 14.07.2005 at 12:30 p.m, he medically examined accused Muhammad Arshad and found him fit to perform sexual intercourse.
- ii) PW-2: Head Constable Muhammad Ans stated that on 10.07.2005 he received statement of complainant Muhammad Jahangeer Ex.PB through Constable Abdul Ghafoor on the basis of which he recorded the F.I.R Ex.PB/1. On the same day he received two sealed parcels which he dispatched to the office of Chemical Examiner, Lahore on 20.07.2005 through Constable Muhammad Farooq.
- iii) PW-3: Constable Manzoor Ahmad stated that on 10.07.2005, dead body of

Mst.Haleeman Bibi was handed over to him by Liaqat Ali, Sub Inspector which he escorted to Tehsil Headquarters Hospital, Chichawati and delivered it intact to the Women Medical Officer for postmortem examination. The doctor handed over the last worn clothes of the deceased Shalwar P.1, shirt P.2 and Dopatta P.3 which he produced before the Investigating Officer which were taken into possession vide recovery memo Ex.PC.

- iv) PW-4: Nazar Muhammad, Revenue Patwari stated that on 15.07.2005 he visited the place of occurrence and took rough notes on the pointation of Muhammad Jahangeer complainant and other PWs on the basis of which he prepared scaled site plans Ex.PD, Ex.PD/1 and Ex.PD/2 in the scale of one inch equal to 40 Karms. All the drawings, points and note on the site plans in black ink are in his hand and these were signed by him.
- v) PW-5: Lady doctor Shabana Akhtar stated that on 10.07.2005 she conducted postmortem examination of dead body of Mst.Haleeman Bibi. At that time, the deceased was 8 years. This witness observed as under:-

EXTERNAL APPEARANCE

“Single brounished depressed 2½ cm with ligature mark on upper most part of neck at around the neck and missing just below right ear.

ON LOCAL VAGINAL EXAMINATION

Hymen was torn at different sites (angle). Single vaginal tear 2½ cm x ½ cm x muscle deep was present extending to perineum. Vagina was full of clotted blood.”

In the opinion of this witness, death was due to asphyxia under ligature mark which was fatal and sufficient to cause death in ordinary course of nature. The time between death and postmortem was 24 to 36 hours.

- vi) PW-6: Muhammad Farooq stated that on 20.07.2005 Muhammad Ans, Mu-harrir of the Police Station handed over to him two sealed parcels alongwith one sealed envelope and one sealed phial for onward transmission to the office of Chemical Examiner, Lahore. He deposited the same in the concerned office but the same were sent back under objection to the Police Station. After removal of objection he again deposited the same on 25.07.2005 in the said office intact.
- vii) PW-7: Muhammad Jahangeer complainant of the case endorsed contents of the crime report.
- viii) PW-8: Zahid Mehmood got recorded his statement on 14.02.2006 and

stated that about 8 months back, Mst.Haleeman Bibi was murdered. He, Muhammad Ismaeel and complainant Muhammad Jhangeer had been searching for her but in vain. On the next day at about 10.00 a.m they found the dead body of Mst.Haleeman Bibi lying in a Charri crop of Killa No.7 of square No.31 belonging to one Riaz Hiraj. The dead body was strangulated with a dopatta. On the same day at about 4/5.00 p.m, he identified dead body of Mst.Haleeman Bibi before the doctor at the time of postmortem examination in Tehsil Headquarters Hospital, Chichawatni. About three days after the occurrence at 9/10.00 a.m, he was present in the house of Habib PW alongwith Munir Ahmad, Muhammad Ismail and Habib Ahmad when accused Muhammad Arshad and Murtaza alias Murti came there and confessed that after committing rape with Mst.Haleeman Bibi she was strangulated to death by putting a Dopatta around her neck. They requested for a pardon from father of the deceased. He further stated that a Constable had produced Shalwar P.1, shirt P.2 and Dopatta P.3, the last worn clothes of Mst.Haleeman Bibi before the Investigating Officer which were taken into possession vide recovery memo Ex.PC duly attested by him.

- ix) PW-9: Habib corroborated the statement of Zahid Mehmood PW-8 to the extent of confession allegedly made by the accused.
- x) PW-10: Muhammad Jaafar stated that on 09.07.2005 he alongwith Saeed Ahmad was proceeding to Burewala town from his village. At 11:30 a.m, when they reached near Killa No.7 of square No.31 belonging to one Riaz, they found Mst.Haleeman Bibi in the company of accused Muhammad Arshad and his co-accused Murtaza alias Murti under a Sheesham tree, and she was in possession of meals also. They went to the Adda near the tubewell of Sami Ullah from where they went to Burewala town for their personal work. After two days, they returned from Burewala to their village where they learnt that Mst.Haleeman Bibi deceased had been murdered by accused Muhammad Arshad and his co-accused Murtaza alias Murti after subjecting her to Zina-bil-Jabr. He made a statement to the Police in his village about having seen Mst.Haleeman Bibi alive in the company of the accused.
- xi) PW-11: Saeed Ahmad corroborated statement of PW-10 Muhammad Jaafar.
- xii) PW-12 Liaqat Ali, Sub Inspector, stated that on 10.07.2005, on receipt of information, he reached the place of occurrence where complainant Muhammad Jahangeer narrated all the details of the incident orally; which statement was reduced into writing by him. It was read over to him

whereafter he signed the same (Ex.PB) in token of its correctness. He sent complaint Ex.PB to the Police Station for registration of formal F.I.R. He inspected the dead body of Mst.Haleeman Bibi, prepared injury statement Ex.PF and inquest report Ex.PG. He sent dead body of Mst.Haleeman Bibi for postmortem examination through Constable Manzoor Ahmad to Tehsil Headquarters Hospital, Chichawatni. He prepared rough site plan of the place of occurrence Ex.PJ. On the same day, after postmortem examination, Constable Manzoor Ahmad produced last worn clothes of the deceased, Shalwar P.1, Kameez P.2, Dopatta P.3 before him which he took into possession vide recovery memo Ex.PC. The memos were dully attested. He recorded statements of witnesses under section 161 of the Code of Criminal Procedure. On 13.07.2005 he conducted raid and arrested accused Muhammad Arshad. On 14.07.2005 he got him medically examined to ascertain his sexual potency. His application for medical examination of accused Muhammad Arshad Ex.PK was also endorsed by the doctor on which the doctor issued MLR No.115/2005 Ex.PA. He summoned Patwari, who on his instructions, visited the place of occurrence and took rough notes on the pointation of PWs on 17.07.2005, on the basis of which he prepared scaled site plan Ex.PD and Ex.PD/1 in duplicate. All the red notes Ex.PD and Ex.PD/1 were in his hand and bear his signatures. He recorded statements of Nazar Patwari under section 161 Code of Criminal Procedure. After investigation he found the accused guilty and submitted a report under section 173 of the Code of Criminal Procedure against them.

6. After closure of prosecution evidence, the accused facing trial were examined under section 342 of the Code of Criminal Procedure. They, inter-alia, pleaded innocence and claimed that they had been falsely involved due to enmity. In reply to the question “why this case against you and why the PWs have deposed against you?”, appellant Muhammad Arshad stated as follows:-

“The PWs are closely related to each other and I have been involved in this case due to enmity with my maternal grand father Bahawal Haraj who had a dispute on the irrigation water. I am living with my maternal grand father and due to this reason I had so many times hot talks with the complainant party. Due to this reason I have been falsely and with malafide involved in this case. All the evidence produced in Court against me was created malafidely and the PWs had made so many improvements at the time of recording their evidence in trial with malafide intention and getting legal advice to fulfill the lacuna and to strengthen the prosecution case.”

In reply to the question “why this case against you and why the PWs have deposed against you?”, appellant Murtaza alias Murti stated as follows:-

“It is a false case. The PWs have deposed falsely on account of enmity and being related to complainant Jahangeer and enmity between one Ahmad Ali and Taj is admitted by the PWs. All the evidence produced in Court against me was created malafidely and the PWs had made so many improvements at the time of recording their evidence in trial. They deposed against me after getting legal advice to fulfill the lacuna and to strengthen the prosecution case.”

7. The reasons that prevailed upon the learned trial Court for recording the conviction, inter alia, were:-

- (i) the witness of last seen had no malice to falsely implicate the accused;
- (ii) witnesses belonged to the same locality and their presence in the locality cannot be doubted;
- (iii) no reason has been put forward as to why the witnesses of extra judicial confession should not be believed; and
- (iv) the circumstantial evidence is against the accused.

8. The learned trial Court awarded life imprisonment to Muhammad Arshad accused on both the counts because he was declared juvenile and that it was an unseen occurrence. Murtaza alias Murti accused was also awarded life imprisonment on both the counts as this was a case of unseen occurrence.

9. We have gone through the record of this case. The evidence available on record as well as statements of accused have been perused. Relevant portions of the impugned judgment have been scanned. We have also heard learned counsel for the appellants and the complainant as well as learned Deputy Prosecutor General for the State.

10. During the course of arguments, Mian Shah Abbas, learned Counsel for appellant Muhammad Arshad in support of his contention formulated the following points:-

- i) That it is an un-witnessed occurrence as there is no eye witness of the alleged occurrence;
- ii) That there is no direct evidence in the case.
- iii) That the prosecution has failed to prove the motive against the appellant.
- iv) That the learned trial Court has convicted and sentenced the appellant on the basis of presumption, assumption, surmises and conjectures.

- v) That the oral as well as the documentary evidence is contradictory which casts serious doubts about the prosecution case, as such the benefit of doubt should have been given to the appellant.
- vi) That there are contradictions in the statements of PW.8 Zahid Mehmood and PW.9 Habib before whom the extra judicial confession was alleged to have been made by both the accused.
- vii) That last seen evidence produced by Muhammad Jaffar PW.10 and PW.11 Saeed Ahmed is also not reliable because they remained silent for 2/3 days after murder of Mst. Haleeman deceased.
- viii) That dead body was not recovered on the pointation of the accused.
- ix) That without grouping of semen, the offence of zina has not been connected with a particular accused.
- x) That the important witness Mst. Nooran Mai, mother of the deceased was not produced before the trial Court.
- xi) That Arshad appellant was minor at the time of occurrence.
- xii) That the complainant and the witnesses are closely related inter-se.
- xiii) That the appellants had not committed this offence but actually one Pervaiz who had murdered another girl by strangulation in similar manner after committing rape with her.
- xiii) That maternal grandfather of Arshad accused namely Bahawal had a dispute over irrigation water with the complainant party.

11. Learned Counsel for appellant Murtaza alias Murti has adopted the arguments of learned Counsel for appellant Muhammad Arshad. Furthermore, he added as under:-

- i) That there is no eye witness of the occurrence excepting the circumstantial evidence consisting of extra judicial confession and last seen evidence without corroboration from any independent witness, which is the weakest type of evidence and the conviction could not be based upon such interested and inimical prosecution evidence and conviction cannot be based on such evidence.
- ii) That the appellant is innocent and he has been falsely implicated by the complainant due to enmity.

- iii) That the case was registered after due deliberation and consultation.
- iv) That witnesses of extra judicial confession i.e. PW.8 Zahid Mehmood and PW.9 Habib are closely related to the complainant and they had enmity and political rivalry with the accused.
- v) That PW.10 Muhammad Jaffar and PW.11 Muhammad Saeed were chance witnesses and they were inimical towards the appellant.

12. On the other hand Mr. Muhammad Anwar Sipra, learned Counsel for the complainant stated as under:-

- i) This is a case of lust and murder of Mst. Haleeman deceased was committed by the accused in order to conceal their crime of rape.
- ii) That the best evidence is available on the record is in the shape of extra judicial confession as well as the last seen evidence, which is sufficient in nature to connect the accused with the crime.
- iii) That there was no reason to substitute the accused.
- iv) That there is no such contradictions in the statements of the prosecution witnesses which could cause dent in the prosecution evidence.
- v) That in the presence of ocular evidence there is no need of semen grouping.

13. Ch. Muhammad Ishaq, Deputy Prosecutor General appearing for the State has made the following submissions for consideration of the Court:-

- i) That the appellants were nominated in the FIR.
- ii) The plea taken by the appellants that the offence was committed by one Pervaiz, who after committing rape murdered Mst. Haleeman Bibi has no value in the eye of law as no evidence was produced on record in this regard.
- iii) Although it is an unseen occurrence but the prosecution has proved its case through circumstantial evidence, extra judicial confession and last seen evidence.
- iv) That the complainant gave full ocular account regarding the offence

committed by the accused and the same was corroborated by the other witnesses.

- v) That the prosecution has proved its case beyond any shadow of doubt.
- vi) That the learned trial Court has rightly convicted and sentenced the appellant under Section 10(4) Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and Section 302-(b) of the Pakistan Penal Code. Therefore, the Judgment of the learned trial Court is liable to be upheld.

14. We have considered the arguments of the learned Counsel for the parties and also perused the record with their assistance.

15. According to the prosecution case, minor girl Haleeman Bibi left her house on 09.07.2005 to give food to his father Muhammad Jahangeer complainant, in the field, and when she did not return home, the complainant started her search and ultimately on 10.07.2005 he found her dead body lying in the Charri crop of one Muhammad Riaz situated in Killa No.7, square No.31 on 10.07.2005. Then he lodged FIR at Police Station Ghazi Abbad on the same day wherein he suspected Muhammad Arshad and Murtaza alias Murti as accused who had murdered Mst. Haleeman Bibi after committing rape with her. The complainant was not an eye witness of the occurrence however Muhammad Jaffar and Saeed Ahmed had lastly seen Mst. Haleeman Bibi in the company of accused Muhammad Arshad and Murtaza alias Murti on 09.07.2005 while sitting under a Sheesham tree, at the place of occurrence, i.e., situated in Killa No.7, square No.31. Both these witnesses appeared before the trial Court as PW.10 and PW.11 respectively and they gave details about last seen evidence. They were cross-examined at length but their statements were not shattered. Further more Zahid Mehmood PW.8 and Habib PW.9 stated in their statements that accused Muhammad Arshad and Murtaza alias Murti came to them in the house of Habib PW where Munir Ahmad and Muhammad Ismail were also present. The accused made confession before them that they committed zina-bil-jabr with Mst. Haleeman Bibi one after the other and thereafter they strangulated her to death with her Dopatta around her neck.

16. Lady Doctor Shabana Akhtar had conducted post mortem examination of the dead body of Mst. Haleeman Bibi on 10.07.2005 and she opined that the death was due to asphyxia under ligature mark which was fatal and sufficient to cause death in ordinary course of nature. The lady doctor, after observing report of Chemical Examiner, also opined that rape was committed with Mst. Haleeman Bibi.

17. Although the occurrence was unseen but the statement of the complainant alongwith last seen evidence, extra judicial confession and medical evidence connected the accused persons with the commission of offence. There were minor technical contradictions in

the statements of the witnesses but these contradictions are not sufficient to disprove the prosecution version.

18. The plea of the appellant regarding relation of the prosecution witnesses with the complainant has no weight because they are the natural witnesses as they alongwith the complainant made efforts regarding search of Mst. Haleeman Bibi. The witnesses who gave details about extra judicial confession i.e. Zahid Mehmood PW.8 and Habib PW.9 are also natural witnesses and the accused made confession before them under the impression that they being relatives of the complainant, were in a position to get them pardon from the complainant.

19. There is adequate undisputed evidence on the record to prove that the minor Mst. Haleeman Bibi was murdered after commission of zina with her. Oral evidence coupled with the medical evidence and the report of the Chemical Examiner leave no doubt about the fact of murder of Mst. Haleeman and commission of zina with her. Although there is no direct evidence against the appellant but the evidence through extra judicial confession and last seen evidence have been believed by the trial Court for corroboration with other evidence available on record.

20. The prosecution produced the ocular account, last seen evidence and extra judicial confession in chain with each other and no link has been broken at any stage. Furthermore the accused in their statements under section 342 of the Code of Criminal Procedure had taken stereo-style stance of enmity. However Prosecution did not plead enmity, and there is no proof of enmity between the parties available on the record. In fact, such a plea of defence itself, goes against them to add a motive of revenge to that of lust, claimed by the Prosecution against the Appellants. The accused neither recorded their statements on oath under section 340(2) of the Code of Criminal Procedure nor they produced any evidence in their defence in order to prove enmity of the order and nature so that the complainant party could be believed to have substituted the real culprits of murder and rape of their minor daughter.

21. Although PW.8 Zahid Mehmood and PW.9 Habib before whom extra judicial confession was made by both the accused, were not active enough and vigilant to react immediately to the offender confessing their guilt, which sometimes so happens because of illiteracy, unawareness of legal requirements and weakness of social responsibility. But these important witnesses have remained unshaken during their in-chief and cross examination.

22. The last seen evidence produced by Muhammad Jaafar PW.10 and PW.11 Saeed Ahmed is also natural in the sense that from the site it is clear that the place where the victim was last seen by them is located between the village and the field or work place of the father of the victim where she was taking meal for him. These witnesses passed through

the place so close to the way leading to the point of transport they wanted to take for their journey to Burewala Town, that they could very closely witness the whispering postures of the accused, while the victim was in their company. They informed the complainant about the victim seen last by them as soon as they returned to the village after 2 days and came to know about the gruesome occurrence. The defence could not bring any evidence in support of their claim if these witnesses were present in the village, or any body had seen them there.

23. The accused live in the neighborhood, in the small village, where the gruesome occurrence had taken place, announcement was made, and burial had taken place where village in-mates participated. The defence raised a question in cross examination about whether Muhammad Jaafar PW.10 and PW.11 Saeed Ahmed participated in the burial/funeral ceremony, which was denied that they were not seen there (as they were not in the village and had gone to Burewala Town). This very same question arises whether the accused in the neighbourhood participated or came forward with any gesture of condolence with the grieved family (the complainant family). The answer in the negative, socially isolates the guilty conscience or even singles out the guilty from normally expected human behavior.

24. The exact spot, i.e., Killa No.7, Square No.31 belonging to one Riaz, at which the victim was last seen is located between the village and the field where father of the victim was working, and it is on the way, through which the victim was passing. On a query the learned counsel for the appellants clarified that the appellants/accused worked on that field (Killa No.7, Square No.31 belonging to one Riaz,). It is the place from where the dead body was recovered. This fully connects the accused with the crime, and the plea of the learned counsel for the appellants that dead body was not recovered on the pointation of the accused, holds no ground. It was in fact the recovery of the dead body from the field of work of the accused where the victim was last seen with them that led to the arrest, trial and conviction.

25. So far plea of the learned counsel for appellants that grouping and matching of semen was not done, it was clarified that the appellants had also not even demanded it in their defence. Furthermore, in view of clear ocular evidence corroborated by medical, Chemical Examiner's report and circumstantial evidence, non-grouping does not leave any deficiency in the evidence, as it is not the compulsory component without which the evidence may not be admissible, in the circumstances.

26. Production of Mst. Nooran Mai, mother of the deceased was not considered necessary in the chain, because even without her the chain was not affected.

27. The upshot of the above discussion is that we are of the firm view that the prosecution has fully proved its case against the appellants beyond any shadow of doubt. The learned

Counsel appearing for the appellants have not been able to create any dent in the prosecution evidence. The learned trial Court has rightly convicted and sentenced the appellants under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and Section 302 (b) of the Pakistan Penal Code. However the learned trial Court has already given lesser punishment of life imprisonment to both the appellants under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 for the reason that the occurrence was unseen and Muhammad Arshad appellant was juvenile at the time of occurrence.

28. In this view of the matter, we uphold the conviction and sentence awarded to the appellants by the learned trial Court. Both the impugned judgments dated 26.07.2006 delivered in Sessions Case No.26/ASJ-CCI of 2005, Sessions Trial No.14/ASJ-CCI of 2005 and Sessions Case No.9/ASJ-CCI of 2005, Sessions Trial No.13/ASJ-CCI of 2005 are upheld and both the appeals i.e. Cr. Appeal No.213/L/2006 and Cr. Appeal No.238/L/2006 are dismissed.

29. The above are the reasons of our short order passed on 25.07.2011 in the open Court.

Fit for reporting.

Lahore the
25-07-2011
M. Imran Bhatti/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE SHAHZADO SHAIKH
MR.JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO.45/I OF 2010

1. Inayat s/o Nausher ... Appellants
2. Fawad s/o Nausher
3. Zarshad s/o Sher Afzal
4. Nazir s/o Uzair
5. Shahid s/o Iqbal

Versus

The State ... Respondent

Counsel for the appellants --- Mr. Talat Mehmood Zaidi
and Mr. Qausain Faisal Mufti,
Advocate

Counsel for the Complainant --- Mr. Muhammad Saleem Mardan,
Advocate

Counsel for the State --- Mr. Muhammad Sharif Janjua,
Advocate

FIR No., date &
Police Station --- 138 dated 01.12.2009
P.S. Par Hoti District
Mardan

Date of Judgment of
Trial Court --- 15.04.2010

Date of Institution of Appeal --- 04.05.2010

Date of Hearing --- 09.09.2011

Date of Decision --- 09.09.2011

JUDGMENT:

SHAHZADO SHAIKH, J :- This Criminal Appeal filed by the appellants namely 1. Inayat 2. Fawad both sons of Nausher 3. Zarshad s/o Sher Afzal 4. Nazir s/o Uzair and Shahid s/o Iqbal, who were convicted and sentenced by Additional Sessions Judge-III, Mardan vide his judgment dated 15.04.2010 under section 20 of Haraba Offence Against Property (Enforcement of Hudood) Ordinance read with section 395 PPC and sentenced to the imprisonment for life each with a fine of Rs:50,000/- each in default of payment of fine further undergo 02 years S.I. each and under section 458/149 PPC 05 years R.I. each with fine of Rs:10,000/- each in default of payment of fine further undergo 06 months S.I. each. They were further convicted under section 411 PPC one year R.I each with a fine of Rs.5000/- in default of payment of fine further undergo 03 months S.I. each with benefit of Section 382-B Cr.P.C. All the sentences were ordered to run concurrently.

Brief facts of the prosecution case is that on 1.12.2009 at 1200 hours complainant Fazal Maula s/o Muhammad Karim lodged the report at police station Par Hoti, Mardan, stated therein that on the night of 23.11.2009, he alongwith his relatives namely Yousaf Shah s/o Halim Shah r/o Dobain, Iftikhar s/o Ahmad Wali r/o Tor Khan Bhati were sleeping in a room of the house of complainant, while his mother alongwith his sister, brothers and wife of Iftikhar were sleeping in another room. Suddenly all of them woke up on the knocking at the door of the house and opened the door and saw that 8/9 persons with muffled faces, who were duly armed with pistol and daggers entered into the house, tied the hands of the males behind and closed them in the room and started searching of the house as a result of which they took away the cash amount of Rs.70000/- alongwith gold ornaments weighing 3 and half tolas in the shape of a locket, ear rings and finger rings three in number, 3 mobile phones Nokia with one China mobile set, one CPU one pistol 30 bore, one woolen chadder and one 12 bore rifle single barrel. After that the complainant narrated the incident to his uncle namely Muhammad Zareen and charged the unknown accused for commission of the offence, hence this case.

3. The case was duly investigated; some of accused were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After investigation, challan was submitted in the court under section 173 Cr.P.C. against the arrested accused to face the trial. The learned trial court framed charge against the arrested accused on 26.3.2010 and 10.4.2010 respectively.

4. The prosecution in order to prove its case produced eleven witnesses as well as one S.W. (Process Server) at the trial. The gist of the evidence of prosecution witnesses is as follows:-

PW-1 Fazli Maula, complainant of this case narrated the same facts as mentioned in the crime report. He further narrated that he had not charged anyone in his report. Later on, he was in search of the accused and came to know from different persons

and through his secret inquires that the offence was committed by the accused Shahid, Inayat, Fawad, Zarshad, Nazir and Murad Ali with the connivance of Mst. Amina alongwith the absconding accused Shah Faisal, Zafar Iqbal, Umar Sajjad and Umar Gul. He charged the accused for the offence committed by them. He had also pointed out the place of occurrence to the Investigating Officer, who prepared the site plane.

PW-2 Yousaf Shah is an eye witness of this case, who narrated the facts of case on the same lines as narrated the complainant in his deposition. He further stated that later on the complainant charged all the accused in his supplementary statement which he came to know through different sources. In his cross examination he admitted that as the accused was muffled faces and their identification was not possible.

PW-3 Haji Muhammad Zareen is uncle of the complainant to whom the complainant informed about the occurrence in the first instance. He stated that complainant was residing separately from him but in the same Mohalla. He come to know regarding the occurrence at Fajr Azan Vala and went to the house of complainant and found that certain articles were stolen away. In this situation he alongwith Fazli Moula went to the police station and lodged the report regarding the incident. He narrated that they thought that the case had been registered but after 2/3 days of occurrence they came to know that their case was not registered in the police station. After that, they approached to the higher authority, then the present case was registered and Shahenshah SHO was transferred.

PW-4 Manazir DFC is a formal witness regarding warrant of arrest under section 204 Cr.P.C. against the absconding accused and likewise he was entrusted with proclamation notice u/s 87 of Cr.P.C. against the accused persons.

PW-5 Muzumal Shah ASI, is also a formal witness who lodged the FIR which is Ex.PA.

PW-6 is Janzada Khan SHO who arrested Mst.Amina accused on 14.12.2009. He also arrested Zarshad accused on 15.12.2009. After their arrest both the accused were handed over to I.O. namely Azam Khan SI for investigation. After completion of investigation, this PW submitted complete challan against the accused on 4.2.2010. He also arrested Murad Ali accused on 20.3.2010 and handed him over to I.O. for investigation and on 24.3.2010 this PW has submitted the supplementary challan of said accused.

P.W-7 Muhammad Arif Constable is the marginal witness of recovery memos Ex.PW-7/1 to Ex.PW-7/7 vide which the I.O. recovered stolen articles as well as

crime weapons from the accused persons and took the same into possession.

P.W-8 Mian Mazhar Khan SHO who arrested the accused Inyat on 9.12.2009 and handed over the said accused to police station Par Hoti for investigation.

P.W-9 Muhammad Azam Khan Sub Inspector is the first Investigating Officer of this case, who narrated the facts regarding investigation of this case. He also narrated the facts regarding recovery of stolen articles from possession of the accused. After his transfer the case was entrusted to another Investigating Officer for conducting further investigation.

PW-10 Sardaraz Khan S.I. is another Investigating Officer of this case who completed the investigation of this case and handed over the case file to SHO for submission of challan.

PW-11 Fazal Mahboob, goldsmith is a hostile witness, who stated that Sajjad came to his shop, Rozi Market, situated at Sakhakot and gold ornaments weighing 3 and a half tola were in his possession. This PW had purchased it at the rate of Rs:27000/- per tola, for which he paid him Rs:94500/-. He further narrated that when the police came to his shop and asked him regarding the gold ornaments he handed over the said gold in melted position to the police.

Zubair DFC appeared as SW-1, who narrated the details regarding the warrants of arrest against the absconding accused.

5. The appellants in their statements under section 342 Cr.P.C, denied the allegations of the prosecution and pleaded innocence.

6. After hearing both the parties learned trial Court convicted and sentenced the appellants as mentioned in opening para of the judgment.

7. We have heard learned counsel for the parties at length who let us through entire record of the case. Evidence of the prosecution witnesses as well as statements of accused have been perused. The relevant portions of the impugned judgment have been scanned.

8. During the course of arguments Mr.Talat Mehmood Zaidi, Advocate learned counsel for the appellants Shahid and Fawad contended that FIR was lodged after 08 days from the occurrence. The delay in lodging FIR was not properly explained. The accused stated to be muffled but no structural description of accused has been given in the FIR. In such situation it is not possible to identify the accused; inspite of the fact that FIR was lodged with delaying of 08 days. Later on the appellants were involved in this case after due deliberation through supplementary statement of the complainant only to fulfill the lacuna

in the case; despite the fact that appellant was living in the neighborhood to the complainant and complainant had known them prior to this occurrence; no source of information in respect of accused has been explained by the complainant as faces of the accused were muffled, therefore, identification parade of accused were necessary, as such this case is of no evidence. He further argued that the identification of the stolen articles has not been held which was necessary under the law and the stolen articles have not been identified by any of the prosecution witness, all the recovered articles are planted as the same are easily available in market, description of currency notes recovered from the accused has not been given by the prosecution. He further contended that requirement of illustration (a) of article 129 of Qanoon-e-Shahadat has not properly been taken into consideration by the trial Court because alleged recovery has been affected after about 20/22 days. Statement of Fazl Mehboob under section 164 Cr.P.C. has no legal value because it has not been recorded accordance with law after fulfilling all the legal formalities which was necessary for this purpose, the Magistrate who recorded the statement was not produced as a witness by the prosecution before the trial Court. The pointation of place of occurrence has no legal value because the Investigating Officer had already prepared the site plan of place of occurrence prior to arrest of accused.

9. Learned counsel placed reliance on following case law in favour of his contentions.

- i. SCMR 1995 pg 1350 (Falik Sher Vs. The State.)
- ii. YLR 2008 pg 2669 (Muhammad Tahir Vs. The State)
- iii. YLR 2008 pg 1755 (Nasir Mehmood Vs. The State)

10. Mr.Qausain Faisal Mufti, Advocate learned counsel for the appellants namely Inyat, Zarshad and Nazir contended that there is no distinction mark of recovered stolen properties, and illustration (a) of Article 129 of Qanoon-e-Shahadat has not been taken into consideration properly. He further argued that record shows that signatures of PW-7 namely Muhammad Arif differ on the recovery memos, this fact goes against the prosecution.

11. Learned counsel placed reliance on the following case law in favour of his contentions.

- i. SCMR 1997 pg. 971 (Farhan Ali Vs. The State)
- ii. SCMR 1984 pg. 930 (Muhammad Iqbal Vs. The State)
- iii. SCMR 1995 pg. 1350 (Falak Sher Vs. The State)
- iv. NLR 1989 pg 341 (Muhammad Luqman Vs. The State)
- v. SCMR 1971 pg 955 (Bahadar Khan Vs. The State)

12. Mr.Muhammad Saleem Mardan, Advocate, learned counsel for the complainant, contended that the complainant was minor at the time of occurrence and he

is a labour (generator mechanic). While he was sleeping in his house alongwith his family members when gang of the desperate and hardened criminals armed with deadly weapons entered in to his house at mid night and committed the offence in a barbaric manner and robbed the house. In such situation the complainant straightway informed about the incident to his uncle and lodged the report properly before the police, but the police did not lodged his report regarding the occurrence and delayed the matter deliberately but after interference of the higher authority, this case was registered, resultantly the SHO who was giving favour to the accused was transferred due to procession of locality; this occurrence has been duly supported by the recoveries of the robbed cash amount, gold ornaments which were sold by Shahid and Sajad (absconder) to goldsmith who had melted the same and narrated this fact before the Magistrate in the shape of his statement under section 164 Cr.P.C. The delay in lodging of the FIR has been properly explained by the complainant, in fact the complainant proceeded to the police station to lodge the FIR but unfortunately his report was not lodged by the concerned SHO. Although there is slight difference between the signatures of PW-7 who was witness of the recovery memos but the defence should have verified the signature from signature expert, if they had any objection. Lastly, he prayed that prosecution has successfully proved its case beyond reasonable doubt. He also contended that there was no enmity between the parties to fabricate the false case against the appellants. Hence, the conviction and sentences passed by the learned Addl: Sessions Judge-III, Mardan may be maintained.

13. Learned counsel for the State on the other hand opposed the appeal and supported the judgment under challenge and arguments advanced by the Counsel for the complainant.

14. We have carefully analyzed the arguments of the learned counsel for the appellants as well as learned counsel for the complainant and learned counsel for the State in the light of evidence on record.

15. It transpires from the record that occurrence took place on 23.11.2009 and FIR No. 138 was registered at police station Par Hoti, Mardan on 1.12.2009. Delay in lodging the matter has not been explained fully and description of culprits has not been mentioned in the FIR. In such situation identification test of the accused persons become necessary in the case. Holding of such test is a check against false implication and it could be a good piece of evidence against the genuine culprits. Holding of identification parade cannot be dispensed with, simply because the persons accused of committing the robbery, has been subsequently found in possession of the robbed articles. So for as the recovery crime pistol is concerned from the possession of the appellants, it was doubtful as it was not made in the presence of any independent witness nor the specification as to the weapons allegedly used in the commission of offence was given in the FIR and supplementary statement. The complainant had not explained the specific role played by the accused during the incident as it was not reported as to what role was played by each one of the accused. Names of the appellants do not appear in the FIR. Complainant Fazli Moula

stated that he had not named the appellants in the FIR but later on when he was in search of the accused, he came to know from different source and through secret inquires, that the offence was committed by the present appellants and he had charged the accused through his supplementary statement. It is clear that many improvements has been made by the complainant at the time of his supplementary statement for involving of the appellants in the case and no reliance can be placed on such type of statements. Evidence in respect of the appellants, Inyat, Fawad, Zarshad and Nazir is also not established. This aspect of the case was not examined properly by the trial court. Admittedly, no specific role is attributed to any appellant and only presence of the appellants at the place of occurrence has been stated by the complainant. The allegation against the appellants that they were present at the place of occurrence seems to be incorrect. PW-2 stated that he, Fazli Moula and Iftikhar were sleeping in one room but after occurrence when the culprits left from their house, they did not make any hue and cry, which is very strange and creates reasonable doubt as the three male members were present on the spot, besides ladies and children. Despite the fact that the alleged culprits had been living in their neighborhood, but they had not identified them during the occurrence. During the occurrence they had not made any struggle to save their house from robbery as it is stated that one 30 bore pistol and one 12 bore single barrel gun was available in the house. It has been stated that hands of male members were tied and they were closed in one room. But it is strange that other members of the family did not untie their hands. There is complete silence as to how they got the door opened, if they did not raise any hue and cry, or if the door was not closed from outside, it seems strange that all of them remained quite all along. Under the circumstances, the statement of this PW is not natural. The occurrence took place at about mid night on 23.11.2009 and the FIR was lodged on 1.12.2009 after about 08 days, although the police station was not far from their house and the complainant Fazli Moula has not given any reasonable explanation of this ordinate delay in his statement. He stated that after the occurrence he was in search of the accused, this is no explanation at all.

16. In this view of the matter , we are of the considered view that offence under section 20 of Haraba Offence Against Property (Enforcement of Hudood) Ordinance read with section 395-PPC and section 458/149 PPC is not proved from the evidence available on record, as there are many contradictions and doubts to the extent of appellants 1. Inayat 2. Fawad both sons of Nausher 3. Zarshad s/o Sher Afzal 4. Nazir s/o Uzair, who were convicted and sentenced by Addl: Sessions Judge-III, Mardan vide his judgment dated 15.04.2010 under section 20 of Haraba Offence Against Property (Enforcement of Hudood) Ordinance read with section 395 PPC and sentenced to the imprisonment for life each with a fine of Rs:50,000/- each in default of payment of fine further undergo 02 years S.I. each and under section 458/149 PPC 05 years R.I. each with fine of Rs:10,000/- each in default of payment of fine further undergo 06 months S.I. each. They were further convicted under section 411 PPC and sentenced to one year R.I each with a fine of Rs.5000/- in default of payment of fine further undergo 03 months S.I. each with benefit of Section 382-B Cr.P.C. They are, therefore, acquitted by giving the benefit of doubt to the charge to the extent leveled against them. They shall be released forthwith if not required in any other case.

17. While appeal to the extent of appellant Shahid s/o Iqbal, it is dismissed, as sufficient evidence linking the appellant/accused with the offence is available on the record. Fazli Mehboob PW-11 appeared before the Judicial Magistrate, Mardan on 23.12.2009 and got recorded his statement under section 164 Cr.P.C. after fulfilling all the legal formalities. He categorically stated in his statement that he was running the business of jewelry where 15 and 16 days before recording the statement Shahid and Sajjad came to his shop, Rozi Market, Sakhakot. They gave him gold ornaments i.e. one nakless, one pair of ear rings, three finger rings weighing 3 and half tola for sale, which he purchased from them at the rate of Rs.27000/- per tola and paid them the total amount of Rs: 94500/- in cash. The said golden ornaments had been melted and converted into metal, which he had handed over to the Investigating Officer, who took it into the possession. He further stated that he had no knowledge that the said gold ornaments were the stolen property. However, during his deposition before the learned trial Court, he named only Sajjad, whereas he did not name Shahid, whom he had fully involved in association with Sajjad in his statement before the Judicial Magistrate under Section 164 Cr.P.C., which was recorded after fulfilling all legal requirements, out of his free will, and duly signed by him before the Magistrate. He maintained his statement about Sajjad, who is absconder, as at least for the time being, he was not facing him. Therefore, Fazal Mehboob PW-11 was declared hostile. It is, therefore, important to analyze conduct of Fazal Mehboob PW-11, in this respect. The first and foremost source of information for the complainant was Fazal Mehboob PW.11 from whom the complainant came to know regarding sale and purchase of his robbed gold and after having information the complainant straight away informed the Police about the accused, and in such a manner the complainant had not concealed any thing from the police and this action of the complainant was after his due satisfaction that he named the accused for occurrence. This assertion of the complainant was duly corroborated by the robbed gold ornaments which were traced to have been sold by accused Shahid with his companion Sajjad to the goldsmith at Malakand agency and the goldsmith had melted the same. The goldsmith categorically stated in his statement before Magistrate under section 164 Cr.P.C. that he had purchased the gold ornaments of the descriptions (as given by the complainant also) weighing about 3 ½ tolas from Shahdid and Sajjad at the rate of Rs.27,000/- per tola and also paid total amount of Rs.94,500/- in cash to the accused. The said goldsmith further stated that he melted the gold ornaments and later on when the police came and inquired from him about the above-said robbed ornaments, he handed over the said gold in melted form to the police. This fact was duly corroborated by Muhammad Arif PW-7, witness of recovery memo Ex.PW-7/6 whereby the police took into possession 3 ½ tolas melted gold. Furthermore the police also recovered Rs.5,000/- from Shahid accused vide recovery memo Ex.PW.7/5.

18. House trespass, dacoity or Harraba, is admittedly vocation of hardened criminals, as also argued by the learned counsel for the complainant. Historically and in criminology these crimes are treated as heinous by all important religious and secular legal systems. In such offences, offenders are always, as in this case, fully armed and could go to any extent,

including murder. It is not easy to stand witness against them. Retraction by witnesses when they come face to face with such criminals during identification or trial before court, as in this case, is not very rare. Fazal Mehboob PW-11 refrained from naming Shahid but maintained his earlier statement against Sajjad only without giving plausible reason about such a partial withdrawal. He did not challenge any lapse in recording his earlier statement, non-compliance of legal procedure, or any pressure or suggestion when name of Shahid was mentioned by him. He did not challenge his signature. Both of these names of accused were mentioned by him in the same statement under one signature duly attested by the Magistrate, as a full document. Conduct of the Magistrate was also not challenged. No allegation of enmity of Magistrate or anyone else connected with the process of such recording, against Shahid, made. Furthermore, if the story was false, he would not have returned/given the gold without any contest. Items and weight of gold ornaments were not disputed, if any of these items was different from the items reported in the FIR. Shahid was nominated, charged and linked with the stolen property, and also named by independent witness Fazal Mahboob with whom no enmity was claimed. Therefore, conviction and sentences of appellant Shahid S/O Iqbal, as awarded by Additional Sessions Judge-III, Mardan, under Section 20 Harraba of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with section 395 PPC, for life imprisonment with fine of Rs.50,000/- or in default of payment of fine to further undergo two years S.I, under section 458/149 PPC for five years R.I. with fine of Rs.10,000/- or in default thereof to further undergo six months S.I. and under section 411 PPC for one year R.I. with fine of Rs.5,000/- or in default thereof to further undergo three months S.I. are maintained. Benefit under section 382(B) Cr.P.C. as allowed by the learned trial Court is also maintained. All the sentences shall run concurrently. The direction of learned trial Court for issuance of perpetual warrants of arrest against proclaimed offenders Shah Faisal, Sajjad alias Sajjad, Zafar Iqbal, Umar and Ajab Gul is upheld.

19. These are reasons of our short order dated 09-09-2011.

Fit for reporting.

Islamabad, the
09 September, 2011
Zain/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE SHAHZADO SHAIKH

JAIL CRIMINAL APPEAL NO.93/I OF 2010

Abdul Qadeem son of Dost Muhammad Caste Qutabzai, r/o Ghora Hospital, Chaman.	...	Appellant
	Versus	
The State	...	Respondent
Counsel for the appellant	...	Mrs.Parveen Masood, Advocate
Counsel for the State	...	Mr. Muhammad Sharif Janjua, Advocate
FIR No., date & Police Station	...	No.254 dated 08.12.2009 P.S. Saddar Chaman District Killa Abdullah
Date of Trial Court	...	13.10.2010
Date of Institution	...	30.10.2010
Date of Hearing	...	01.04.2011
Date of Decision	...	01.04.2011

JUDGMENT:

SHAHZADO SHAIKH, J :- The appellant Abdul Qadeem has filed this jail criminal appeal against the judgment dated 13-10-2010 delivered by the learned Additional Sessions Judge, Killa Abdullah at Chaman, whereby appellant has been convicted under section 392 of the Pakistan Penal Code and sentenced to seven years Rigorous Imprisonment with fine of Rs.50,000/- (fifty thousand only) in default whereof to further undergo three months Rigorous Imprisonment. The benefit of section 382 (b) of the Code of Criminal Procedure has been extended to the appellant.

2. The brief facts of the case arising out of FIR No. 254/09 dated 08-12-2009 at Police Station Saddar Chaman District Killa Abdullah, are that complainant Wazir Muhammad had purchased a Honda 70cc Motorcycle, Model 2009 Chassis MAF-358951, Engine No. 306122 a few days prior to the incident. He had got only a receipt, whereas he had not yet obtained its documents from the showroom. On 08-12-2009 at 5-30 pm when he reached near his Kalli two persons armed with pistols intercepted him, snatched his motorcycle, and proceeded towards city. Meanwhile his cousin Haji Asmatullah and Police mobile reached there. He narrated the incident to them. Thereafter the complainant alongwith Haji Asmatullah and the Police chased them. Whereupon two motorcyclists made firing on the Police party who in response also returned fire. After exchange of fire one dacoit fell down from the motorcycle and he was apprehended alongwith a pistol. He disclosed his name Abdul Qadeem son of Dost Muhammad. He further disclosed name of his accomplice as Babar son of unknown. Hence this case.

3. Investigation ensued as a consequence of registration of crime report. After completing investigation, police submitted a report before the Court under section 173 of the Code of Criminal Procedure against the accused, requiring him to face trial.

4. On 23-02-2010 the learned trial Court framed charge against accused Abdul Qadeem under section 17 (3) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979 to which he pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case examined four Prosecution witnesses and two Court witnesses. The gist of prosecution evidence is as follows:-

- (i) Complainant Wazir Muhammad appeared as P.W-1. He deposed same facts as narrated in the crime report.
- (ii) Haji Asmatullah, appeared as P.W-2. It is mentioned in the F.I.R that this witness was present at the spot at the time occurrence and in his presence accused robbed motorcycle and weapon of offence was recovered from the possession of the appellant.

- (iii) Sub-Inspector Shan Muhammad appeared as PW-3. On 08-12-2009 when he along with other Police officials Maqbool, ASI, Muhammad Rafique, Sub Inspector/SHO and officials driver Ghulam Mustafa was on patrolling, met complainant Wazir Muhammad who told him that two robbers had snatched his motorcycle. Thereafter Police party, complainant and his cousin started chasing the accused, one of whom was apprehended after exchange of fire while the other fled away. The apprehended accused who was armed with T.T. pistol disclosed his name as Abdul Qadeem, accused and disclosed the name of other accused as Babar. Police party recovered motorcycle CD-70 model 2008 and motorcycle Yamaha 100cc which belonged to the accused. The pistol recovered from accused Abdul Qadeem was unlicensed, which was taken into possession through separate Fard and sealed in parcel No.1. They also prepared separate memos of arrest of accused and recovery of motorcycle. Thereafter Sub-Inspector Maqsood prepared sketch and recovered three empties of cartridge of .30 bore, which were taken into possession through separate Fard and sealed in parcel No.2. He identified his signatures on the memo of recovery of motorcycle Honda CD-70 Ex-P.3-A, memo of recovery of pistol of .30 bore Ex-P.3/B, memo of recovery 3 empties of cartridges Ex-P.3/C, memo of recovery of motorcycle Yamaha 100cc P.3/D and its Article Honda CD-70 motorcycle Articles P-1.
- (iv) Inspector Muhammad Yaqoob was PW-4. On 13-12-2009, the investigation of this case was assigned to him. He arrested the accused Abdul Qadeem and prepared incomplete Challan and handed over to SHO on 23-12-2009. He produced the copies of FIR Ex-P-4/A, sketch Ex-P.4/B and sketch place of recovery Ex-P-4/C and challan Ex-P.4/D.
- (v) ASI Syed Anwar appeared as CW-1. He was assigned non-bailable warrants against accused Babar which he returned unexecuted and prepared report Ex-C-1/A.
- (vi) ASI Shehzad Hussain appeared as CW-2. He was assigned bailable warrant against PW Haji Asmatullah, PW-2 Ex-CW-2/A which he returned unexecuted with the report that said PW is not traceable along with his report Ex-CW-2/B.

6. After closing prosecution evidence, statement of accused was recorded under section 342 of the Code of Criminal Procedure. The accused neither made his statement under section 340 (2) of the Code of Criminal Procedure nor produced any witness in his defence.

7. After hearing both the parties the learned trial Court convicted and sentenced the appellants as mentioned in opening para of this judgment.

8. Learned counsel for the appellant contended that:-
- i. There is no direct evidence against the appellant other than the complainant.
 - ii. The appellant is in jail since his arrest and had already undergone one year three months and 24 days.
 - iii. In last resort, the sentence of appellant may be reduced, taking a lenient view as the appellant is a young man and only bread winner of his family, and he is a first offender.
9. The learned counsel for the State on the other hand supported the impugned judgment with the following contentions:-
- i. That the appellant was arrested on the spot, red handed.
 - ii. Recovery of the snatched motorcycle has been effected from the appellant at the spot.
 - iii. Although there is no witness other than complainant, so far occurrence is concerned, but there is a witness besides Police Officials i.e. Asmatullah who witnessed the recovery.
10. On query the learned counsel for the State clarified that in the FIR, the complainant had reported that he had purchased a Honda CD-70 cc motor cycle from the show room at Chaman, given its chassis No.MAF-358951, whereas the photo-stat copy of Registration of the said motor cycle dated 27.07.2009 placed on original file bears name of some other owner of the said motor cycle, as Ubaidullah son of Abdul Samad, which creates doubts about the very basis of his alleged complaint/FIR about robbery of his motorcycle. There is no mention in the judgment and on the record about claim of the complainant for the return of the said motor cycle as the recovered case property, which no real owner would leave it remain unclaimed by him. The learned counsel for the State, on query, clarified that it is not clear from the record whether the snatched motorcycle was new or old having been purchased from the show room. If it was an old/ used motorcycle, then it should have been registered and must have some registration number also. But there is nothing of this sort on record. This become dubious further, as the photocopy of the registration in the name of some other person, i.e. Ubaidullah son of Samad, also does not bear any registration number.
11. I have heard the learned counsel for the appellant and learned counsel for the State at length. Entire evidence available on record has been carefully and minutely perused and considered including the impugned judgment in the light of contentions raised by the learned counsel for the parties.

12. There are some material contradictions in the statement of PW-1 Wazir Muhammad, complainant and PW-2 Asmatullah. These statements do not corroborate each other and also the contents of FIR. The recovery of the snatched motor cycle from the possession of appellant is also not proved, in the light of ocular as well as circumstantial evidence. Recovery of weapon of offence i.e. 0.30 bore pistol from the possession of appellant is also not proved successfully. The statement of Investigation Officer does not strengthen the case of prosecution. Alleged recovered empties were not sent to FSL for Chemical analysis and matching the same with the recovered 0.30 bore pistol, nor empties of alleged return fire from Police party were shown on the record. In his statement under section 342 Cr.P.C. the accused has taken plea that there was dispute regarding not paying taxi fare by the complainant to him. It is clear from the statement of the prosecution witness that at the time of apprehending the appellant, he (appellant) had fallen down, from the motorcycle. Since the appellant had fallen from the moving motorcycle, he was bound to be injured, but there is no evidence, or even mention about any injury, medical examination, treatment or medical certificate to this effect, available on record to verify this fact. Mostly prosecution witnesses are officials. In his deposition the complainant stated that his uncle Asmatullah reached at the spot in his own vehicle whereas PW-2 Asmatullah stated that he was following him from bazaar to his village with his children in the vehicle, when he reached Kacha Road. The complainant Wazir Muhammad who was his co-villager was going in front of him and this occurrence had taken place before him. There is inconsistency and contradiction between the statements of PW-1 and 2, as PW-1 says that PW-2 is his uncle whereas PW-2 says that PW-1, the complainant, is his co-villager. Furthermore, according to ASI Shehzad Hussain who appeared as CW-2, he had to be assigned bailable warrant against PW Haji Asmatullah, which he returned unexecuted alongwith his report Ex-CW-2/B, which shows that he had to be forced to be brought as witness. This contradiction and the way the evidence has been laid create doubts in the prosecution story. Although PW-2, Asmatullah stated in his evidence that the incident took place in front of him, but there is no natural reaction on his part on the spot, if his nephew was being deprived of his motorcycle forcibly. All this operation must have taken a few minutes, and then the PW-1, says in his statement that he narrated the incident to PW-2, Asmatullah, which contradicts the very claim of PW-2, Asmatullah, that the incident took place in front of him. Anyway, if the incident was narrated by PW-1 to PW-2, it must have taken a few moments, and then as the Police party came, who had not witnessed the incident, it must have taken additional couple of minutes to explain to them the incident. During all this time, the dacoits, as stated by the complainant had already decamped/fled from the place. Then the complainant allegedly got into the vehicle of PW-2 and the Police party allegedly started the chase. This story does not inspire any confidence as PW-2, Asmatullah, was carrying his children in that vehicle. It is quite unnatural that the person who did not dare intervene when he could have, if the incident was taking place before him, involves himself in hot chase in face of alleged firing both by the dacoits and the Police, while his children were with him in his vehicle. It is also very strange that Police mobile came at the spot at the same time, without any delay and exchange of fire took place while the two dacoits, each on one motorcycle,

separately, were speeding before them. Although they have shown apprehension of one dacoit, allegedly red handed, as stated above, in front of PW-1 and PW-2, and recovered the snatched motorcycle and the empties, but the recovery memo is signed only by the Police officials. Therefore, ocular testimony is neither creditable nor trust worthy. Evidence of recovery of snatched motorcycle and weapon of offence i.e .30 bore pistol, thus suffer from padding and become meaningless. There is no independent witness in this case. Recovery of crime weapon from the possession of accused was inconsequential in the absence of matching report of the fir-arm expert, with the crime empties. The testimony of PW-1 i.e. complainant in the circumstance of the case requires exceptionally strong corroboration coming from unimpeachable source and supported by strong circumstantial evidence, but such corroboration is not available in this case. Therefore, in absence of such evidence the conviction is not sustainable.

13. So far as recovery of weapon of offence i.e. .30 Exh.P3/B bore pistol is concerned it is of no consequence, as it was not matched with the recovered empties. The alleged recovery of snatched motorcycle at the instance of police was also of no consequence as it is not clear from the registration paper that the said recovered motorcycle belongs to the complainant because name of some other person is mentioned in the papers, and even the alleged receipt of purchase by the complainant is not on record. For these reasons the evidence of the recovery neither connects the appellant with the crime nor advances the case of the prosecution as the same is not reliable. The statements of PW-1 and PW-2 who deposed about the snatching of motorcycle have been found to be highly improbable and unreliable.

14. For all the reasons noted above grave doubts have arisen in my mind about the guilt of the appellant. The appeal is therefore, allowed and I have already set aside the impugned judgment dated 13-10-2010 delivered by the learned Additional Sessions Judge, Killa Abdullah at Chaman in Hudood Case No.01/2010 and have acquitted the appellant Abdul Qadeem son of Dost Muhammad, for these reasons, vide my short order dated 01.04.2011 and have allowed the appeal while giving him benefit of doubt.

Islamabad, the
1st April, 2011
Abdul Majeed

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH

JAIL CRIMINAL APPEAL NO.88/I OF 2010

Amjad Hussain son of Qaim Khan Caste Karlal r/o Mohallah Rafiqueabad, Rawalpindi	...	Appellant
	Versus	
The State	...	Respondent
Counsel for the appellant	...	Mr. Aziz-ur-Rehman, Advocate
Counsel for the State	...	Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General
FIR No., date & Police Station	...	No.84 dated 22.01.2009 P.S. Sadiqabad, Rawalpindi
Date of Trial Court	...	24.09.2010
Date of Institution	...	12.10.2010
Date of Hearing	...	11.03.2011
Date of Decision	...	11.03.2011

JUDGMENT

SHAHZADO SHAIKH, J:- The appellant Amjad Hussain has filed this Jail Criminal Appeal against the judgment dated 24-09-2010 whereby he has been convicted under section 377 of the Pakistan Penal Code and sentenced to ten years Rigorous Imprisonment with fine of Rs. 50,000/-. The benefit of section 382-B of the Code of Criminal Procedure has also been extended to the appellant.

2. The brief facts of the case arising out of FIR No.84, dated 22.01.2009 lodged at Police Station Sadiqabad, Rawalpindi by complainant Muhammad Riaz, are that on 22.01.2009 at 3.00 p.m when the complainant reached home, his wife Mst. Shakila Riaz told him that his son Maaz bin Riaz who had gone to get kite and thread at 1.30 p.m. had not returned home by then. Thereafter complainant alongwith his brother Muhammad Ilyas started searching his son Maaz. When they reached near Federal Government (Boys) School they heard cries and weeping. Thereafter complainant saw his son coming weepingly and his shalwar was also put off while a young boy who was later identified as Amjad Hussain ran away seeing them coming. On enquiry, complainant's son told that Amjad Hussain had committed sodomy with him in a room on the pretext of giving him kite and string. Hence this case.

3. Investigation ensued as a consequence of lodging FIR. Sub-Inspector Abdul Latif, PW-7, investigated this case. He prepared injury statement Ex-PC of victim Maaz bin Riaz and sent him to Benazir Bhutto Hospital Rawalpindi for his medical examination through constable Yasir Imtiaz who after getting the victim medically examined produced carbon copy of MLR No.126/2009 and sealed envelope which he took into possession through recovery memo Ex-PA attested by constables Yasir Imtiaz and Muhammad Irfan. He recorded statements of PWs under section 161 of the Code of Criminal Procedure. He visited place of occurrence on the pointation of victim Maaz bin Riaz and Muhammad Riaz, complainant and prepared site plan Ex-PE. He made efforts to arrest accused but he was not traceable to him. On 23.01.2009, the accused Amjad Hussain was arrested in this case. The accused was medically examined through Muhammad Boota 3679/C from Benazir Bhutto Hospital Rawalpindi through application EX.PF who later produced MLR No.129/2009 before the Investigation Officer. The statement of Moharrar Malkhana Maqsood Ahmed was also recorded under section 161 of the Code of Criminal Procedure by the Investigating Officer. On 24-01-2009 the accused was sent to judicial lock up by the orders of area Magistrate.

4. After completing investigation police submitted report under section 173 of the Code of Criminal Procedure requiring the accused to face trial.

5. The learned trial Court framed the charge against the accused on 24.08.2009 under sections 367-A and 377 of the Pakistan Penal Code to which he pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case produced nine witnesses. The gist of prosecution evidence is as follows:-

- (i) HC-4898 Maqsood Akhtar, appeared as PW-1, who received one sealed envelope from Sub-Inspector Abdul Latif on 22-01-2009 and handed over the same to C/6203 Muhammad Latif on 23-01-2009 for onward transmission to the office of Chemical Examiner, Rawalpindi.
- (ii) C-6203 Muhammad Latif, appeared as PW-2, who received one sealed parcel envelope from HC-4898 Maqsood Akhtar and deposited the same in the office of Chemical Examiner, Rawalpindi on 23.01.2009.
- (iii) C-7884 Yasir Imtiaz, appeared as PW-3. On 22-01-2009, he escorted victim Maaz bin Riaz to Benazir Bhutto Hospital, Rawalpindi for medical examination. After medical examination of victim he received carbon copy of MLR No.126/2009 and one sealed envelope containing swabs which he produced before Investigation Officer who received through recovery memo Ex-PA, attested by him and HC-435 Muhammad Irfan.
- (iv) Dr. Muhammad Ijaz appeared as PW-4. He conducted medical examination of victim Maaz bin Riaz on 22-01-2009. He opined that sodomy has been committed upon him. In this regard this witness had issued MLR No.126/2009 Exh.PB.
- (v) Complainant Muhammad Riaz appeared as PW-5. He deposed same facts as he narrated in his crime report.
- (vi) Victim Maaz bin Riaz appeared as PW-6. Before his deposition some court questions were put to him for ensuring his capability of making statement on oath and after judging his capability to make his statement on oath, thereafter, his statement had been recorded. He deposed that when he reached the shop of accused Amjad Hussain to purchase kite and thread on 22-01-2009, the accused took him inside the shop and committed sodomy with him after bolting door of the shop. Thereafter he came out of shop where his father and uncle met him.
- (vii) Sub-Inspector Abdul Latif appeared as PW-7. He was Investigation Officer and his role has already been mentioned in para No.3 of this judgment.
- (viii) Dr. Malik Mazhar Hussain appeared as PW-8. He conducted medical examination of accused Amjad Hussain on 23-01-2009 and found him potent.

- (ix) Sub-Inspector Muhammad Mumtaz appeared as PW-9. He recorded formal FIR No.84/2009, Ex-PD/1.

7. After closing prosecution evidence, statement of accused was recorded under section 342 of the Code of Criminal Procedure. He did not produce any witness in his defence but made his statement on oath under section 340 (2) of the Code of Criminal Procedure which is as follows:-

“I have not committed the act of sodomy with Maaz bin Riaz, victim of present case, I have been implicated falsely in this case.”

In his cross-examination he stated as follows :-

“It is in correct to suggest that I was convicted in a sodomy case at Abbottabad. Volunteered that I have acquitted in a sodomy case at Abbottabad.”

8. After hearing both the parties the learned trial Court convicted and sentenced the appellant as mentioned in opening para of this judgment.

9. Learned counsel for the appellant stated that the accused is a young man of about 22 years. He further contended that the appellant is the only bread winner of his family and had come from Abbottabad to Rawalpindi for earning of his livelihood. He contended that the Investigation Officer took into possession dirty piece of cloth from the place of occurrence and prepared separate memo but the said recovery memo is not available on the file of the case, even the clothes of the victim were not produced by the prosecution and the trousers of the victim were not stained with semen. The medical officer has categorically stated that the rectal sphincter was not stained with blood and he did not observe any scratch on the private part or body of the victim, which is fatal for prosecution. There is no direct evidence except the statement of minor victim to prove the case against the appellant beyond shadow of doubt in this case. The I.O. did not take into possession thread and kite from the place of occurrence which was necessary to prove the allegation against the appellant.

10. Learned counsel for the appellant stated that the accused is a young man of about 22 years, and the only bread earner, languishing in jail since arrest. In the end, his case may be considered on basis of mitigating circumstances also.

11. Learned counsel for the State on the other hand opposed the appeal and supported the judgment under challenge.

12. With the help of the learned counsel for the parties, I have gone through the entire evidence. It is very clear from prosecution evidence that the appellant took the minor victim,

Maaz bin Riaz, into the room, at the place of occurrence and committed unnatural offence with the victim who was only 12 years of age. Maaz bin Riaz the victim categorically supported the prosecution case as contained in the promptly lodged FIR and corroborated each and every material point of the case. The victim also corroborated medical evidence and the motive part of the prosecution story narrated by the complainant Muhammad Riaz PW-5. Solitary statement of the victim of the sodomy, which is confidence inspiring and corroborated by medical evidence would be sufficient to prove the case and for maintaining the conviction under section 377 of the Pakistan Penal Code. There is no apparent reason and ulterior motive to involve appellant Amjad Hussain, in this case i.e. offence of sodomy with minor boy of 12 years, when there was no enmity between the parties so as to make such allegations which also stigmatize the minor victim for all his life. FIR of the case was lodged promptly. Although recovery memo regarding the dirty piece of cloth which was stated to have been taken into possession from the place of occurrence, is not available in the judicial file and clothes of the victim were not produced by the complainant, but it does not mean that his whole story is to be discarded. The established principal of law is that chaff is to be shifted from the grain. Therefore, it does not create any impact on the prosecution story specially when victim's allegation is completely corroborated by the medical evidence. It is a fault on the part of police, as on many occasions, even with motive. It is not substantial at all to discard the whole prosecution. There is nothing on the record which may be considered as a source of mitigating factor in favour of appellant for lesser penalty, particularly in view of minority of the victim, and the accused's statement about his acquittal in similar charge against him in the past. The detention of the appellant as an under trial prisoner during the trial and as convict in the jail pending disposal of the appeal before this Court, would not be extenuating and mitigating circumstance to be considered for the purpose of reduction in quantum of sentence under section 377 of the Pakistan Penal Code. Reduction in sentence of imprisonment is not such a discretion, which should be exercised as a matter of routine, rather such discretion is to be exercised in a case in which circumstances so demanded in the interest of safe administration of justice. In fact, instead of sentence for life, under section 377, Pakistan Penal Code, the trial Court has already given lesser sentence of 10 years.

13. I have considered the contention raised by the learned counsel for the appellant and do not find any force in the argument for reduction in the sentence of the appellant.

14. On careful analysis of the entire evidence available in the case I have come to the conclusion that the case against the appellant stands proved beyond any shadow of reasonable doubt and he has been rightly convicted and sentenced under section 377 of the Pakistan Penal Code. The conviction and sentence of appellant Amjad Hussain are, therefore, maintained and the appeal having no merit is accordingly dismissed.

15. The learned trial Court while awarding the sentence of fine of Rs.50,000/- did not mention that in default of payment of fine how much further imprisonment the appellant

had to undergo. It is, therefore, ordered that in default of payment of fine of Rs. 50,000/-, the appellant Amjad Hussain will have to undergo further 6 months Simple Imprisonment. These are reasons of my short order dated 11-03-2011. The benefit of section 382-B Cr.P.C. shall remain intact.

Fit for reporting.

Islamabad, the
11th March 2011
Abdul Majeed/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE DR.FIDA MUHAMMAD KHAN

CRIMINAL REVISION NO.01/L OF 2011

1. Imdad Hussain son of Nazar Hussain,
R/o Mauza Ghankar, Post Office Kahna Nau,
Tehsil Lahore Cantt. District Lahore.
2. Rana Iftikhar Hussain son of Faqir Hussain,
R/o Mauza Malluki, Post Office Raja Jhang,
Police Station Thhay Shaikhan, District Kasur. Petitioners

	Versus	
The State	Respondent
Counsel for petitioners	Mr. Khurram Shahzad Malik, Advocate
Counsel for State	Mr. Muhammad Akram Tahir, District Deputy Prosecutor General
FIR, Date and Police Station	772/05, 30.06.2005 Lower Mall, Lahore
Date of Order of trial court	24.02.2011
Date of Institution	19.03.2011
Date of hearing	07.10.2011
Date of decision	03.11.2011

ORDER

DR. FIDA MUHAMMAD KHAN, Judge.- This revision petition jointly filed by Imdad Hussain and Rana Iftikhar Hussain, under Article 203 DD of the Constitution of Islamic Republic of Pakistan, 1973 assails the order dated 24.02.2011 passed by learned Additional Sessions Judge, Lahore whereby an amount of Rs. 100,000/- had been deposited by petitioner No.2 Rana Iftikhar Hussain who is maternal nephew(bhanja) of petitioner No.1 Imdad Hussain.

2. Facts of the case, briefly stated are that petitioner No.1 had stood surety to accused Jehangir who while facing trial under sections 10/11/13/14 of Offence of Zina (Enforcement of Hudood) VII of 1979, slipped away from the Court on 23.09.2010 during the pronouncement of Judgment by the learned Additional Sessions Judge, Lahore. Thereafter the SHO was directed to arrest the accused but inspite of repeated adjournments made by the Court he failed to arrest him and then ultimately non-bailable warrant of the accused was issued repeatedly and ultimately, the salary of CCPO was attached vide order dated 17.01.2011 and thereafter the accused Jehangir was declared as proclaimed offender and a notice to the surety was also issued vide order dated 04.02.2011 and the case was fixed for 17.02.2011. Since a notice was issued to the SHO for 24.02.2011, the local police apprehended the maternal nephew of the surety i.e. Rana Iftikhar Hussain and other family members to pressurize them as Imdad Hussain surety was not in his house. He allegedly forced his nephew, petitioner No.2, to pay the amount of Rs. 100,000/- in the Court otherwise they would not be released. The petitioner No.2, as alleged, had no other option except to deposit the amount of Rs. 100,000/-. Thereafter the SHO presented petitioner No.2 and maneuvered his statement. On 22.02.2011, the petitioner No.1 submitted an application for the withdrawal of non-bailable warrant issued against him. The application was fixed for hearing on 24.02.2011 alongwith report of Ahlmad but the learned trial court did not make any order on the said application and instead directed the petitioner No.2 that the surety amount must be deposited in the Court and accordingly he complied with the order.

3. Vide this revision petition the petitioners have prayed to set aside the impugned order passed on 24.02.2011 and to return the surety bond in favour of petitioner No.2 and to exonerate petitioner No.1 from the charges.

4. I have heard learned counsel for the parties and have perused the record with their assistance. Learned counsel for the petitioners submitted that:-

- * the petitioner No.2 was not bound at all to deposit the amount of Rs.1,00,000/- which has been paid by him only to save his skin and his other family members, who were detained by the SHO concerned illegally and unlawfully and had forced them to deposit the same, therefore, the said amount was deposited under threat;

- * while producing petitioner No.2 in the court, both the petitioners agitated the matter regarding the deposit of amount, whereas, an application for the withdrawal of non-bailable warrant of arrest of petitioner No.1 was also filed on 22.2.2011 two days before said date but the learned Additional Sessions Judge did not pass any order on the same and instead directed petitioner No.2 without any lawful authority and legal justification to deposit the amount. He contended that by not proceeding further on the application of petitioner No.1, an illegality had been committed and it amounts to condemning both the petitioners unheard and the impugned Order is, therefore, void and unwarranted by law and the same may kindly be set aside.
- * the petitioner No.1 while submitting application, also provided the settled principle of law that if an accused slips away from the court premises, the surety is not bound to pay the surety amount. He further submitted that the amount deposited by the maternal nephew of petitioner No.1 was not deposited on the instruction of petitioner No.1 but he was forced by the police to deposit the same and this highhandedness of the police was completely illegal;
- * while passing the impugned Order the learned Additional Sessions Judge, Lahore did not apply his judicious mind;
- * the impugned Order has been passed in very hasty manner; and
- * that the petitioners have been condemned unheard.

Learned counsel has relied upon 1982 P.Cr.L.J. 623-Lahore, Shafiq Ahmed and others Vs. The State, PLD 1996 Lahore 600, Shatab Khan and another Vs. The State, PLD 1996 Lahore 602, Lahore Stock Exchange Ltd. Vs. Asmat Ullah Sheikh, 1999 P.Cr.L.J. 2102 Lahore, Farman Ali Vs. The State and 1997 P.Cr.L.J. 554 FSC, Ghulam Qadir Siyal Vs. The State

The learned District Deputy Prosecutor General for the State supported the impugned order.

5. I have considered the arguments of the learned counsel for the petitioners and feel persuaded to agree with him. According to law, the surety bond is made by the conditions of the bond which, inter-alia, includes the condition that the surety shall produce the accused on every date of hearing whenever the case is fixed and the notice is duly received. In the instant case, as is established on record, the petitioner No.1 faithfully discharged his obligation by producing the accused Jehangir on 23.09.2010 when the learned Additional

Sessions Judge was announcing the judgment. It transpires from the last para of the said judgment, that at the time of announcement of judgment, the accused slipped away from the Court. It means that so far as the duty of the surety is concerned, he had fulfilled his obligation. The lapse if any, was committed by the representatives of the law-enforcing agencies who were present in the Court. It was their responsibility to show vigilance and keep the accused under close watch. The surety was definitely liable to produce the accused Jehangir but once he produced him in the Court, his obligation for that particular day was fulfilled and he was discharged of his duty. Moreover a glaring discrepancy which apparently floats on the surface is that actually Imdad Hussain petitioner (No.1) had stood surety for the accused Jehangir who was facing trial and who had then slipped away at the time of announcement of Judgment but it is strange that instead of Imdad Hussain, petitioner No.1, Rana Iftikhar Hussain, petitioner No.2, had to deposit the surety amount of Rs. 100,000/- in the NIB Civil Secretariat Branch, Lahore. This fact is very clear from the impugned order, passed on 24.02.2011, which reads as under:-

“Rana Iftikhar Hussain maternal nephew/Bhanja of Imdad Hussain son of Nazar Hussain caste Rajput R/o Mauza Kanakkar P/S Kahna. Tehsil Cantt. District Lahore has deposited surety amount of Rs.1,00,000/- in the NIB, Civil Secretariat Branch, Lahore in case of Jhangir accused of case FIR No.772/2005 under section 10/11/13/14/7/79 Offence of Zina and has produced the receipt of the same which is placed on the file. The order of issuance of NBW of arrest is withdrawn. He is set at liberty. The instant application be attached with the main case.”

The statement of petitioner No.2 Rana Iftikhar Hussain recorded on the same day clearly appears to have been maneuvered under duress by the CCPO concerned whose salary had been attached vide order dated 17.01.2011. In this view of the matter the impugned order dated 24.02.2011 is erroneous in the eyes of law.

6. Consequently for the reasons stated above the impugned order which has entailed the forfeiture of the bond and direction to petitioner No.2, instead of petitioner No.1, to pay the full amount of Rs. 100,000/- cannot be sustained.

7. So far as the petitioner No.1 Imdad Hussain is concerned he has obviously fulfilled his duty and the accused Jehangir who had slipped away from the Court on the date when the judgment was announced, is still at large and fugitive from law and has been declared a proclaimed offender. It is not humanly possible now for petitioner No.1 to ensure his production before the Court. Further emphasizing in this respect is the fact that even the State with all its powers and resources at its command has failed to apprehend him till date. Since petitioner No.1 Imdad Hussain has already fulfilled his obligation to produce him on the said date, therefore forfeiture of the bond submitted by him under such circumstances shall be oppressive, hence un-just. Therefore the present Criminal Revision is allowed and

the impugned order dated 24.02.2011 is hereby set aside and resultantly petitioner No.1 stands discharged of his bail bonds.

8. Resultantly the amount of Rs. 100,000/- deposited by petitioner No.2 on behalf of petitioner No.1 may be released to him.

9. The petition is allowed in above terms.

Announced in open Court
on 03.11.2011 at Islamabad
Fit for reporting
Umar Draz/

IN THE FEDERAL SHARIAT COURT
(Revisional Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO.111/L OF 2010

Muhammad Umar son of Falak Sher,
R/o Bhedhal Autar, Tehsil Depalpur,
District Okara
(Presently confined in District Jail Sahiwal) Appellant

Versus

The State Respondent

CRIMINAL REFERENCE NO.03/I OF 2011

The State Appellant

Versus

Muhammad Umar Respondent

Counsel for appellant Mian Muhammad Tayyab Wattoo,
Advocate

Counsel for complainant Mr. Muhammad Aamer Najeeb
Wattoo, Advocate

Counsel for State Ch. Muhammad Sarwar Sidhu,
Additional Prosecutor General

FIR. No, Date and 446/06, 02.08.2006

Police Station Haveli Lakha

Date of Judgment of trial court 29.09.2010

Dates of Institution of 15.10.2010 and 26.2.2011

Appeal & Cr. Reference respectively

Date of hearing 10.08.2011

Date of decision 20.08.2011

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- The appellant Muhammad Umar has challenged the judgment dated 29.09.2010 passed by learned Additional Sessions Judge, Depalpur District Okara whereby he has convicted him under section 11 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance) and sentenced him to life imprisonment with payment of fine of Rs.30,000/- or, in default thereof, two months simple imprisonment. He has further convicted him under section 10(4) of the said Ordinance and sentenced him to suffer death sentence.

Criminal Murder Reference No.03/I of 2011, erroneously sent earlier to Lahore High Court has also been submitted by the District & Sessions Judge, Okara for confirmation of death sentence. Since Criminal Appeal as well as the Murder Reference arise out of one and the same Judgment, both are disposed of by this Single Judgment.

2. This case has arisen out of FIR (Ex.PA/1) registered on 2.8.2006 at Police Station Haveli Lukha on the written application (Ex.PA) of complainant Abdul Ghani regarding an occurrence which took place on 1st August, 2006 at 7.00 p.m. in the area of Bhidhal Uttar District Okara.

3. The case of prosecution in brief is that the complainant Abdul Ghani submitted a written application (Ex.PA) on 02.08.2006 before SHO Police Station, Haveli Lukha District Okara wherein he stated that, on 01.08.2006 at about 7.00 p.m. his virgin daughter Mst. Nabeela Bibi, aged about 15/16 years, went out of the house to ease herself in the cotton field wherein Muhammad Sajid and Muhammad Umar, armed with deadly weapons, alongwith two unknown persons, were already present. They abducted her forcibly at gun-point with the intention to commit zina with her. They took her at some distance to a vacant field where Muhammad Sajid and Muhammad Umar, one after the other committed zina-bil-jabr with her and the un-identified two persons remained there as guard. The complainant further alleged that when his daughter did not return till late hours, he set out for her search alongwith his brothers Muhammad Akram and Muhammad Aslam. At about 4.00 a.m. on hearing hue and cry of his daughter, the complainant and the P.Ws were attracted to the vacant field. On seeing them the above accused fled away, leaving the said girl in naked condition. The complainant helped his daughter to put on her clothes. She told about the whole occurrence to them. It was further alleged by the complainant that heirs of the accused had been beseeching him for not reporting the matter to the police but he turned down their request and got registered the case.

4. After registration of FIR, the case was investigated by Rashid Baig, Sub Inspector who recorded supplementary statement of complainant wherein he further nominated Amjad and Majid sons of Latif as co-accused. On 10.10.2006 he joined Sajid accused in the investigation. He also recorded statements of Abdullah and Muhammad Ashraf, constables and thereafter when he was transferred from the said police station. The case was

investigated by Muhammad Murtaza, Sub Inspector, P.W.5. On 02.08.2006 he inspected the place of occurrence, prepared rough site plan (Ex.PC) and recorded statements of witnesses under section 161 Cr. P.C. On 03.08.2006 he moved an application (Ex.PD) for medical examination of Mst. Nabeela Bibi and got her medically examined from Haveli Lukha Hospital. During investigation, he found accused Muhammad Umar not guilty in this case.

5. Learned trial court on receipt of challan framed charge against accused Sajid Latif on 31.10.2007 under sections 11 and 10(3) of the said Ordinance. However, thereafter, on 09.10.2008 the learned trial court framed amended charge against the accused Sajid Latif as well as the present appellant Muhammad Umar under sections 11 and 10(4) of the said Ordinance. The accused did not plead guilty and claimed trial.

6. The prosecution, in order to prove its case at the trial, produced eight witnesses. The gist of deposition of P.Ws is as under:-

- * Mst. Nabeela, victim, appeared as P.W.1 and gave details of her abduction and commission of zina-bil-jabr by both the accused and also corroborated the statement made by her father Abdul Ghani, complainant/PW.2;
- * Abdul Ghani, complainant appeared as P.W.2. By and large he re-interated the contents of complaint (Ex.PA) on the basis of which formal FIR. (Ex. PA/1) was registered;
- * Lady Dr. Robina Nasreen appeared as P.W.3 and stated that on 03.08.2006 she medically examined Mst. Nabeela victim. As per her report she found “No bruise, tear or laceration on the local parts. Vagina permitted one finger loosely. Hymen was torn.” She issued MLC (Ex.PB) dated 03.08.2006 in this respect;
- * Muhammad Abdullah, ASI appeared as P.W.4. He deposed that on 03.08.2006 he was posted as Moharrar and on the same day Ghulam Murtaza, ASI handed over to him a sealed parcel said to contain swabs for keeping in Malkhana and he handed over that to Muhammad Ashraf, Constable No.215 on 09.08.2006 for onward transmission to the Office of Chemical Examiner for analysis;
- * Statement of Muhammad Murtaza, Sub Inspector was recorded as P.W.5. He partly investigated the case. The same has been mentioned herein above;
- * Muhammad Amin, SI as P.W.6 stated that on 02.08.2006, complainant Abdul Ghani produced before him complaint (Ex.PA), on the basis of which he drafted formal FIR. (Ex.PA/1) without omission or addition;

- * Muhammad Ashraf, Constable No.215 appeared as P.W.7 and stated that on 09.08.2006 Muhammad Abdullah, Moharrar handed over to him one sealed parcel said to contain swabs to deliver the same in the office of Chemical Examiner, Lahore. He delivered that intact on the same day;
- * Rashid Baig, Investigating Officer who partly investigated the case appeared as P.W.8 and gave details of the investigation conducted by him.

7. The learned trial court after close of prosecution evidence recorded statement of appellant/accused Muhammad Umar under section 342 Cr. P.C. wherein he deposed that the P.Ws had deposed against him due to previous enmity and that the case was false and fabricated. He did not produce any evidence in defence and also made no statement on oath under section 340(2) Cr. P.C. The learned trial court after completing all codal formalities, convicted the appellant under sections 11 and 10(4) of the said Ordinance and sentenced him as mentioned above. Hence the present appeal.

8. We have heard the learned counsel for the parties and perused the record with their assistance. Learned counsel for the appellant submitted that:-

- * the appellant was declared innocent by the Investigating Officer;
- * the FIR was delayed and the story of the prosecution is unnatural and unbelievable;
- * the place of occurrence was situated in the nearby vicinity of house of the complainant;
- * as admitted by P.W.1 Mst. Nabeela Bibi victim of the offence, her sister Shakeela and three other girls namely Abida, Humera and Fatima were also accompanying her but even they neither raised hue and cry nor reported the matter to father of the victim;
- * the evidence of P.W.2 is only hear-say;
- * no signs of struggle were observed at the place of occurrence; and
- * lastly no grouping of semen was made.

He further submitted that the complainant party has patched up the matter with the appellant Muhammad Umar and he has moved a Criminal Misc. Application No.139/2010/LHR in this respect alongwith the statements and affidavits of the complainant party.

9. Learned counsel for the complainant verified the affidavits and statements made for effecting a compromise between the parties and confirmed the contents regarding compromise made by the complainant party, as contained therein.

10. Learned Additional Prosecutor General, however, fully supported the impugned judgment and submitted that findings of Investigating Officer were not binding on Courts. He further submitted that the offence was not compoundable and besides the ocular evidence of P.W.1 and P.W.2, report of the Chemical Examiner was positive which corroborates the allegations made against the appellant.

11. We have thoroughly perused the record in the light of the submissions made by all learned counsel for the parties. It transpires that the occurrence took place on 01.08.2006 at about 7.00 p.m. and a report in this respect was lodged with the police by Abdul Ghani father of Mst. Nabeela Bibi, aged 15/16 years, who was virgin at that time. According to the complainant his daughter Mst. Nabeela Bibi had gone out of the house for easing herself in the cotton field where the absconding co-accused Muhammad Sajid, appellant/accused Muhammad Umar, armed with fire arm weapons, and two unknown persons were already present. They forcibly took her at some distance to a vacant field where Sajid and Umar committed zina-bil-jabr with her, turn by turn, and the un-identified persons remained as guard. When Mst. Nabeela did not return till late night, he got worried and set out in her search alongwith his brothers Muhammad Akram and Muhammad Aslam and, in the process, at about 4.00 a.m, after hearing hue and cry of his daughter reached to the said field. On seeing them however the accused succeeded in making good their escape. The complainant saw his daughter in naked condition. After making her put on her clothes, they took her along to their house. According to him the heirs of accused had been beseeching them to refrain from initiating legal proceedings against them, but the complainant refused and lodged the report.

12. After investigation the police declared Muhammad Umar innocent and challaned only his co-accused Muhammad Sajid for the offence. Accordingly formal charge was submitted only against Muhammad Sajid on 31.10.2007. However, on 30.04.2008 when statement of Mst. Nabeela was recorded, the complainant submitted an application for summoning the appellant Muhammad Umar to face trial. The said application was allowed and the appellant was also summoned to face trial in this case. Initially a charge had been framed under section 10(3) of the Ordinance but on 09.10.2008 the charge was amended and sections 11 and 10(4) of the Ordinance against both the accused Muhammad Sajid and Muhammad Umar were substituted. During the trial, however, on 16.05.2009 the accused Sajid absented and, subsequently, on 23.11.2009 he was declared proclaimed offender and the case to his extent was separated under section 512 Cr. P.C. Thereafter, only Muhammad Umar appellant/accused was tried.

13. Out of the eight P.Ws produced by the prosecution, P.W.1, Mst. Nabeela Bibi, P.W.2, Abdul Ghani and P.W.3 Lady Dr. Robina Nasreen are most significant. Mst. Nabeela is victim of the case who in her statement charged Muhammad Sajid (the absconding accused)

as well as the appellant Muhammad Umar for commission of zina-bil-jabr with her. P.W.3 Lady Dr. Robina Nasreen medically examined Mst. Nabeela on 03.08.2006 and made, inter-alia, the following observations:-

“No bruise, tear or laceration on the local parts.

Vagina permitted one finger loosely. Hymen was torn.”

P.W.2, Abdul Ghani, father of the victim has supported the version made by P.W.1 Mst. Nabeela Bibi.

14. So far as the occurrence is concerned, the statement of Mst. Nabeela Bibi finds full corroboration from the medical evidence produced by P.W.3 as well as from the report of Chemical Examiner (Ex.PF). However, besides the fact that no grouping of semen was made to hold the appellant responsible and create his nexus with the offence, there are some major discrepancies and contradictions which make the case of prosecution to the extent of appellant/accused highly doubtful. As stated above, P.w.1 at the time of occurrence, was accompanied by her sister Mst. Shakeela as well as three other girls Abida, Humera and Fatima. None of them was either produced at the trial nor cited as a witness in the calendar of witnesses even. We may observe that in the natural course of events all the four girls should have proceeded immediately to the house to inform the complainant but there is nothing on record to even show that they either offered resistance or raised hue and cry on the spot or ever informed the complainant thereafter. According to the complainant when his daughter Mst. Nabeela Bibi did not return to the house till late night, he got worried and alongwith his two brothers set out in search of his daughter. The question is why he did not ask Mst. Shakeela about the occurrence and why Mst. Shakeela herself did not disclose details about the exact place of occurrence from where Mst. Nabeela had disappeared. The said place was not at all too far off. Had the occurrence taken place in the manner stated by the complainant, he should have gone much earlier to the said place and succeeded to recover his daughter. The time of occurrence was 7.00 p.m. and it took almost 09 hours till 04.00 a.m, when he was allegedly attracted over there and that too after the hue and cry of his daughter. In this background, his statement does not inspire confidence. Moreover, in his cross-examination he stated that he saw his daughter in naked condition while her hands were also tied. Mst. Nabeela does not say a word like that. According to the complainant except the two accused none else was present at that time but Mst. Nabeela refers to the presence of two other unknown persons who were standing as guards over there. It is also noteworthy to mention that as admitted by P.W.2, he had earlier lodged a case for the abduction of his wife wherein the absconding co-accused was also nominated as an accused. Though he denied, he was suggested that he had effected a compromise with said Sajid by giving an affidavit. He admitted that he had divorced his wife after her abduction. This reflects on the conduct of P.W.2 and his veracity. According to P.W.2, Muhammad Akram and Muhammad Aslam were his real brothers and they had accompanied him during the search of Mst. Nabeela who has

also deposed likewise. However, both of them have not appeared as PWs to corroborate their version. It is also questionable as to why the occurrence continued for about 09 hours and the appellant and his absconding co-accused kept on waiting, till the arrival of complainant party, at the same place where Mst. Shakeela and three other girls had seen Mst. Nabeela disappear. According to Mst. Nabeela the appellant and his co-accused Sajid were armed but P.W.2 who saw both of them makes no mention to their arms, whatsoever.

15. We have also perused the application submitted by learned counsel for the appellant wherein inter-alia he has submitted that the complainant and his daughter have exonerated the appellant/accused and have no objection if he be acquitted of the charge. He has submitted the affidavits of P.W.1, Mst. Nabeela, P.W.2, Abdul Ghani, complainant for this purpose. The contents of the affidavits and statements are confirmed by the learned counsel for complainant. The contents clearly spell out that the appellant/accused was innocent and had neither abducted Mst. Nabeela nor committed zina-bil-jabr with her. Mst. Nabeela has added that being a night occurrence she could not identify the appellant and had nominated him on account of suspicion but after due satisfaction has come to the conclusion that her allegation against him was based on sheer mis-understanding. Though the offence is not at all compoundable, the statements as well as affidavits submitted by the complainant party disclose retraction from their earlier statements and create gravest doubt about the veracity of their depositions. It is evident that the victim and her father who have now changed their versions and have not only resiled from their previous statements but have turned a somersault and given totally conflicting statements, are worthy of no credence and any conviction especially the one carrying capital punishment cannot be awarded on the testimony of such witnesses who lack credibility and reliability.

16. In this view of the matter we have come to the conclusion that the case of prosecution against the appellant/accused is highly doubtful and he is entitled to get the benefit thereof.

17. Consequently for the reasons stated above we extend benefit of doubt to the appellant/accused Muhammad Umar and allow his appeal and acquit him of the charges. He is confined in jail. He shall be released forthwith, if not, required in any other case.

18. Since the case against the appellant/accused has not been proved and he is acquitted of the charges leveled against him, the question of confirmation of death sentence of the appellant does not arise. Therefore, Criminal Murder Reference No.03/I of 2011 is not confirmed and is answered in the negative.

19. These are the reasons for our Short Order passed on 10.08.2011.

Announced

Fit for reporting

Islamabad the 20th August, 2011.

UMAR DRAZ/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE RIZWAN ALI DODANI

JAIL CRIMINAL APPEAL NO. 138/I OF 2009

Zulfiqar Ali son of Inayat Ali,
R/o Chak No.410-TDA Chaubara,
District Layyah.

Appellant

Versus

The State

....

Respondent

CRIMINAL MURDER REFERENCE NO.04/I OF 2011

The State

....

Appellant

Versus

Zulfiqar Ali son of Inayat Ali,
R/o Chak No.410-TDA Chaubara,
District Layyah.

Respondent

Counsel for appellant

....

Mr. Muhammad Sharif Janjua,
Advocate

Counsel for complainant

....

Ms. Nuzhat Yasmeen,
Advocate

Counsel for State

.....

Ch. Muhammad Sarwar Sidhu,
Additional Prosecutor General

FIR No. Date & Police Station

.....

114/2009, 24.04.2009
Chaubara, Layyah

Date of Judgment of trial court

.....

03.11.2009

Dates of Institution

.....

20.11.2009 & 15.3.2011
respectively

Date of hearing

.....

25.10.2011

Date of decision

.....

25.10.2011

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- This appeal filed by Zulfiqar Ali is directed against the judgment, dated 3.11.2009, passed by learned Additional Sessions Judge, Layyah, whereby he has convicted him under section 376 PPC and sentenced him to death, on three counts, with fine of Rs.100,000/-, for each Offence separately or, in default thereof, further one year S.I.

The learned Additional Sessions Judge, Layyah has duly submitted Murder Reference which has been registered as Criminal Murder Reference No. 4/I of 2011. Since the Jail Criminal Appeal and the Murder Reference arise out of one and the same judgment, we are disposing both the matters by this single Judgment.

2. Brief facts of the case as stated by Mst. Aqsa Bibi in complaint (Exh.PB), which was subsequently incorporated into FIR, are that about six months prior to the lodging of FIR, her father Zulfiqar Ali took her along to the fields on the pretext of cutting grass and then he committed rape upon her. She duly complained about the matter to her mother who later on disclosed this fact to Bushra Iqbal, sister of accused, but, keeping in view the family honour and after assurance given by the accused by taking oath on Holy Quran, the matter was hushed up. Thereafter, on 29.3.2009, when all other family members had gone to attend a marriage ceremony, the accused Zulfiqar once again committed rape upon her in his house. On her protest, the accused gave her beatings and the matter was hushed up again. On 15.4.2009 the accused Zulfiqar, after beating her with a handle of hatchet, subjected her to zina-bil-Jabr. She raised hue and cry which attracted her maternal uncle Faqeer Sain, her mother Tanvir Bibi and her brother Qasim Ali. They all rushed to the place and witnessed the occurrence. However, accused Zulfiqar Ali, after wearing his shalwar and taking along his hatchet ran away. The complainant further alleged that she was sick of the attitude of her father and could not tolerate it any more. Hence, she lodged the instant report which forms basis of the formal FIR which was registered on 24.04.2009 at Police Station Choubara District Layyah, with the request to take legal action against the accused/appellant.

3. Investigation ensued as a consequence of registration of FIR. PW.8 Faiz Muhammad Sub Inspector was assigned the charge of investigation. He sent Mst. Aqsa Bibi for her medical examination. She was duly escorted by Muhammad Iqbal ASI, and her mother as well as maternal uncle to the hospital. On 24.4.2009, Muhammad Iqbal, ASI produced before him MLC alongwith sealed two phials and three parcels. He took that into possession vide recovery memo (Exh.PE), duly attested by Faqeer Hussain and Tahir Hussain, constables. He recorded statements of PWs under section 161 Cr.P.C. and inspected the spot, on 25.4.2009, where he prepared rough site plan (Ex.PF). He recorded statement of witnesses in this regard and arrested the accused on 25.4.2009. On 29.4.2009, on disclosure and pointation of the accused, he recovered the hatchet (P-1) which was lying in the standing reeds near his house. That was taken into possession vide recovery

memo (Ex.PD), duly attested by Muhammad Iqbal, ASI and Abdul Shakoor, constable. On 28.04.2009 he produced the accused in the laboratory for conducting his DNA test. After receiving the parcels from office of Chemical Examiner Multan, he submitted challan to the Court requiring the accused to face trial.

4. At the trial, the prosecution produced ten witnesses in all. The detail of their depositions is as under:-

- * PW-1 Dr.Fiaz Kareem Laghari, Medical Superintendent deposed that on 30.4.2009 when he was posted at THQ Hospital Chaubara he medically examined Zulfiqar Ali son of Inayat Ali, aged about 40 years, r/o Chak 410 Union Council, Rafiq Abad. He recorded his marks of identification as follows:-

“No.1. Cut mark on right thumb nail,

No.2. Cut mark on right index finger”.

He found him fit to perform sexual intercourse.

- * PW-2 Muhammad Ashraf, ASI deposed that on 24.4.2009 when he was posted as duty Officer at P.S. Chaubara, he received complainant (Ex. PB) and accordingly he formally drafted FIR (Ex. PB/1) and signed the same.
- * PW.3 Dr. Sajida, WMO, deposed that on 24.4.2009 when she was posted at DHQ Hospital Layyah, she medically examined Mst. Aqsa Bibi, aged about 14/16 years. She found no signs of violence present on any part of her body. She made the following observations:-

“Examination for Rape Vulva and Vagina

Normal, healthy looking. No sign of violence were found present on her private parts.

In lithomy position labia majora was not covering the labia minora. Vaginal orifice was visible. Old healed tags were present. Hymen was not intact. On P/V examination one finger loosely passed. Whitish discharge was present. Three vaginal swabs were taken for DNA test and three for chemical analysis.”

Report of the DNA results and conclusion is as follows:-

“DNA profile obtained from sperm fraction of item 1.0 (vaginal swabs of victim) is

partial and inconclusive. DNA profile obtained from the E.cell fraction of item 1.0 matches with DNA profile of victim Aqsa Bibi (item 2.0).

The vaginal swabs of victim Aqsa Bibi (item 1.0) did not generate any conclusive male DNA profile; therefore no comparison could be made with DNA profile of accused Zulfiqar Ali son of Anayat Ali (item 3.1)”

Report of the Chemical Examiner reveals:-

“The above swabs are stained with semen”.

- * P.W.4 Ghulam Mustafa, Head Constable stated that on 24.4.2009 when he was posted at P.S. Chaubara as Muharrar, Faiz Muhammad, SI/I.O. handed over to him two sealed phials and three sealed envelopes which he kept in Malkhana for safe custody. Thereafter, on 27.4.2009 one sealed phial and two sealed envelopes for DNA test were also handed over by Faiz Muhammad SI. On 28.4.2009 he handed over one sealed phial and one sealed envelope to Abdul Shakoor, Constable, for onward transmission to the office of Chemical Examiner, Multan and he deposited that in the said office on the same day.
- * Aqsa Bibi, complainant appeared as P.W.5 and reiterated her statement as mentioned hereinabove.
- * Tanweer Bibi, mother of victim/complainant is an eye witness of the occurrence. She appeared as P.W.6 and fully corroborated the statement made by Mst. Aqsa Bibi complainant.
- * PW-7 Muhammad Iqbal, ASI deposed that on 24.4.2009 when he was posted at police station Chaubara, he alongwith Faiz Muhammad SI was present at Turko Adda where Aqsa Bibi (victim) alongwith her mother got recorded her statement before Faiz Muhammad SI (Ex.PB). He accompanied Mst. Aqsa Bibi victim to DHA Hospital Layyah for her medical examination. After her medical examination, the doctor handed over to him three sealed envelopes and two phials alongwith MLC which he handed over to Faiz Muhammad, I.O. in presence of PWs.
- * Faiz Muhammad, SI who investigated the case appeared as P.W.8 and deposed about the details of investigation conducted by him in the case. The same have already been mentioned herein above.
- * PW-9 Abdul Shakoor, Constable stated that on 29.4.2009 when he was

posted at P.S. Chaubara, he joined the investigation of this case. During the course of interrogation, the accused present in the Court made disclosure that he could lead the police party to the recovery of hatchet which was used in the occurrence and accordingly he led the police party to the place of occurrence and got recovered hatchet (P-1) from the standing reeds. That was taken into possession by I.O. vide recovery memo (Exh. PD). The said recovery memo was duly testified by the witnesses.

- * PW-10 Tahir Hussian, Head Constable stated that on 24.4.2009 when he was posted at P.S. Chaubara. In his presence Muhammad Iqbal, S.I. received, from the doctor, two sealed phials and three sealed envelopes for chemical examiner and DNA test and he handed over that to the I.O. The same were taken into possession by him vide recovery memo (Ex. PE).

5. The learned trial court, after close of the prosecution evidence, recorded statement of accused under section 342 Cr.P.C. wherein he pleaded innocence and denied the allegations. In answer to the question, “why this case against you and why the P.Ws have deposed against you?” he stated as follows:-

“I am innocent. The PWs are closely related interse and inimical to me, therefore, they have deposed falsely against me. I being father even cannot think to commit Zina-bil-jbr with my daughter Aqsa Bibi. In fact mother of the complainant was sitting outside the room of the house whereas Aqsa victim and her paramour Sohail were present in the room having illicit relations. Further that when I came back to the house and entered into the room despite restraint of complainant, had seen Aqsa Bibi victim with her paramour Sohail in compromising position upon which I became infuriated, picked up hatchet and tried to murder mother of the complainant, victim Aqsa and her paramour Sohail but they all fled away. Further more, in order to save their skin and to remove me from their way, they have falsely concocted the present story and it is the talk of the town that Aqsa and Sohail were caught red handed by me. No recovery of hatchet was effected from me and police has falsely planted the same against me in order to strengthen the case.

It is notable that neither he opted to make statement on oath under section 340(2) Cr.P.C. nor produced any evidence in his defence. The learned trial Court, after examining all incriminating material brought on record by the prosecution, came to the conclusion that the appellant/accused was guilty of commission of offence under section 376 PPC. Therefore he convicted and sentenced him as mentioned hereinabove. Hence the present appeal.

6. We have heard the learned counsel for the parties and have perused the record with their assistance.

Learned counsel for the appellant contended that there are contradictions and discrepancies regarding the time of return of the family members of complainant to the house and about the appellant/accused as to whether he had fled away or was handed over to the police. He also submitted that learned trial court has ignored the defence plea raised by the appellant regarding the relations of complainant with one Sohail.

Learned counsel for complainant, however, contended that there are no material contradictions; that the quality of evidence brought on record is convincing and credible; that in his first version the appellant had admitted his guilt; and that the offence committed by the appellant is very grave and he deserves no leniency.

Learned Additional Prosecutor General also supported the impugned judgment and contended that the appellant has been rightly convicted and sentenced.

7. Before embarking on discussion about the facts of this case, we consider it pertinent to mention that Islam regards commission of illegitimate sexual intercourse a very great sin and heinous crime. If proved guilty, Islam prescribes severe punishment for such criminals. It is also worth-noticing that Islam considers both fornication as well as adultery equally serious offences and makes no distinction between them in their nature as offences against human society. The gravity as well as the sentences of the offence, however, varies according to the marital status of the offender. If the offender is unmarried, the quantum of punishment is somewhat less than that of the married one. The offence in the later case is considered more severe for the reason that legitimate means to satisfy his urge were available to such a person but even then he preferred and resorted to unlawful means. Since according to Islamic Injunctions, the commission of zina is a cognizable crime, it has not only prescribed severe punishments but has introduced a number of reformatory and preventive measures as well. The legal sanctions and deterrent punishments are, in fact, promulgated as a last resort to curb the evil and purify the society. It is also notable that there are some prohibited degrees in the inter-personal relationships by means of affinity, consanguinity and fosterage, where not to speak of commission of illegal sex, even contract of marriage is strictly forbidden.

8. Incest which in other words means sexual intercourse between person falling in the said specified degrees of consanguinity or affinity or fosterage is a very great sin. The Holy Quran has given detailed and very clear injunctions in this respect. For example, Islam prohibits marriage with mother, daughter, grand daughter, sister, niece, foster-mother, foster-sister, mother-in-law, daughter-in-law etc. Incest within these prohibited degrees of relations is therefore considered a grievous and ignoble offence. The gravity of this offence increases manifold, as compared to that of zina simpliciter, when a person is proved guilty

of commission of incest by cogent, trustworthy and reliable evidence. It is very unfortunate that instances of incest abound in the modern world and, besides the so-called civilized countries, also found increasingly alarming in the Muslim societies as well.

9. Here we also consider it pertinent to mention that the Holy Quran has emphasized that while inflicting punishment on any male or female who is proved guilty of commission of zina, no leniency be observed. The verse enjoins upon the believers:

“Let not compassion move you in their case, in a matter prescribed by God, if ye believe in God and the Last Day:” (24:2)

More over according to Islamic law even marrying any woman falling in the prohibited degrees of marriage is void ab-initio and a great criminal offence which entails exemplary punishment. As mentioned in the authentic collections of Ahaadith by Abu Daud, Nasai and Ahmed Ibne Hanbal, people found guilty of this offence by credible evidence were punished by the Holy Prophet (ﷺ) with death and confiscation of property. It appears from a Hadith related by Ibn ‘Abbas that the Holy Prophet (ﷺ) had emphasized the following general rule:

‘Kill whosoever commits sexual intercourse with a woman forbidden to him’ (see Ibne Majah; ‘Hudud’, Ahmed Ibne Hanbal, Musnad, vol.1, p. 300—Ed.) There is some minor disagreement among jurists, however, on an aspect of this question. While Ahmed Ibne Hanbal is of the opinion that such a convicted person should be put to death and his property be confiscated, Abu Hanifa, Malik and Shafi are of the opinion that if a person commits sexual intercourse with a woman within the prohibited degrees he should be punished for adultery only; and if he merely marries (but does not actually commit sexual intercourse), he should be subjected to deterrent punishment.

10. In the instant case we find that Mst. Aqsa Bibi was subjected to zina, thrice, on various dates with some intervals in-between. The statement made by her inspires confidence. It appears but natural that she did not report the matter to police on the first two occasions but the reason, as discussed above, is obvious. At that time she was unmarried and had naturally considered its future repercussions against her father. She was also conscious of the honour of her family as stated by her. The family pressure in such matters is always apparent. In her own words when she got sick of the attitude of her father, she had no other option but to report the matter to police.

11. The first and foremost circumstance that can be looked for in cases of rape is the evidence of resistance which one would naturally expect from a woman un-willing to yield to sexual intercourse forced upon her. Such a resistance may lead to the tearing of clothes, infliction of personal injuries and even injuries on the private parts. In the instant case Mst. Aqsa Bibi has made a very convincing statement. All the three times after her

rape, she protested and complained about the occurrence to her mother. Her statement is fully supported by medical evidence and further corroborated by report of the Chemical Examiner. As mentioned above, there is nothing on record to show that she was either a girl of easy virtue or had any bad reputation in her community. The appellant/accused has alleged about her relations with one Sohail but that is a bare allegation and has not been substantiated by any piece of evidence. He took no action against Sohail. He neither raised lalkara nor chased to apprehend him even. He had a hatchet but he spared said Sohail and let him run away. He did not even lodge any FIR against the said accused. Had the allegation been actually true, his whole family would have come to his help. He has not even bothered to make statement on oath in this respect. No one from his family member has supported his allegation against his daughter. The first version of the appellant wherein he admitted his guilt is also considerable. Mst. Aqsa Bibi though teenager seems a girl of maturity and full understanding and she cannot be expected to tell lies against her own father.

12. Regarding the delay in FIR we would like to mention that mere delay per-se is not at all fatal to the case of prosecution if the other evidence inspires confidence and delay is plausibly explained. Normally the delay is considered to create doubts about a case when it is used for deliberation, manipulation, maneuvering evidence or settling some score of enmity or widen the net to implicate innocent people. In the instant case, the delay has been plausibly explained. The mental agony of the young teenager girl can be well-imagined. She was raped by her real father. Virtually, after her rape, she was between the devil and the sea. But even then she protested each time. She was raped thrice. First of all the occurrence of rape took place in the crop field about six months before lodging of the report. She deposed that at that time she was tortured and subjected to zina-bil-Jabr whereafter she narrated the occurrence to her mother who went to her paternal aunt and she rebuked the accused who then repented after putting his hands on Holy Quran. At that time she kept silent in order to avoid danger to family honour. After her rape on second time she again informed her mother but her father gave beating to her mother and also extended threats of death in case the matter was report or disclosed to any one. At the third time of rape, he gave beating to her with the handle of hatchet and raped her. It was on this occasion that she raised hue and cry which attracted her maternal uncle Faqeer Sain, her mother and her brother Qasim Ali over there. They all were threatened by him with hatchet and thereafter putting on his shalwar, he fled away. It was after this third incident, that the family members could not tolerate his attitude any more and handed him over to police.

13. As is evident, it was a matter that involved the family honour as well as the future of an unmarried 14/15 years old girl. Her own father who was supposed and duty bound to give her due protection and patronage had himself turned into a beast. The whole family had to lose its guardian in case the matter was reported or disclosed. There is only one single nominated accused. Therefore the delay plausibly explained is natural and reasonable and does in no way damage the prosecution case.

14. Regarding the discrepancies and contradictions about time in return of the inmates to their house after marriage, it suffices to mention that these are very trivial in nature and do not affect the main version about the occurrence.

15. The defence plea taken by the appellant/accused, about relations of Mst. Aqsa with one Sohail, as also suggested to her, is baseless, un-substituted and, appears, rather criminal. No cogent piece of evidence or any DW is available to support that allegation.

16. The deposition of victim Mst. Aqsa Bibi, P.W.5 finds full support from the testimony of P.W.6, Mst. Tanveer Bibi, her mother. Both the statements are fully consistent in material particulars, ring true and inspire confidence. They have stood firm in the lengthy cross examination and no dint whatsoever has been caused in their evidence. The report of the Chemical Examiner as well as the DNA report, reproduced hereinabove, lend corroboration. The MLR submitted by PW.3 does not at all show the victim to be a girl of easy virtue and confirms her testimony.

17. We may also mention that though it may not be imaginable to find a real father subjecting his own daughter to rape but it is also unbelievable that a real daughter would ever charge her own father for committing such a heinous offence, without any rhyme or reason.

18. In this view of the matter we have come to the irresistible conclusion that the prosecution has proved its case against the appellant/accused to the hilt and, keeping in view the gravity of the offence, he deserves an exemplary deterrent punishment. He has been rightly convicted and sentenced and the impugned judgment calls for no interference whatsoever. Consequently for the reasons stated above we maintain the conviction and sentences awarded to the appellant/accused Zulfiqar Ali by the learned trial court and dismiss his appeal.

19. The Criminal Murder Reference No. 04/I of 2011 is confirmed and answered in affirmative.

20. These are the reasons for our short order dated 25.10.2011.

Fit for reporting
Islamabad the 25th October, 2011.
Umar Draz/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE RIZWAN ALI DODANI,

CRIMINAL APPEAL NO. 84/L OF 2010

Muhammad Ayub son of Allah Din ... Appellant
Badhal alias Balhorra by caste, resident of Mao
Mubarak Kot Samaba, District Rahim Yar Khan

Versus

The State	...	Respondent
Counsel for the appellant	...	Mr. Rauf Ahmad, Advocate
Counsel for the complainant	...	Rai Abdul Basit, Advocate
Counsel for the State	...	Mian Muhammad Awais, Deputy Prosecutor General
FIR No. Date and Police Station	...	No.10/2005 dated 12.01.2005, Fazilpur, District Rajanpur.
Date of trial Court	...	29.04.2010
Date of Institution	...	26.06.2010
Date of hearing	...	30.09.2011
Date of decision	...	06.10.2011

JUDGMENT:

JUSTICE RIZWAN ALI DODANI, J: Appellant Muhammad Ayub, has through this appeal, challenged the judgment dated 29.04.2010 delivered by learned Additional Sessions Judge, Rajanpur whereby the appellant was convicted under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and sentenced to life imprisonment with fine of Rs.10,000/-, in default whereof, to further undergo four months simple imprisonment. Benefit of Section 382-B of the Code of Criminal Procedure was extended to the appellant. However co-accused Irshad and Mst. Azeezan Bibi were declared proclaimed offenders during the trial.

2. The prosecution case in brief is that complainant Manzoor Hussain PW.4 laid oral information recorded by Ashiq Hussain Assistant Sub Inspector as Ex.PA on 12.01.2005 which was registered as FIR No.10/05 Ex.PA/1 wherein it was stated that on 23.10.2004 nikah of his daughter Mst. Naz Bibi was contracted with Haq Nawaz but rukhsati had not taken place. In the night between 01.01.2005, accused Ayub, Irshad and Mst.Azizan Bibi came to his house as guests to participate in a marriage ceremony. After concluding the marriage on 3/4.01.2005 at night, after taking dinner, Mst. Azizan Bibi alongwith his daughter Mst. Naz Bibi made tea and served all the inmates of the house as well as the guests. In the morning the complainant found Mst. Naz Bibi as well as Ayub, Irshad and Mst.Azizan Bibi missing. He inquired from his relatives. His brother Hazoor Bux and Rabnawaz informed him that they had seen Mst. Naz Bibi going alongwith Ayub etc. and on their query the accused stated that they were taking Mst. Naz Bibi to her sister Mst. Bano Bibi wife of Muhammad Ismail at Mao Mubarak. The complainant alongwith the PWs went to the house of accused Ayub at Mao Mubarak where accused Ayub and Mst.Naz Bibi were not present. On query Irshad and Mst.Azizan Bibi had not given satisfactory reply. He also inquired from his son in law Muhammad Ismail about Mst. Naz Bibi but he showed ignorance about her. The complainant alleged that the accused had enticed away his daughter Mst. Naz Bibi with intention to commit Zina with her. The complainant further stated that he made efforts through Panchayat for return of his daughter but could not succeed and ultimately reported the matter to the police. Hence FIR Ex.PA/1 was registered at Police Station Fazilpur, District Rajanpur under Sections 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

3. Investigation ensued as a consequence of registration of crime report. The Station House Officer first submitted incomplete report under section 512 of the Code of Criminal Procedure before the Court on 28.02.2006 wherein it was stated that the Police conducted various raids for arrest of accused persons but to no avail; got issued their non-bailable warrants of arrest and then initiated proceedings under Section 87 of the Code of Criminal Procedure. Then another incomplete report under section 173 of the Code of Criminal Procedure was submitted before the Court on 16.03.2006 stating that Mst.Naz Bibi was retrieved with the intervention of Brathri people on 22.04.2005 and she was murdered by her brother Abdul Hameed. Aurangzeb, Sub Inspector arrested accused Irshad Hussain on

05.03.2006 and sent him to judicial lock up on 14.03.2006 while Mst. Azizan and Ayub, proclaimed offenders, had not been arrested. Ultimately Ayub and Mst. Azizan Bibi were arrested on 25.08.2009 and complete report under Section 173 of the Code of Criminal Procedure was submitted before the Court on 26.08.2009 requiring the accused to face trial.

4. The learned trial Court summoned the accused but only Ayub accused was produced before the Court under custody while Mst. Azizan Bibi did not appear before the Court and after fulfilling codal formalities she was proceeded under Section 87 of the Code of Criminal Procedure vide order dated 15.01.2010. Irshad accused, who was earlier tried, was also declared proclaimed offender vide order dated 27.11.2006. Ayub accused was charged on 22.01.2010 under section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

5. The prosecution produced ten witnesses to prove its case. The gist of the deposition of the witnesses is as follows:-

- (i) PW.1 Muhammad Sadiq, Assistant Sub Inspector arrested accused Ayub and Mst. Azizan who were proclaimed offenders and sent them to judicial lock up.
- (ii) PW.2 Rahmat Ullah Inspector had formally recorded FIR Ex.PA/1 on receipt of complaint Ex.PA which was sent to him by Ashiq Hussain, Assistant Sub Inspector through Abdul Majeed Constable.
- (iii) PW.3 Doctor Muhammad Usman had medically examined accused Irshad on 09.03.2006 and found him sexually potent.
- (iv) Complainant Manzoor Hussain appeared as PW.4 and endorsed the contents of his complaint Ex.PA. He produced original copy of Part Nikah Ex.PC of Mst. Naz Bibi with Haq Nawaz which was taken into possession by the Investigating Officer through recovery memo Ex.PC/1.
- (v) PW.5 Hazoor Bux and PW.6 Rabnawaz supported the version of complainant Manzoor Hussain PW.4.
- (vi) PW-6: Rabnawaz is the Waj Takkar witness. He corroborated the version of the complainant Manzoor Hussain PW-4.
- (vii) PW.7 Irshad Hussain stated that he participated in Nikah ceremony of Haqnawaz with Mst. Naz Bibi. He alongwith Khadim Hussain was appointed as witness of Nikah and the Nikah was performed by Qazi Abdul Ghaffar.

- (viii) PW.8 Fida Hussain stated that on 23.10.2004 he participated in the Nikah ceremony of Haqnawaz with Mst. Naz Bibi and he signed the 'Part Nikah' as witness on behalf of Mst. Naz Bibi. The Nikah was recited by Qazi Abdul Ghaffar.
- (ix) PW.9 Aurangzeb Sub Inspector stated that on 15.01.2006 he was entrusted with the investigation of the case. On 23.01.2006 he got issued non-bailable warrants of arrest of accused Irshad, Ayub and Azeez Mai from the concerned Illaqa Magistrate and after entering the same in the relevant register handed over to Haqnawaz constable for execution. On 25.02.2006 he got issued proclamation under Section 87 of the Code of Criminal Procedure against the accused. He recorded statement of Haq Nawaz Constable under section 161 of the Code of Criminal Procedure. On 28.02.2006 he submitted the file before the Station House Officer who prepared challan/report under Section 512 of the Code of Criminal Procedure. He arrested accused Irshad on 05.03.2006 from Adda Chowk Qureshan and got him medically examined on 09.03.2006. During investigation he found accused Irshad guilty and sent him to judicial lock up on 14.03.2006.
- (x) PW.10 Aurangzeb Sub Inspector had identified the handwriting and signatures of Ashiq Hussain, Assistant Sub Inspector, on complaint Ex.PA, recovery memo of 'Part Nikah' Ex.PC and site plan of place of occurrence Ex.PD.

6. The prosecution closed its evidence on 26.03.2010. Thereafter the learned trial Court recorded statement of the accused under section 342 of the Code of Criminal Procedure on 26.04.2010. The appellant denied the allegations levelled against him. In reply to question "Why this case against you and why the PWs have deposed against you?" the appellant stated as under:-

"P.Ws are related inter se; thus, they deposed falsely against me and I have been falsely involved in this false case."

7. The learned Counsel for the appellant submitted his arguments:-

- i) That grave injustice was caused to the appellant as he was not given any Counsel on State expenses by the learned trial Court. He relied on PLD 1987 S.C 304 and PLD 1987 S.C 356.
- ii) That the accused contracted Nikah with the alleged abductee Mst.Naz Bibi.

- iii) That the FIR was lodged after a delay of 08 days.
- iv) That there are contradictions in the statements of the PWs.
- v) That the alleged abductee was not produced before the trial Court nor her statement under Section 161 Cr.P.C was recorded.
- vi) The accused was involved in this case due to rivalry.
- vii) The alleged abductee was not recovered from the possession of the appellant Muhammad Ayub.
- viii) During and after the abduction, the alleged abductee did not raise any hue and cry despite the fact that she had many chances to do so.
- ix) That the alleged abductee filed Writ Petition No/1116-2005/BWP against the District Police officer, Rajanpur, complainant Manzoor Hussain and the witnesses of the case seeking protection and a direction to the respondents not to interfere in her matrimonial life. In the petition, she posed herself to be the wife of the appellant Muhammad Ayub.

8. Learned counsel for the complainant and the learned D.P.G for the State urged the following points;-

- i) That the prosecution witnesses deposed against the accused before the learned trial Court.
- ii) That it is on the record that the abductee was returned to his father through Panchayat from the accused side.
- iii) That Nikah Nama is alleged to be dated 22.08.2004 but it was not produced by the accused at the time of the trial nor any suggestion was put to him to that effect.
- iv) That no Nikah Nama was produced even in the statement under Section 342 Cr.P.C.

Learned D.P.G relied upon the judgments reported as:-

1988 SCMR 819

1991 SCMR 2300

PLJ 2001 FSC page 46.

The accused remained P.O and he did not surrender himself before the law but he was arrested. The learned D.P.G placed reliance on the Judgments reported as:-

PLJ 1985 191

1992 SCMR 1036

v) That nothing was rebutted in this case.

9. We have gone through the arguments advanced by learned counsel for the parties and the State as well and evidence of the prosecution witnesses. The relevant portions of the impugned judgments have also been scanned.

10. The complainant stated that in the morning of 04.01.2005, he found his daughter Mst.Naz Bibi and above said three guests including the appellant missing and on searching he was informed by Hazoor Bux PW-5 and Rab Nawaz PW-6, who are relatives of the complainant, that accused persons were taking Mst.Naz Bibi and on their query they told that they were going to meet the sister of Mst.Naz Bibi (daughter of the complainant). The same narration was reiterated by the complainant and the PWs as well in their respective testimonies before the learned trial Court.

The fact which comes up from these statements is that neither any hue and cry nor any call for help on the part of the alleged abductee have been emphasized by the prosecution witnesses, therefore, it can safely be observed that no force had been applied by the accused persons at any relevant point of time although the alleged abductee had got a chance when the PWs had made query from them but she had not called for any help from them. That the charge against the appellant is under Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, which is being reproduced hereunder:-

“11: Kidnapping, abducting or inducing woman to compel for marriage, etc.---Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment [which may extend to life] and with whipping not exceeding thirty stripes, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in the Pakistan Penal Code, (Act XLV of 1860) or of abuse of authority or any other method of compulsion induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.”

11. While going through the ingredients of Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, it has been observed that the words “kidnapping”, “abduction” or “inducement” have been used. To understand the offence of abduction as a whole, it would be appropriate to reproduce also Section 362 of the Pakistan Penal Code, 1860 which deals with the offence of abduction:-

“Section 362: Abduction: Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

That there are two essential ingredients which form offence of “Abduction”, use of ‘force’ and secondly ‘inducement by any deceitful means’. As far as the first requirement i.e the ‘use of force’ is concerned, as discussed in the preceding para, the same has not been seen on the record. In so far as the second one i.e ‘inducement by deceitful means’, it may be mentioned here that while making arguments, the counsel for the appellant submitted that a Constitution Petition No.1116/2005 titled “*Mst.Naz Bibi wife of Muhammad Ayub vs. DPO Rajanpur and 04 others*” was filed in the Hon’ble Lahore High Court, Bahawalpur Bench, Bahawalpur, as the certified copy of the said petition alongwith an order passed thereon on 15.04.2005 has been provided to this Court and being record of a Court, the same can be considered. As obvious from the title, it was filed by the alleged abductee who mentioned herself as wife of the appellant Muhammad Ayub, the said petition was filed with the prayer which is reproduced for convenience as under:-

“It is humbly prayed that directions be issued to the respondents No.1 to 4 not to harass and pressurize the petitioner and respondent No.5 illegally and also not to interfere into the matrimonial life of the petitioner and respondent No.5. Any other remedy which is available to this August and Hon’ble Court may kindly and graciously be granted.”

12. The contents of this Prayer show that Mst.Naz Bibi, the alleged abductee, has appeared before the Hon’ble High Court seeking protection and an order against the four respondents {(DPO Rajanpur, S.H.O Fazalpur, complainant Manzoor Hussain and Haq Nawaz (alleged husband)}. She placed appellant Muhammad Ayub as respondent No.5 in the Writ Petition, therefore, it shows that no ‘inducement’ was applied on part of the appellant, inasmuch as had it been so, the petitioner/alleged abductee would not have filed the said petition and produced herself before the Hon’ble High Court. So under these circumstances, neither the ‘Force’ nor inducement by deceitful means have been undertaken by the accused persons. So much so it is also on the record that the recovery of the alleged abductee has not been effected from the appellant as the complainant and PWs on every relevant point of time stated that the recovery of the alleged abductee was effected by the Panchayat and they no where named the appellant as to this effect.

13. That the vital piece of evidence of the alleged abductee has also not come on the record as it was brought to the notice of this Court that she was murdered allegedly by her brother in complainant's house immediately after her recovery through Panchayat and an FIR was lodged to this effect. Besides, the murder of the abductee in the house of the complainant further strengthens that she was not abducted as if it was so then she would not have been done to death after coming back to the complainant. That the existence of Nikahnama as produced by the complainant's side too does not help the prosecution story in order to connect the appellant with the offence he has been charged with.

14. Under these circumstances, the case in hand seems to be the willful disappearance of the alleged abductee and, as such, Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 is not attracted in the instant case. We, therefore, find that the conviction and sentence awarded under Section 11 *ibid* to the appellant Muhammad Ayub son of Allah Ditta to life imprisonment with a fine of Rs.10,000/- by the learned Additional Sessions Judge, Rajanpur vide Judgment dated 29.04.2010 in Hudood Case No.19 of 2009 and Hudood Trial No.01 of 2010 is not correct and warrants to be interfered. As such, we acquit the appellant by setting-aside his conviction and sentence as stated above. Consequently the appeal is allowed and the appellant is ordered to be released unless required to be detained in any other case.

15. These are the reasons of our short order dated 30.09.2011.

Fit for Reporting
Dated: 6-10-2011
Amjad/*

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO. 164/L OF 204 L.W.

Imran alias Mani son of Appellant
Muhammad Ashraf, caste Cheema,
Aged 25 years, resident of Khaway-Wali, .
Wazirabad

Versus

The State ... Respondents

CRIMINAL MURDER REFERENCE NO.8/L OF 2005

The State Appellant

Versus

Imran alias Mani son of Respondent
Muhammad Ashraf, caste Cheema,
aged 25 years, resident of Khaway-Wali,
Wazirabad.

Counsel for the appellants	...	Mr. Shoaib Zafar, Advocate
Counsel for the complainant	...	Mr. Muhammad Waseem, Advocate
Counsel for the State	...	Ch. Nisar Ahmed Virk, Deputy Prosecutor General
FIR No. Date and Police Station,	...	No.106/2003, dated 29/-5-2003 Ahmad Nagar, Wazirabad, Gujranwala
Date of judgment of trial Court	...	27.05.2004
Date of Institution of appeals in FSC	...	02.06.2004
Date of hearing	...	24.01.2012
Date of Judgment	...	24.01.2012

JUDGMENT:

JUSTICE RIZWAN ALI DODANI, J: Appellant Imran alias Mani has, through this appeal, challenged the judgment dated 27.05.2004 delivered by learned Additional Sessions Judge, Wazirabad whereby he was convicted under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and sentenced to 7 years rigorous imprisonment with fine of Rs.10,000/-. He was further convicted under section 302 (b)/34 P.P.C. and sentenced to death on two counts and also to pay Rs.1,00,000/- as compensation to the legal heirs of each of the deceased i.e. Muhammad Siddique and Ghulam Sakina and on each default to further undergo 6 months S.I. The learned Additional Sessions Judge, Wazirabad has submitted murder reference for confirmation of death sentences awarded to appellant Imran alias Mani, which was registered as Murder Reference No.8/L/2005.

It is pertinent to mention here that Mst. Memona, co-accused was also convicted and sentenced alongwith appellant Imran alias Mani by the same judgment. She filed Cr. Appeal No.165/L/2004 against her convictions and sentences. She was granted bail by this Court vide Court's order dated 14.10.2004 in Cr. Appeal No.165/L/2004. She, after obtaining bail, disappeared and inspite of repeated Notices and execution of warrants for her arrest she could not appear before the Court. Therefore, her appeal is separated.

2. Brief facts of the prosecution case as narrated by Nasrullah Khan complainant PW-7 are that Muhammad Siddique his paternal uncle (Chacha) had three sons including Muhammad Mansha (husband of co-accused Mst.Memona) and two married daughters Mst. Shamim Kausar and Mst.Robina Kausar. Co-accused Mst.Memona alongwith her parents-in-law Muhammad Siddique and Ghulam Sakina was residing in the village Khewaywali. Muhammad Mansha and his other brothers were abroad. Muhammad Mansha had gone there three months ago to the occurrence Co-accused Mst.Memona was not of good moral character and she had developed illicit relations with her co-villager/accused Imran Ahmad alias Mani and they used to meet each other on and off. His uncle and aunt (Chacha and Chachi deceased of this case) used to supervise Mst.Memona and this fact irritated/caused annoyance to accused Mst.Memona. On 29.05.2003 at about 4:30 a.m early in the morning, he (complainant), Khalid Mehmood given up PW and Khalid Hussain PW-8, resident of Faqiranwali a guest in the house of the complainant proceeded from the house to visit their well (Khooh). When they reached in front of the house of Muhammad Siddique deceased, they over-heard whispering from Baithak of Muhammad Siddique. On suspicion, they peeped through the crevice of the window and in bulb's light found that both the accused of this case were committing Zina. They knocked the door (outer door) but it was not opened. They (PWs) hurriedly through the house of neighbour approached the house of the deceased and witnessed that in one room of the house, both the accused of this case put Mst.Ghulam Sakina on the floor. Accused Mst.Memona was sitting on her chest and accused Imran alias Mani was throatling her neck. One the hue and cry, Muhammad Siddique came ahead to rescue Mst.Ghulam Sakina (his wife). Imran alias Mani picked a sewing machine without wooden base case, lying in the room and hit on the head of Muhammad Siddique, who in

injured condition fell down on the ground. They (PWs) overpowered both the accused at the spot. Large public gathered there and Mst.Ghulam Sakina and Muhammad Siddique were found dead. Imran alias Mani and Memoona accused had murdered both of them to conceal/camouflage their sin. He had then deputed Khalid Mehmood and Khalid Hussain to guard the dead body and himself went to Police to report.

3. That after conclusion of the investigation, the local Police submitted in the court a report under section 173 of the Code of Criminal Procedure requiring both the accused Imran alias Mani and Mst.Memona to face trial. Thereafter charge was framed against both the accused vide charge sheet dated 22.10.2003, under sections 10 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and 302 read with 34 of the Pakistan Penal Code.

4. That prosecution produced 11 witnesses at the trial in support of its case. Mr.Muhammad Zarait Kiyani, S.P Investigation was examined as CW.1. The gist of the deposition of the prosecution witnesses is as follows:-

- i) PW-1: Dr.Muhammad Jamal Nasir conducted potency test of accused Imran Ahmad alias Mani and found him fit to perform sexual intercourse. He also conducted post mortem on the dead body of Muhammad Siddique aged 70/71 years and observed the following injuries:-
 - “1. *Lacerated wound measuring 2 cm x 2 cm x going deep on left eye brow.*
 2. *Lacerated wound measuring 1 cm x 1 cm x going deep just above right eye brow with bone pieces visible.*
 3. *Lacerated wound 1cm x .5 cm on outer aspect of right eye brow.*
 4. *An abrasion 3 cm x 3 cm on right side of forehead.*
 5. *Lacerated wound through & through on outer part of right pinna.*
 6. *Lacerated wound 1.5 cm x 1 cm x going deep 6 cm behind and above right ear.*
 7. *Multiple fracture of lower jaw.”*

In the opinion of the doctor, all injuries were ante-mortem. Injury No.1 causing the brain damage and brain death alongwith the injury to larynx leading to asphyxia and death were sufficient to cause death in ordinary course of nature.

The time between death and injuries was 15 minutes to 30 minutes and the time in between death and post mortem was 12 to 14 hours. Post mortem report was exhibited as Ex.PB.

- ii) PW-2: Taqi Raza, ASI is an author of the FIR.
- iii) PW-3: Dr.Tehmina Sheeraz Toosy conducted post-mortem examination on the dead body of Mst.Ghulam Sakina and found following injuries:-
 1. Bruise 1 x cm on left side of chin.
 2. 1 x 1 cm, contusion (bruise) on left side of neck 8 cm from ear, 5 cm from mid line.
 3. 2 x 1 cm contused on neck 7 cm from right ear and 4 cm from mid line.”

In the opinion of this doctor, the cause of death was due to injuries No.2 and 3 leading to hyoid bone fracture and it is a type of asphyxial death.

- iv) PW-4: Muhammad Bashir Constable on 29.05.2003 alongwith Constable Muhammad Sharif escorted the dead bodies of Muhammad Siddique and Mst.Ghulam Sakina from the place of occurrence to mortuary Wazirabad. This witness also received blood stained last worn clothes of the deceased from the doctor. On 02.06.2003, he also received from the Moharrar of the Police Station two sealed parcels said to contain swabs and clothes of Mst. Memona accused which he delivered in the office of Chemical Examiner, Lahore. On 05.06.2003 he also received two sealed parcel said to contain blood stained earth and blood stained sewing machine from the Moharrar and deposited in the office of Chemical Examiner, Lahore.
- v) PW-5: Zafarullah identified the dead bodies of Muhammad Siddique and Mst.Ghulam Sakina. He is also a witness of production of last worn clothes of the deceased by a Constable to the Investigation Officer.
- vi) PW-6: Muhammad Aslam Moharrar of the Police Station corroborated the statement of Constable Bashir PW-4 with regarding to delivery of different sealed parcels.
- vii) PW-7: Nasrullah Khan is complainant and eye witness of the case. He endorsed the contents of his crime report.

- viii) PW-8: Khalid Hussain is also an eye witness of the occurrence. He corroborated the version of the complainant and prosecution story.
- ix) PW-9: Manzoor Ahmad Inspector/Station House Officer recorded statement of the complainant and sent the same to the Police Station for registration of the FIR. During investigation, he visited the place of occurrence; secured dead bodies of the deceased Muhammad Siddique and Mst.Ghulam Sakina; got conducted post mortem examination; secured blood of the deceased from the spot; arrested both of the accused Imran alias Mani and Mst.Memoona; got conducted medical examination of both the accused; recovered weapon of offence sewing machine from the crime scene; took into also possession last worn clothes of both the deceased; recorded statements of the witnesses; got prepared rough site plan of the place of occurrence; delivered all the parcels in sealed manner to the Moharrar of the Police Station; completed the report under Section 173 of the Code of Criminal Procedure and submitted challan in the Court against both the accused.
- x) PW-10: Arif Hussain Ayyaz, Draftsman prepared sketch plan of the place of occurrence and handed over the same as Ex.PO and Ex.PO/1 to the Police on 02.06.2003.
- xi) PW-11: Constable Muhammad Sharif alongwith Constable Muhammad Bashir escorted the dead bodies of both the deceased Muhammad Siddique and Mst.Ghulam Sakina to the mortuary. He also received last worn clothes of the deceased Mst.Ghulam Sakina from the lady doctor and he produced the same before the Investigation Officer who secured it through recovery memo Ex.P-E attested by the witnesses.
- xii) CW-1:Muhammad Zarait Kiyani, S.P Investigation verified the investigation conducted by the local Police; SHO and ASP Wazirabad.

5. After closure of prosecution evidence, the accused facing trial were examined under section 342 of the Code of Criminal Procedure. They, inter-alia, pleaded innocence and claimed that they had been falsely involved due to enmity. In reply to the question “why this case against you and why the PWs have deposed against you?”, the accused/appellant Imran alias Mani stated as follows:-

“I have been falsely implicated in this case due to political enmity. I was member of Zulfiqar Group of Khewaywali, which is opponent of Nasrullah complainant group. I have not participated in this occurrence in any manner. Neither I visited the house of deceased on the night of occurrence for dacoity purpose or for commission of Zina with my co-accused Mamoona or for

murder of the deceased persons. The instant occurrence was committed by Tariq Sunara (goldsmith) who has his goldsmith shop in front of house of the deceased and is resident of Ghakhar Town. Mst.Mamoona Bibi accused had illicit relations with said Tariq goldsmith and to save him from the occurrence, she had falsely implicated myself in this occurrence claiming that I have committed Zina with her. In fact, I have no such links with her. The PWs deposed falsely due to their political rivalry with myself and my pro group Zulfiqar of Khewaywali. They had witnessed the occurrence and false versions was introduced after due deliberation and consultation.”

6. We have gone through the record of this case and have also perused the evidence produced by prosecution. The statements of the accused have also been read. We have also scanned relevant portions of the impugned judgment. We have heard learned counsel for the appellants as well as learned Additional Prosecutor General for the State.

7. Learned counsel for appellant Imran alias Mani while arguing the case, in support of his contention, has raised the following points:-

- (i) This is a night time occurrence and there was no proper source of light under which the witnesses could see and identify the appellant/accused.
- (ii) The witnesses deposed that they have witnessed the occurrence through creeps of window from outside without any proper source of light.
- (iii) Both the eye witnesses are chance witnesses and they are not residents of the locality and they have entered appearance as chance witnesses.
- (iv) The witnesses entered the place of occurrence from the house of someone else and the inmate of that house has not been produced.
- (v) The second Investigating Officer never visited the place of occurrence.
- (vi) The sewing machine alleged to be the weapon of offence was not found stained with blood as mentioned in the recovery memo prepared by the Investigating Officer.
- (vii) The sewing machine alleged to be the weapon of offence was available at the place of occurrence when the recovery memo was prepared. It is hardly believable and even unnecessary that its recovery has been shown on pointation that is why the learned trial court disbelieved.
- (viii) At the time of recovery the sewing machine said to be lying on the shelf.

On the other hand learned counsel for complainant formulated the following points:-

- (i) Khalid Hussain, P.W.8 although does not reside there and admittedly does not own lying there but he used to cultivate there the land of somebody else.
- (ii) Nawaz the neighbour from whose house the witnesses had entered the place of occurrence, was not present at the time of occurrence. He appeared before the police and according to Investigating Officer his statement was not recorded.
- (iii) The FIR is promptly lodged.
- (iv) All the accused are known to the witnesses and there is no chance of mis-identity.
- (v) The accused were caught red-handed.
- (vi) The occurrence is corroborated by Medico Legal Report.
- (vii) The medical report corroborates the commission of sexual intercourse between Imran and Mst. Memoona.
- (viii) There is no reason to falsely implicate the appellants.
- (ix) There are minor discrepancies but not major contradictions.
- (x) Both the appellants were caught red-handed while committing zina.
- (xi) Both the appellants/accused never produced any witness before the Investigating Officer.
- (xii) No witness from the locality appeared in defence of appellants which could negate the prosecution version.
- (xiii) Mst. Memoona admits the offence of zina although as zina-bil-jabr .
- (xiv) Mst. Memoona alleged that the complainant was aged 54 years and had bad eye on her and it is not humanly possible.
- (xv) The second Investigating Officer reported that she given different version.
- (xvi) Both the Investigating Officers had found both the accused guilty.
- (xvii) The sewing machine has bars like nail which entered and injured victim when she was hit by the appellants/accused with the sewing machine.

- (xviii) The appellant/accused Imran was not only fit to perform sexual intercourse but also fit to assault physically with the sewing machine.
- (xix) The mutual enmity was due to political rivalry.

The learned Deputy Prosecutor General contended the following points:-

- (i) The occurrence took place around 4.30.a.m. and the statements etc. and other proceedings were started at 7.30.a.m.
- (ii) PWs 7 and 8 fully corroborate the version of FIR and there is no enmity.
- (iii) Khalid Hussain, P.W. has proved his presence at the place of occurrence and cultivating the land of Nasrullah and no cross-question was put to him in this regard.
- (iv) Both the accused were apprehended red-handed.
- (v) The Inspector Manzoor Ahmed has deposed that both the accused were presented to him when he reached the place of occurrence and they were taken out from the baithak.
- (vi) A question was put to Imran appellant during cross-examination of Nasrullah PW that no valuable was recovered at the time of occurrence.
- (vii) The fact of zina has been reported in the FIR and also confirmed by the Chemical Examiner's report.
- (viii) Dr. Jamal Nasir, PW.1 in para 10 of his report states that Injuries No.2-7 can be caused by heavy object which can crash the bone.
- (ix) The medical evidence corroborates the ocular account.
- (x) The sewing machine is reported to be blood stained.
- (xi) The version reported by the second Investigating Officer is different from the version reported by Investing Officer who firstly investigated the case.
- (xii) There is no previous enmity brought on record.
- (xiii) The prosecution has fully proved its case and the appellant does not deserve any leniency.

8. That it is a case of double murder and it has been observed from the evidence that the prosecution, inter-alia, equipped with ocular evidence, the FIR was lodged promptly and name of the appellant / accused was specifically mentioned therein. That PW-7 Nasrullah Khan and PW-8 Khalid Hussain are the eye witnesses. In their testimony these two witnesses PW-7 and PW-8 categorically stated that they have seen the accused/appellant with co-accused Mst.Mamoona in compromising position and they were naked. Having seen this they knocked the door but they did not open it and only then by using the neighbouring house they entered into the house and saw the appellant strangulating the neck of Ghulam Sakina with the help of co-accused Mamoona and on noise Muhammad Siddique came to rescue her but the appellant picked up a sewing machine lying there and hit it on the head of Muhammad Siddique. They further stated that they over powered both the accused persons and locked them in a room but in the meantime both Muhammad Siddique and his wife Ghulam Sakina have died. That the statements of both of these witnesses remained consistent with each other while narrating the occurrence and no major contradiction was seen therein nor in cross examination the defence side could shatter their evidence in material particulars nor from the suggestions put to these two witnesses the defence side could be able to establish any plausible defence nor their presence at the time and place of occurrence could be adequately denied. In cross examination, they mainly tried to put that the appellant / accused was implicated due to political rivalry and that being patient of T.B, he also remained in hospital and even was not able to commit the offence he has been charged with. The said suggestions seem to be of general nature and could not find any support from any reply of the PWs nor defence side has produced any evidence in this regard in as much as it is a well settled principle that “who assert has to prove the same”. The significant aspect of the case is that the Appellant was arrested from the place of occurrence rather was caught redhandedly and, as such, the version of the appellant that he was arrested from Dera could not find legs to stand.
9. That the medical account has also been corroborative of the prosecution version as stated by the PWs such as the nature and position of the injuries which were sustained by the two deceased persons and causes of death as well as regarding the sexual inter- course with the co-accused Mamoona, specially the MLR of appellant accused negates his version of being incapable of performing sexual inter course.
10. That PW-5 Zafarullah son of Muhammad Khan’s testimony has also remained in line with that of PW-7 and PW-8 in terms of timings of the material particulars. He also endorsed the presence of the complainant PW-7 in hospital till the post mortem of the deceased persons inasmuch as according to this witness he received the information regarding the murder of both the deceased persons at 8:00 a.m in the morning. He identified the dead bodies of the deceased persons and escorted the dead bodies at 9:30 a.m. to hospital. In cross examination, nothing was said specifically in denial of the statement of this witness.

11. In view of what has been discussed above, the prosecution story seems to be confidence inspiring having remained consistent, unshattered and probable. As such, the impugned judgment does not warrant interference of this Appellate Court as the prosecution succeeded to prove the case beyond reasonable doubt.

12. Consequently, Cr.Appeal No.164/L of 2004 filed by appellant / accused Imran alias Mani is dismissed. The conviction and sentence awarded to him by the learned Additional Sessions Judge, Wazirabad vide his judgment dated 27.05.2004 in Sessions Case No.38/2003 and Sessions Trial No.39/2003 are maintained whereby he was convicted under Section 302(b)/34 PPC on two counts and sentenced to death with compensation of Rs.1,00,000/- to be paid to the legal heirs each of the deceased persons and in each default of payment he will further undergo simple imprisonment for 06 months. Imran alias Mani was ordered to be hanged by neck till his death. He was also convicted under Section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and sentenced to 07 years R.I with fine of Rs.10,000/-. (The learned trial Court has not mentioned the sentence in lieu of fine of Rs.10,000/-). Therefore in case of default of payment of fine the convict will further undergo 06 months R.I.

13. The Murder Reference No.8/L of 2005 is answered in the affirmative and his sentence of death is confirmed.

14. These are the reasons of our short order dated 24.01.2012.

15. Mst.Memoona, appellant in Cr.Appeal No.165/L of 2004, who was on bail and warrants of arrest vide order dated 28.09.2011 passed by this Court, were issued but she did not appear on 22.11.2011 and even today she is absent, although notice was sent to her through concerned Police Station. Shahzad Abbas, ASI, Police Station Ahmed Nagar has reported that the Police has verified that Mst.Memoona had come back in Pakistan vide Entry Status, arriving, through Flight No.ED-411 on 15.02.2011 vide Passport No.AN5791681 at Allama Iqbal International Airport, Lahore but her mother has reported that she does not know her whereabouts although her child is residing with her.

16. Perpetual warrants of arrest against Mst.Memoona be issued through the learned trial Court and the DPO concerned with the direction to arrest her immediately and ensure her presence before this Court. Office is directed to keep her case/file pending dormant/intact till her arrest. After her arrest, the case be fixed before the Court.

17. The learned trial Court should also ensure necessary legal action against the sureties of Mst.Memoona and report in this regard within fortnight through Additional Registrar of this Court.

Dated Lahore the,
24th January 2012.
Amjad /*

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT

MR.JUSTICE SHAHZADO SHAIKH
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE RIZWAN ALI DODANI

JAIL CRIMINAL APPEAL NO.57/I OF 2010 L.W

1. Munir Ahmad s/o Fazal Dad, Caste Machi r/o Mangat Appellants
District Mandi Bahuddin.
2. Muhammad Azam s/o Muhammad Roshan, caste Machi
r/o Madina Town, Jhelum.
3. Mian Ghulam Mustafa s/o Muhammad Inayat, caste
Phularwan Mianey r/o Ghen Tehsil Phaliya District
Mandi Bahuddin.
4. Muhammad Ashraf Shah s/o Islam Shah, caste Sayed
r/o Hamidpura, Gali No.4, Okara.

Versus

The State

.....

Respondent

CRIMINAL APPEAL NO.58/I OF 2010 L.W.

Mukhtar Hussain s/o Mohammad Hayat,
caste Jatt r/o Khotiyan Tehsil P.D.Khan
and District Jhelum

.....

Appellant

Versus

1. Abudl Rasheed s/o Muhammad Hayat, Respondents
caste Machi r/o Khotiyan Tehsil
P.D. Khan, District Jhelum
2. Umar Hayat s/o Noor Muhammad,
caste Tarrar r/o Mehlo Kohana P.S.
Qadirabad, District Mandi Bahuddin

3. The State

CRIMINAL REVISION NO.6/I OF 2010 AND

Mukhtar Hussain S/O Mohammad Hayat, caste Jatt Petitioner
R/O Khotiyan Tehsil P.D.Khan and District Jhelum

Versus

1. Munir Ahmad s/o Fazal Dad,
caste Machi r/o Mangat,
District Mandi Bahuddin.
2. Muhammad Azam s/o Muhammad Roshan,
Caste Machi r/o Madina Town, Jhelum.
3. Mian Ghulam Mustafa s/o Muhammad Inayat,
Caste Phularwan Mianey r/o Ghen Tehsil Phaliya,
District Mandi Bahuddin.
4. Muhammad Ashraf Shah S/O Islam Shah,
Caste Sayed R/O Hamidpura, GaliNo.4, Okara

5. The State Respondents

CRIMINAL MURDER REFERENCE NO.3/I OF 2010

The State Versus Munir Ahmad, etc

Counsel for the appellants	....	Mr. Basharatullah Khan for appellants, Munir Ahmed, Muhammad Azam and Mian Ghulam Mustafa in J.Cr.A.No.57/I of 2010
Counsel for the appellants for the appellant	....	Mr. Sardar Ahmad Abid, Advocate Muhammad Ashraf Shah in J.Cr.A. No. 57/I of 2010
Counsel for the Complaints	....	Mian Muhammad Arif Advocate
Counsel for the State	....	Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General for the State

Case FIR No.date & Police Station Pind Dadan Khan, District, Jhelum	....	No. 1/2002 dated 01-01-2002 P.S.
Date of Judgment of trial court	....	30-4-2005
Date of Institution of the Cr. Appeals/Revision in FSC	....	28-05-2010
Date of hearing of Cr. Appeals/Revision	....	25-10-2011
Date of Decision	....	25-10-2011

JUDGMENT

RIZWAN ALI DODANI, J:- By this single judgment we intend to dispose of the following matters filed against the judgment dated 30.4.2005 passed in Sessions case No.8 of 2002 and Sessions Trial No.18 of 2002 by the learned Additional Sessions Judge-I, Jhelum :-

- (i) Jail Criminal Appeal No.57/I of 2010 filed by the appellants Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshen, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah, whereby they were convicted under Section 396 of PPC read with Section 20 of Haraba, Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and sentenced to Death and to pay compensation of Rs.50000/- payable to the legal heirs of the deceased in the event of recovery as arrears of land revenue in default whereof to suffer 06 months imprisonment.
- (ii) Criminal Appeal No.58/I of 2010 filed by appellant Mukhtar Hussain son of Muhammad Hayat against acquittal of respondents namely Abdul Rasheed son of Muhammad Hayat, Umer Hayat son of Noor Muhammad from the charges under Sections 170, 460, 412 of PPC and under Section 17 of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979, read with section 396 PPC.
- (iii) Criminal Revision No.06/I of 2010 filed by Mukhtar Hussain son of Muhammad Hayat for enhancement of compensation payable by the respondents namely Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshan, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah.
- (iv) Criminal Murder Reference No.3/I of 2010 The State Vs. Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshan, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah filed by State for confirmation of DEATH.

2. The brief facts of the case arising out of FIR No.01 of 2002, Ex. PQ dated 01.01.2002 under Section 460 PPC lodged at Police Station Pind Dadan Khan, District Jhelum on the complaint of Mukhtar Hussain, who stated that he alongwith his brother, namely, Muhammad Yousaf, resided in the same house alongwith family members, situated in village Khotiyan, P.S. Pind Dadan Khan, District Jhelum. On 01.01.2002, at about 08.00 p.m., he alongwith his wife, namely Mst. Nazeer Begum and daughter-in-law, alongwith suckling grandson were sitting in a room. They were watching T.V. The door was closed. A knock was made on the door, which was opened by his daughter-in-law. Suddenly four

persons entered the room. Three were in police uniform while the other was in white dress. Three persons were in the courtyard. Two of them were in civil dress while third was in police uniform. One was armed with kalashankov; one was armed with 7MM; one was armed with 12 bore and two were armed with 30 bore pistols. They were of about 25/30 years in age; colour was white. One was longer in height; while the remaining were of normal structure. In the room, one was in uniform of ASI, who addressed to Mukhtar Hussain, complainant by asking his name as Mukhtar. It was replied by the complainant that he is Mukhtar. Whereupon; the said person informed the complainant that they were not amongst the police force but they are docaits. They need money. The person armed with pistol put the pistol on his grandson. In the meantime, brother of the complainant, namely Muhammad Yousaf, his wife namely Mumtaz Begum and his son namely Mudassar Hayat came there from the adjoining room. The second person with pistol put the pistol on the neck of Mudassar Hayat. The complainant opened the box on the asking of the person who was in the uniform of ASI. A sum of Rs.90000/- was taken by them and they started reiterating from the room towards the outside. While leaving the door, the person armed with kalashankov gave a brust while the other started indiscriminate firing due to which Mst. Nazeer Begum, Mst. Mumtaz Begum, brother of complainant and Maqbool sustained injuries. Mst. Mumtaz Begum died on the spot and the accused ran away from the place of occurrence. The matter was reported to the police by the complainant for action in accordance with law.

3. Investigation ensued as a consequence of lodging FIR and after completing investigation police submitted a report under section 173 of the Code of Criminal Procedure requiring the accused to face trial.

4. The learned trial Court framed the charge against accused Munir Ahmad, Muhammad Azam, Mian Ghulam Mustafa, Muhammad Ashraf Shah, Umer Hayat and Abdul Rashid on 02.11.2002 under Sections 170, 460 PPC and under Section 17 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with Section 396 and 412 of PPC to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case produced twenty four witnesses. The gist of prosecution evidence is as follows:-

- (i) Muhammad Asgher constable, P.W-1 deposited the sealed parcel, said to contain blood stained cotton in the office of Chemical Examiner, Lahore, intact on 14.01.2002.
- (ii) Haji Naseer Ahmed, PW.2 was witness of identification of dead body of Mst. Mumtaz Begum at the time of postmortem in DHQ, Hospital, Jhelum on 01.01.2002.

- (iii) Sher Muhammad, PW.3 was witness of the identification of dead body of his sister Mst. Nazeer Begum at the time of postmortem examination.
- (iv) Gulzar Hussain, PW-4 was witness of recovery memo of blood stained cotton Ex.PA, Ex.PB through which I.O. had collected blood stained cotton of Mst. Mumtaz Begum and Mst. Nazeer Begum, witness of two empties of pistol Ex.P-1/1-3 and one 7-mm empty P.2 vide recovery memo Ex.PC containing sealed parcel, witness of recovery of one magazine P.3 of 30 bore along with 06 live cartridges P.4/1-6 as Ex.PD, recovery of 03 empties of 30 bore P.5/1-3 as Ex.PE, one muffler P.6. He was also witness of memo of disclosure by accused Munir who later got recovered .30 bore mouser and pistol of mouser from the graveyard as Ex.PG and witness of memo of disclosure by accused Ghulam Mustafa who later got recovered rifle 7-MM, P-8 from the graveyard near village Khotian Ex.PH
- (v) Muhammad Shafique constable, who appeared as P.W.5 had escorted the dead-body of Mst. Nazeer Begum to DHO Jhelum for postmortem examination and received post mortem report, inquest report, shalwar P-9, Qamees P-10, sweater P.11, Taveez P.12 one small box containing two bullets from doctor and delivered the same to the I.O. vide recovery memo Ex.P.J.
- (vi) Umer Hayat, PW.6 deposed that in his presence and in presence of PW and Muhammad Aslam on 01.10.2002 at about 6.00 p.m., Abdul Rashid accused confessed instigating accused Azam for commission of dacoity in the house of Muhammad Ashraf. He also confessed that on 01.01.2002 he alongwith the co-accused had committed dacoity and murder of two women in the house of Mukhtar Ahmed, complainant and begged pardon from complainant.
- (vii) Muhammad Aslam PW.7 corroborated the statement of PW-6 Umer Hayat.
- (viii) Muhammad Akram, PW.8, was witness of disclosure by accused Muhammad Azam who later got recovered pistol P-7 after digging earth from graveyard. The recovery memo is as Ex.PK, a sealed parcel which contains pistol P.7. He was also witness of disclosure by accused Ashraf Shah who later got recovered pistol P.8 from the graveyard. The recovery memo is Ex. P.L containing sealed parcel of pistol P.8.
- (ix) PW-9 Muhammad Riaz constable received two sealed parcels said to contain empties 7 MM and 30 bore and deposited the same to the office of Forensic Science Laboratory, Lahore intact on 28.3.2002.

- (x) PW-10 Muhammad Nazeer, was witness of memo of disclosure and pointation to place of occurrence by accused Muhammad Azam, Munir, Mustafa, Ashraf Shah, Umar Hayat and Abdul Rasheed and also witness of memo of disclosure by accused Umer Hayat and recovery of gun .12 bore used in the occurrence as Ex.P-9 and recovery memo Ex.PM
- (xi) PW-11 Sikander Hayat, was witness of disclosure by accused Muhammad Azam and recovery of Rs.2000/- consisting of 40 notes of Rs.50 Ex.P.10/1-40 vide recovery memo Ex.PN., witness of disclosure by accused Munir Ahmad and recovery of Rs.2000/- consisting of 40 notes of Rs.50 Ex.P.11/1-40 and police uniform, pent, Ex.P.12, shirt Ex.P.13, Cap Ex.P.4 and rank Ex.P.15 vide recovery memo Ex. P.O and also witness of disclosure by accused Abdul Rasheed and recovery of Rs.1000/- consisting of notes of Rs.50 Ex.P.16/1-20 vide recovery memo Ex.P.P.
- (xii) Imdad Hussain Sub Inspector, PW.12 had drafted the FIR Exh.P.Q. on the basis of complaint sent to him by Framoz Mumtaz, Inspector.
- (xiii) Muhammad Lateef, ASI, appeared as PW.13. He had received from moharrar Umer Hayat two sealed parcels containing empties which he kept in malkhana intact and finally handed over to Muhammad Riaz, constable on 28.3.2002. He had also received from I.O. two sealed parcels containing pistols and three parcels containing gun rifle 7MM and pistol of mouser shape which he kept in malkhana in safe custody and handed over the said parcels to Abdul Rehman constable for onward transmission to the office of Forensic Science Laboratory, Lahore.
- (xiv) Umer Hayat, ASI, PW.14 deposed he was moharrar of P.S. P. D. Khan on 2.1.2002 and received the sealed parcel containing blood stained cotton and two empties form I.O. and handed over the said parcels to constable Muhammad Asghar for onward transmission to the office of Chemical Examiner, Lahore.
- (xv) Muhammad Riaz constable, PW.15, had escorted the dead body of Mst. Mumtaz Begum which he received from the I.O. for postmortem examination. After postmortem examination doctor handed over him the last worn blood stained clothes of the deceased i.e. Qamees Ex.P.17, shalwar Ex.P.18, sweater Ex.P.19, dupatta Ex P.20, which he later handed over the I.O. vide recovery memo Exh. P.R. attested by him.
- (xvi) Akhtar Naqash, PW.16 had taken rough notes from the place of occurrence and prepared the site plan Exh. P.S. and Exh. P.S 1 & 2, and handed over the same to the I.O.

(xvii) Dr. Khalid Mehmood Farooqi appeared as PW.17. He conducted medical examination of injured Mst. Nazir Begum and observed as follows:-

“She was an old lady of about 60 years old, was lying on bed. She was crying with pain. Pulse was feeble. B.P. was not recordable. Skin was cold and clammy. She was in shock and dangerous stage. Following injures were noted:

INJURY NO.1

Multiple firearm wound of entry were cited over the left hypochondria region of abdomen margin of wounds were inverted and blackening was present around the wound margin. Two wound cited below left costal margin were communicating with abdominal cavity and were bleeding profusely.

INJURY NO.2

Firearm wound of entry was cited over the interior aspect of left lumber region. Size of wound was half cm diameter. Margin of wound were inverted and burnt black. Wound was not communicating with the abdominal cavity.

INJURY NO.3

A Firearm wound circular in shape 1 cm in diameter was cited over the left inguinal region. Margin of the wound were inverted and burnt black.

INJURY NO.4

A bone deep fire of wound cited over the anterior end of left iliac region. Size of wound was 1cm diameter. Margin of wound was burnt black and inverted.

INJURY NO.5

A fire of wound of entry size ½ cm diameter was cited over the posterior aspect of lower one third of left forearm. Margins were inverted. No blacking was seen.

INJURY NO.6

Firearm laceration measuring size of 5 cm x 4 cm was cited over the left breast. Holes in clothes due to firearm injuries were present which corresponded to the injuries.

All the injuries were kept under observations. However, in my opinion injury No.1 was dangerous to life. It was jurjiafa. Probable time between injuries and examination was within two hours. All injuries were caused by firearm. The patient was referred to Holy family hospital Rawalpindi because patient was in critical condition. Exh. P.T is correct corban copy of my MLR which is in my hand and bears my signatures. Injury statement regarding Nazeer Begum bears my signatures which is Exh.P.U. The I.O. produced before me application for recording the statement of Mst. Nazeer Begum injured on this application my opinion was that Mst. Nazeer Begum was not able to record her statement. My opinion is Exh.P.V.

On the same day and time Basharat Mahmood 525/C of P.S. P.D.Khan produced before me injured Muhammad Maqbool son of Ghulam Rasool, caste Bhatti, resident of village Khotian, P.S. P.D.Khan. I performed the medico legal examination of the injured. My observations were as follows:-

He was a young male about 30 years old was lying on bed. He was crying with pain. Following injuries were noted.

INJURY NO.1

A circular shape firearm wound of entry measuring size of 3/4 diameter were cited over the left interior auxiliary line about 7cm infer lateral to the left nipple. Margin of the wound were inverted and blackening was present. X-ray of chest was advised.

INJURY NO.2

A circular firearm wound of entry measuring 1cm in diameter was cited over the back of left side of chest just lateral to inferior angle of left scapula. Margin of wound were averted. X-ray of chest was advised.

All the injuries were kept under observations. Duration of injuries was within two hours and were caused by firearm weapon. After the receipt of report of X-ray both the injuries were declared as Jurah ghair Jaifa Mutlaihma. Exh. PW is correct corban copy of my MLR. It is in my hand and bears by signature Exh.PW/1 is report of radiologist, which is in my hand and bears my signatures. Injury statement of injured Muhammad Maqbool is Exh.P.X, which also bears my signatures.

On the same day Basharat Mahmood 525/C P.S.P.D.Khan produced before me injured Muhammad Yousaf son of Muhammad Hayat, about 55 years old, caste Jatt Khotee, resident of village Khotian, P.S. P.D. Khan. I performed the medico legal examination of the injured and my observations were as follows:

INJURY NO.1

There was a lacerated wound measuring in size of 2 cm x 1 cm cited on the dorsal aspect of thumb of right hand. There was marked tender swelling on whole of thumb. Wound was bleeding perfursely. X-ray of right hand was advised.

The injury was kept under observations and duration of injury was within two hours, and was caused by firearm weapon. Exh.P.Y is correct corban copy of my MLR of Muhammad Yousaf which is in my hand and bears my signatures. On receipt of radiologist report I declared the injury as Jurah Ghari Jaifa Hashma. In this regard my opinion on Exh.P.Y is Exh.P.Y/1. It is also in my hand and bears my signature. Injury statement of Muhammad Yosaf injured also containing my signatures which is Exh.P.Z.

(xviii) Dr. Tayyaba Aziz, PW.18 conducted post mortem examination of dead body of Mumtaz Begum on 2.1.2002 . The dead body was identified by Intisar Ahmad and Haji Naseer Ahmed.

EXTERNAL APPEARENCE

It was a dead body of middle aged woman healthy wearing green colour shalwar and qamees, white sweater and white shall. No ligature mark. Post mortem staining were present on dependent parts of body. Rigormotis was present with estensor attitude of limes. Following injuries were present.

- i). 3 x 2 cm wound in left eye. The eye balls pushed in verse in crinal cavity.
- ii). 18 x 6 cm wound on left side of skull, whole brain matter protruding out. Clotted blood was present. Skull bones bault was fractured.

CRANIUM AND SPINAL CORD

Skull injury already mentioned. Spinal cord healthy and net opened.

THORAX

All the organs were found healthy.

ABDOMEN

Stomach normal and contain semi solid food. Bladder was empty and healthy.

ORGAN OF GENERATIONS

Normal size empty uterus. No injury to external genital orgins.

MUSELES, BONES AND JOINTS

- 1) 3 x 2 cm injury at left eye pushing the eye ball in the skull cavity.
- 2) 18 x 6 cm injury at left side of skull brain matter protruding along.

OPINION

By doing the external and internal post mortem of the deceased, I was of the opinion that cause of death of the lady was due to internal bleeding of cranial vessels and injury to the braing matter caused by firearm which caused sudden death.

Probable time elapsed between injury and death: Sudden. Probable time between death and post mortem. 10 to 12 hours. PAA is correct corbin copy of my post mortem report of Mst. Mumtaz Begum which is written in my hand and bears my signatures. Exh. PAA/1 is scia-gram which also bears my signatures. Injury statement of dead body of Mst. Mumtaz Begum is Exh.P.BB which also bears my signatures. Inquest report of dead body of Mst. Mumtaz Begum is Exh.P.CC which also bears my signatures.

On 3.1.2002 she conducted the post mortem examination of Mst. Nazeer Begum produced before me by Muhammad Siddique constable of P.S.P.D.Khan. It was identified by Khizar Hayat and Sher Muhammad of village Khotian.

EXTRNAL APPEARANCE

It was a dead body of an old lady of about 55-60 years of age. She was healthy and wearing printed brown gamees and white shalwar which had black lines on it and brown sweater. All were soaked in blood. No ligature marks, post mortem staining were present on dependent parts of body. Rigormotus was present. Following injuries were present.

- i) 4 stitches on laprotomy wound which was about 30 cm in length.
- ii) 1 x 1 cm bullet wound on left wrist.
- iii) Three small prouder spots below the left ribcage latterly.
- iv) Two bullet wounds (a) 1 x 1 cm (b) 2 x 1 cm below the left ribcage meddialy.
- v) 6 x 3 cm wound in breast bullet wound.
- vi) 1 x 1 cm bullet wound in left iliac region near the iliac tuberosity.
- vii) 1x1 cm bullet wound below the right ribcage about 8 cm from mid line.
- viii) 1 x1 cm bullet wound near the naval sign left side.

CRANIUM AND SPINAL CORD

Healthy. Spinal cord not opened.

THORAX

6 x 3 cm wound on left breast ribs and cartilages were not injured. Remaining organs were found healthy.

ABDOMEN

- i) About 30 cm laproto my wound in the mid line.
- ii) Three small powder spots below the left rib cage latterly.
- iii) Two bullet wound below the left ribcage medially.

- iv) 1 x 1 cm bullet wound in left iliac region.
- v) 1 x 1 cm bullet wound below the right ribcage bound 8cm from mid line.
- vi) 1 x 1 cm bullet wound near the naval sign, left side.

Peritrium injured. Stomach punctured, which was stitched, ante-mortem. Small in testiness punctured at one side which was stitched ante-mortem. Large intestine torn. Liver damaged. A stitch was applied on greater lob of liver. Under surface of lever was crushed. Right kidney damaged. Orgin of re-generation were healthy. Abdominal aorta was torn at two places about 1 cm apart. One bullet recovered from right flank. One piece of bullet was recovered from track of bullet in the left iliac region.

OPINION

By doing the external and internal post mortem examination I was of the opinion that cause of death of the deceased was due to hemorrhage and shock caused by firearm weapon also injury to the liver and kidney. Main abdominal vessel were injured which caused hemorrhage leading to shock and death. Probable time elapsed between injuries and death 24-36 hours. Probable time between death and post mortem 6-8 hours. After post mortem examination I handed over a well stitched body of Nazeer Begum alongwith last worn clothes, Taveez of neck and sealed box containing two bullets to Muhammad Shafique constable of P.S. P.D.Khan Exh.P.DD is correct corbin copy of my post mortem report which is in my hand and bears my signatures. Exh.P.DD/1 and Exh.P.DD/2 are a copy of scia-grams which are in my hand and bear my signatures. Application for post mortem examination is Exh.P.EE which bears my signatures. Exh.P.FF is inquest report also bears my signatures.

- (xix) Mukhatar Hussain, complainant appeared as PW.19. He stated the same facts as narrated in his crime report.
- (xx) Muhammad Yousaf, appeared as PW.20. He corroborated statement of the complainant. He was also witness of memo of recovery of one led of pistol and one led of 7MM as Ex.P.HH, Ex.P.21 and Ex.P.22, witness of recovery of Rs.2000/- consisting 40 notes by accused Muhammad Azam Ex.P.N and Ex.P.10/1-40, witness of recovery of Rs.2000/- consisting 40 notes of Rs.50/- Ex.P.11/1-40, police uniform, pent Ex.P.12, shirt P.13 and Ca P.14 and rank P.15, Ex.P.O. He had also identified accused Umar Hayat, Muhammad Ashraf Shah, Munir Ahmed, Muhammad Azam and Ghulam Mustafa in jail on different dates.
- (xxi) Raja Framoz Iqbal, appeared as PW.21. He after hearing information of occurrence reached place of occurrence and recorded statement of complainant Mukhtar Ahmad as Ex.P.GG and sent the same to the police station for registration of case.

He prepared injury statement of Mst.Nazeer Begum Ex.PU and sent her hospital for medical examination.He prepared inquest report Ex.P.CC of Mst.Mumtaz Begum alongwith application Ex.P.BB and dispatched the dead body to hospital for post mortem through Muhammad Riaz constable and recorded the statement of eye witnesses u/s. 161Cr.P.C. He prepared the injury statement of Muhammad Yousaf Ex.P.Z and injury statement of Maqbool Ex.P.X and end them to the hospital for medical examination.He also prepared application Ex.P.JJ to M.O. for the purpose of recording statement of Nazeer Begum. He made search for the accused. The following days he inspected the place of occurrence and collected blood through cotton from the place where Mst.Mumtaz Begum received fire armed injury and made into a sealed parcel. He also took blood of Mst.Nazeer Begum through cotton and made it into a sealed parcel vide recovery memo Ex.PB. He collected three empties of pistol of .30 bore and one empty of 7MM rifle from the place of occurrence and made it into a sealed parcel vide recovery memo Ex.P.C. He also collected magazine of .30 bore pistol loading with six live cartridges. Bullets are P.4/1-6 vide recovery memo Ex.P.D. He also took three empties of .30 bore pistol near the place of occurrence and made into a sealed parcel vide recovery memo Ex.P.E. He recovered muffler P.6 the recovery memo Ex.P.F. He took into possession blood stained last worn clothes of deceased Mumtaz Begum i.e P.17, shalwar P.18, sweater P.19 and Duppata P.20 vide recovery memo Ex.P.R. He prepared rough site plan of the place of occurrence Ex.P.KK. On 3.1.2002 he reached the hospital where Nazeer Begum died. He prepared application Ex.P.EE and inquest report Ex.P.FF. After post mortem examination of Nazeer Begum he received last worn clothes of deceased i.e. shalwar P.9, Qameez P.10, sweater P.11, Taveez P.12 vide memo Ex.P.J. He also received parcel of two bullets. He also got prepared rough notes of place of occurrence on the pointation of PWs under his direction.

- (xxii) Abdul Rehman constable, appeared as PW.22. He received from moharrar Muhammad Latif five sealed parcels of gun of .12 bore, 7 MM rifle and .30 bore pistol which he deposited in the office of Forensic Science Laboratory, Lahore on 09.05.2002 intact.
- (xxiii) Allah Bakhsh, appeared as PW.23. He deposed that on 11.1.2002 investigation of this case was handed over to him by Shahid Hussain inspector/ SHO P.D.Khan. On the same day, he contacted the complainant of this case and recorded the statements of P.Ws. On 15.01.2002 he recorded the statement of moharrar and a constable regarding the dispatch of parcel to the concerned quarter. On 16.01.2002 he went to Gujrat and met Reffat Mehmood S.I, in Adda police post, P.S.Civil Lines, Gujrat. The accused Munir Ahmad,Ghulam Mustafa, Azam and Ashraf were under an arrest at that time. He interrogated them and obtained the extracts from the ziminis of case FIR No.980 under section 458/380 PPC wherein some disclosures were made by the aforesaid accused during the investigation in the said case. He incorporated

these extract in the ziminis. On 20.1.2002 Muhammad Yousaf produced before him one led bullet of pistol 30 bore and one bullet of 7MM rifle which were taken into possession by him vide recovery memo Exh.P.HH,. Led bullets are Ex.P.21 and P.22 respectively, under the attestation of P.Ws. he recorded the statements of PWs under section 161 Cr.P.C. On 23.1.2002 he moved an application to DPO Jhelum for the transfer of accused from District Gujarat. On 27.1.2002 he arrested Umer Hayat accused in this case while he was nearby the bridge of chak Nizam. On 28.1.2002 he sent him to jail on judicial remand for the purpose of identification parade. On 2.2.2002 he moved an application to Special Judicial Magistrate for identification parade of the accused. The identification parade was conducted in the presence of Magistrate on 9.2.2002, within the jail premises. On 11.2.2002 Ashraf accused was get transferred from Gujrat to Jhelum and he formally arrested him in this case. On 12.2.2002 he sent him to jail on judicial remand for the purpose of identification parade. On 13.2.2002 he moved the application for attested copies of the proceedings conducted by the special judicial Magistrate for the purpose of identification parade of Umer Hayat accused. On 14.2.2002 he moved an application to Special Judicial Magistrate, namely, Mr.Muhammad Sabtain, P.D. Khan, for identification parade of Ashraf Shah, accused which was conducted on 21.2.2002 in jail premises. On the same day he obtained the copy of the identification proceedings. On 6.3.2002, he get transferred Munir, Ghulam Mustafa and Azam accused from Gujarat to Jhelum, and formally arrested them in this case, and sent them to jail on judicial remand on 7.3.2002 for the purpose of identification parade. On 8.3.2002 he moved an application before the learned Special Judicial Magistrate for identification parade of the accused which was conducted on 16.3.2002, and he obtained its copy on 18.3.2002. On 21.3.2002 he received the report of Chemical Examiner regarding blood stained cotton which was collected from the place of occurrence. On 29.3.2002, heI recorded the statements of moharrar and Riaz constable u/s 161 Cr.P.C. On 30.3.2002 he obtained physical remand of Umer Hayat, Azam and Muhammad Ashraf from the Ilaqa Magistrate. He obtained physical remand of Munir and Ghualm Mustafa accused on 1.4.2002. He joined Abdul Rashid accused in the investigation on 2.4.2002 who was in the judicial lock up at P.D.Khan. On 3.4.2002 Imdad ASI after getting remand of Abdul Rashid, accused produced him before this PW and he was joined in the investigation. On 3.4.2002 he interrogated Azam accused. He made a disclosure about the availability of pistol 30 bore and accordingly led to recovery from graveyard of Ariyanwala. He took the same into possession vide recovery memo Ex.P.K after making it into a sealed parcel. Pistol is P.7. He recorded the statements of PWs. The rough site plan of the place of recovery is Ex.PK.1/1. He did not produce any valid license against the said pistol therefore, separate case was registered against him. On the return to police station, he handed over the case property to moharrar and detained the accused in lock up. On the same day, he took out Muhammad Ashraf accused from the lock up and interrogated him who made disclosure and led to recovery of pistol .30 bore from

graveyard of Ariyanwala. He got recovered the pistol. He took into possession the same vide recovery memo Ex.P.L and made into sealed parcel. Pistol is Ex.P.8. He also prepared rough site plan of place of recovery Ex.P.1/1 and recorded the statements of PWs. He did not produce any valid license, therefore, a separate case was registered against him. On 4.4.2002 all of the five accused made disclosure regarding the place of occurrence. He took them to the place of occurrence where they disclosed the house where the occurrence had taken place. He prepared memo of the pointation of the place of occurrence Ex.P.LL under the attestation of PWs. He returned to the police station and kept them in the judicial lock up. Thereafter he took out Umer Hayat accused from the lock up and interrogated him. During the investigation he made disclosure and led to the recovery of .12 bore gun Ex.P.9, from the graveyard of Ariyanwala. He made it into sealed parcel and took the same into possession vide memo Ex.P.M under the attestation of PWs. He also prepared rough site plan of place of recovery Ex.P.M./1. He could not produce any licence, therefore, a separate case was registered against him. On 8.4.2002 he interrogated Munir Ahmed accused who made a disclosure and led to the recovery of pistol .30 bore from the graveyard of Ariyanwala. It was made into a sealed parcel by this PW vide memo Ex.P.G. Pistol is P.7. He could not produce any license against it therefore, a separate case was registered against him. He also prepared rough site plan of place of recovery Ex.PG/1. On his return to police station he delivered the parcel to moharrar for safe custody in malkhana and doing the needful. On the same day he interrogated Ghulam Mustafa accused who made disclosure during the investigation and led to the recovery of 7MM rifle from the graveyard of Ariyanawala which is Ex.P.8. It was made into sealed parcel vide memo Ex.P.H. He prepared the rough site plan of place of recovery Ex.PH/1. He could not produced any licence, against it therefore, a separate case was registered against him. The case property was handed over to moharrar by me. On 10.4.2002 he interrogated Azam accused in the presence of PWs who made disclosure during the investigation and led to the recovery of Rs.2000/- from saw machine of Abdul Rashid from a room. The amount was consisting of 40 notes of Rs.50/- each Ex.P.10/1-40 and these were taken into possession by me vide recovery memo Ex.P.N. He also prepared rough site plan of place of recovery Ex.P.N/1. He came back to police station and case property was handed over to moharrar. On the same day he interrogated Munir Ahmad, accused in presence of PWs who made a disclosure during the investigation and led to the recovery of Rs.2000/- from the a box placed in the room situated nearby the saw machine. The amount consists of 40 notes of Rs.50/- which are Ex.P.11/1-40. He also got recovered police uniform, pent P.12, shirt P.13, cap P.14 and rank P.15 from the same box. He took into possession vide memo Ex.P.O. He also prepared rough site plan of place of recovery Ex.P.O/1. On 11.4.2002 he interrogated accused Abdul Rashid in presence of PWs who made a disclosure and led to the recovery of Rs.1000/- from a box situated in residential house of village Khotiyan. The amount consists of 20 notes of Rs.50/- each which are Ex.P.16/1-20.

He took into possession vide memo Ex.P.P. and also prepared the rough site plan of place of recovery Ex.P.P/1. He delivered the case property to moharrar. Thereafter, he was transferred to P.S. City, Jhelum.

(xxiv) Muhammad Sabtain Abid Kazmi, Special Judicial Magistrate appeared as PW.24. He conducted identification parade of accused Umer Hayat, Muhammad Ashraf Shah, Munir, Muhammad Azam and Ghulam Mustafa on different dates

6. The prosecution tendered in evidence reports of Chemical Examiner Exh. P.RR, Exh.P.SS, reports of Serologist Exh.P.TT and Exh. P.UU and report of Forensic Science Laboratory, Lahore Exh. P.VV.

7. After closing prosecution evidence, statements of accused were recorded under section 342 of the Code of Criminal Procedure. They neither opted to produce any defense evidence nor made their statements under Section 340 (2) of the Code of Criminal Procedure. In reply to a question “why this case against you and why the PWs deposed against you?” the accused Munir Ahmed stated as follows:

“I am innocent in this case. It was a blind case and there was a pressure on the police to locate and apprehend the accused of this case. So, the police, only to show a progress in the performance of duties, had made me an scapegoat and in connivance with the P.Ws had concocted a false storey. There is no direct evidence against me. The recovery is planted. The identification parade was managed and I was shown to the P.Ws prior to the identification parade.”

While accused Muhammad Ashraf, Ghulam Mustafa, Abdul Rasheed, Muhammad Azam, Umer Hayat adopted the statement of accused Munir Ahmed.

8. After hearing both the parties the learned trial Court convicted and sentenced the appellant as mentioned in opening para of this judgment.

9. We have gone through the file. Evidence of the prosecution witnesses as well as statements of the accused have been perused. The relevant portions of the impugned judgments have been scanned.

10. During the course of arguments, leaned counsel for the appellants Mr. Basharatullah Khan argued that story of prosecution regarding wearing of uniform by the appellant during the course of dacoity is not believable as only one police uniform is recovered from Munir Ahmed which is not fitting with the body of Munir Ahmed as observed by the learned trial Court; alleged Kalashnikov has not been recovered from the possession of any of the appellants as it was stated by the prosecution that the person armed with Kalashnikov gave the first burst while the others started firing. The appellants were not

nominated in the FIR, and at the time of identification parade specific role has not been assigned by the prosecution to any of the appellant. The age of accused was mentioned by the prosecution in the FIR at 25/30 years whereas the ages of appellants are 35 to 55 years. The features of the accused are not given in detail in the FIR as Abdul Rashid accused is living in same village and complainant had known him since childhood. It is very strange that accused Abdul Rashid made extra judicial confession, without any reason, before Muhammad Aslam and Umer Hayat, one of whom was real brother of deceased and he did not react against the maker of confessional statement, neither he apprehended him at the time of extra judicial confession, nor they immediately report it. They had no authority over the complainant. Identification parade had not been conducted by the prosecution according to law as the requirement had not been fulfilled by the prosecution. The prosecution witnesses have made several improvements in their statements. Recovered empties were sent to FSL for chemical analysis after delay of about three months; two empties of 12 bore rifle were collected by the police at the place of occurrence but the same were not sent to FSL for chemical analysis. It is noteworthy that other items were sent to FSL, whereas empties were held back and not sent to FSL, and sent only after the appellant/ accused were arrested. It is very strange that as per prosecution that Rs.90,000/- were looted by the accused whereas only a total of Rs.5000/- was allegedly recovered from all the appellants and no direct evidence of recovery was available on record except the police, as other witness of recovery remained outside the room from where the amount was allegedly recovered on the pointation of the appellants, from the same place in two parts. Weapons of offence i.e. 30 bore pistol recovered from Munir Ahmed son of Fazal Dad, rifle 7MM recovered from Mian Ghulam Mustafa son of Muhammad Inayat, 30 bore pistol recovered from Muhammad Azam son of Muhammad Roshan, 30 bore pistol recovered from Muhammad Ashraf Shah son of Islam Shah and 12 bore rifle recovered from Umar Hayat son of Noor Muhammad which were used during the course of dacoity from different places of the same graveyard by the police at different times. The police had kept the appellant at police station for one day after their arrest and during that period appellant was seen by the witness of identification parade. The empties recovered from the place of occurrence were sent to Chemical Examiner who returned the same with objection but it is not clear from record as to what objection had been made by the Chemical Examiner and who removed the same. The blood-stained earth was sent to chemical examiner for chemical analyses but the recovered empties were sent for this purpose later on. All the accused were arrested on extra judicial confession made by Abdul Rashid but maker of the same was acquitted by the trial Court. That the bullets which were recovered from the dead body during the post mortem have not been sent to Forensic Science Laboratory.

11. Mehr Sardar Ahmad Abid, Advocate learned counsel for the appellant Muhammad Ashraf Shah while adopting the above mentioned argument stated that looted money was not recovered from the possession appellant Muhammad Ashraf Shah.

12. Learned counsel for the complainant argued that FIR of this case has been lodged by the prosecution very promptly wherein even the features of the accused had been given. The empties were recovered from the place of occurrence and same have been matched from the weapons of offence recovered from the possession of the accused. Empties were sent for chemical analysis prior to recovery of said weapons of offence. There is ocular account and the latter is confidence inspiring and there is corroboration by the medical evidence; there is no contradiction whatsoever in the statements of the PWs; the presence of eye witnesses is admitted; the medical account is admitted; the parcel prepared by the I.O. on the first day is also admitted and all the parcels subsequently were handed over to the Moharrar of the P.S. is also admitted; this is also admitted fact that four accused persons entered in the residential room of the PW; place of occurrence is the house of complainant; there is no reason to falsely involve the appellants and two respondents in this case; the evidence of identification parade, recoveries of weapons as well as recovery of looted amount and the report of Forensic Science Laboratory is positive; the appellants have not explained their positions in the statements under Section 342 of Code of Criminal Procedure. All the appellants and respondents are record sheeters as per record more than seventeen cases of the same nature have been registered against the present appellants and respondents; the evidence on the file that both the PWs 18 and 20 were also identified the appellants during the course of identification parade and thereafter in the Court while recording their statements. There is no enmity between the complainant and the accused and substitution is rare phenomena in such cases where two innocent persons have been murdered during dacoity. All the appellants belong to desperate and hardened criminal group and gang of dacoits. That they have not been arrested merely on the basis of extra-judicial confession as they have been arrested when they themselves in an interrogation in case FIR No.980 in Police Station Civil Line Gujrat made disclosure as to this crime amongst other as many as 18 crimes.

13. The learned Additional Prosecutor General Punjab for State stated that as the counsel for the complainant has argued the case at length therefore he adopts his arguments.

14. With the help of the learned counsel for the parties, we have gone through the entire evidence. It is very clear that occurrence of dacoity has taken place in the residential house of the complainant wherein two innocent ladies have died. Empties have been recovered from the spot and the same have been matched with recovered weapons. The appellants have been identified by the prosecution witnesses during identification parade as well as in the trial Court during their deposition. The complainant is eye witness who lodged the FIR promptly and features of the accused have been given in the FIR. Deposition of two eye witnesses including the injured one are confidence inspiring. Although whole looted amount has not been recovered from the possession of appellants but some amount has been recovered on the pointation of the accused. The weapons of offence used during the course of dacoity were recovered from the possession of accused and same have been matched with empties recovered from the place of occurrence, through FSL. The presence

of eye witnesses at the place of occurrence is natural as the occurrence took place at night time and the place of occurrence is residential house of the complainant. Medical evidence fully corroborated with the recovery of empties as well as nature of offence. There is no previous enmity or ill will between the appellants and complainant and there is no obvious reason to falsely involve the appellants in this case nor so narrated by the accused persons in their statements got recorded under section 342 Cr.P.C. At the same time, all necessary details have to be carefully analysed, for dispensing even handed justice.

15. There are some mitigating circumstances which need to be considered in their proper perspective and with due weight. This is night time occurrence. It is stated that as soon as accused persons leaving the room they first opened Kalashnikov burst and then started indiscriminate firing, although during deposition, it has been mentioned that firing was made by them while leaving firstly by rifle and that one of the injured witnesses was not produced. Therefore, it has not been possible to assign specific role to each for killing each of the two ladies and the injured persons. Furthermore bullets extracted from the deceased were not sent for matching which might have pointed out the exact culprits of killing and injuring. That such chronic practice on part of the prosecution in non adhering to the fundamental aspects of the probe into the matter comes in the way of Administration of justice and is a torment for the respective courts as well. So they being a responsible and effective part of judicial system are cautioned to play their given role with desired responsibility having regard to its sensitiveness and consequences so that the justice should be dispensed with to the affected people in actual manner.

16. Resultantly this appeal is dismissed with the alteration modification that conviction and sentences in Jail Criminal Appeal No.57/I of 2010 filed by the appellants Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshen, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah against the judgment, dated 30.04.2005 passed by the learned Additional Sessions Judge, Jhelum in Sessions Case No.08 of 2002 and Sessions Trial No.18 of 2002 whereby all of them were convicted under Section 396 of PPC and under Section 20 of Haraba, Offences Against Property (Enforcement of Hudood) Ordinance, 1979 is converted from Death to life imprisonment, however the fine of Rs.50000/- each by way of compensation under section 544-A Cr.P.C, payable to the legal heirs of the deceased in the event of recovery as arrears of land revenue or else or 06 months S.I., is maintained

17. Criminal Appeal No.58/I of 2010 filed by appellant Mukhtar Hussain son of Muhammad Hayat against acquittal of respondents namely Abdul Rasheed son of Muhammad Hayat and Umer Hayat son of Noor Muhammad against the judgment, dated 30.04.2005 passed by the learned Additional Sessions Judge, Jhelum in Sessions Case No.08 of 2002 and Sessions Trial No.18 of 2002 is also dismissed as rightly acquitted by the trial Court under the circumstances and facts of the case disclosed by means of respective evidence.

18. Criminal Revision No.06/I of 2010 filed by Mukhtar Hussain son of Muhammad Hayat for enhancement of sentence of respondents namely Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshan, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah against the judgment, dated 30.04.2005 passed by the learned Additional Sessions Judge, Jhelum in Sessions Case No.08 of 2002 and Sessions Trial No.18 of 2002 is also dismissed accordingly.

19. Criminal Murder Reference No.3/I of 2010 The State Vs. Munir Ahmed son of Fazal Dad, Muhammad Azam son of Muhammad Roshan, Mian Ghulam Mustafa son of Muhammad Inayat and Muhammad Ashraf Shah son of Islam Shah filed by State for confirmation of DEATH sentence is not confirmed and is answered in negative.

20. These are the reasons of our short order dated 25.10.2011.

Islamabad the
25th October, 2011
Abdul Majeed/*

IN THE FEDERAL SHARIAT COURT
(Appellate /Revisional Jurisdiction)

PRESENT

MR.JUSTICE SHAHZADO SHAIKH
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL No.26/I OF 2009.L.W.

Muhammad Bashir son of Appellant
Muhammad Amir caste
Pathan r/o Village Lakan
Afghanistan.

Versus

The State Respondent

JAIL CRIMINAL REVISION NO.4/I OF 2009 L.W.

Ch.Muhammad Iqbal son of Petitioner
Mehr Noor Din r/o House No.308/30,
Jan ColonyTench Bhatta,Rawalpindi

Versus

1. Muhammad Bashir son of
Muhammad Amir caste Pathan
r/o Village Lakan Afghan.

2. The State Respondents

CRIMINAL MURDER REFERENC NO.7/I OF 2009

The State Versus Muhammad Bashir

Counsel for the appellant Mr.Afab Ahmad Khan,
Advocate

Counsel for the petitioner Mr.Muhammad Ilyas
Siddiqui, Advocate

Counsel for the State	.....	Ch. Muhammad Sarwar Sidhu, Addl: Prosecutor General for State
Case FIR No. date & Police Station.	.....	No.315, dated 9-9-2000 Saddar Barooni Rawalpindi.
Date of judgment of trial Court.	.....	27-06-2002
Date of Institution of Jail Appeal in FSC	.....	28.02.2009.
Date of hearing	.....	04.08.2011.
Date of decision	.....	04.08.2011

JUDGMENT

JUSTICE RIZWAN ALI DODANI, J:- This Jail Criminal Appeal preferred by Muhammad Bashir son of Muhammad Amir is directed against the judgment dated 27.06.2002 passed by the learned Additional Sessions Judge, Rawalpindi whereby convicted the appellant under section 302(b) PPC and awarded him Death sentence and to pay compensation of Rs.100,000/- to the legal heirs of the deceased under section 544-A Cr.P.C. and in default of payment of compensation the appellant is further directed to undergo for 06 months imprisonment. The trial Judge has also convicted the appellant under section 392 PPC and sentenced him 05 years R.I. with payment of fine of Rs.20,000/- in default thereof to further undergo 02 months imprisonment. The appellant has also been convicted under section 412 PPC and sentenced to 05 years R.I. and to pay a fine of Rs.20,000/- or in default thereof to undergo 02 months imprisonment.

2. Precisely recapitulated facts of the case as gleaned from FIR registered on 09-09-2000 at police station Saddar Barooni, Rawalpindi on the statement of Muhammad Iqbal PW-10 that on 07-09-2000, Mst. Safoora Begum left her house at 11.30 a.m. for her treatment. After having medical consultation with her Doctor she went to her under construction house situated near Mohra Chapper Stop Chakri Road where Muhammad Bashir accused was residing alongwith his family as an employee/Chowkidar. When Mst. Safoora Begum did not return back till dusk, the complainant started searching her. That eventually on 09.09.2000 at 1.30 p.m. the complainant found dead-body of Mst. Safoora Begum in bath room of his said under construction plot. The dead-body of Mst. Safoora Begum at that time was emitting smell revealing that she was assassinated on 07.09.2000. The accused Muhammad Bashir left/ran away from the house as was not present there even his family member were not found there, therefore, on suspicion accused Muhammad Bashir was named in the FIR. It is added that there was marks of strangulations on the neck of the deceased Mst. Safoora Begum.

3. The police arrested the accused on 19.2.2001 and after due investigation submitted the challan against the accused persons Muhammad Bashir, his wife Mst. Bilqees Begum alias Tatari and son Pishtoon Khan. That subsequently Mst. Bilqees Begum alias Tatari and Pishtoon Khan were declared Proclaimed Offender and their case was separated from this case. On 08.12.2001, a formal charge against the accused Muhammad Bashir under sections 302/397/392/394 PPC read with section 17 Harabah of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and 412 PPC was framed by the trial Court to which the accused plead not guilty and claimed the trial.

4. The prosecution has produced 13 witnesses at the trial. The gist of these witnesses is as under :-

PW-1 Qamar-ud-Din draftman who prepared the scaled site plan of the place of the occurrence and handed it over to the police on 17.10.2000. The site plan is Exh.PA and Exh.PA/1, the drawing and note in black ink are in his hand writing and bears his signatures.

PW-2 Lady Doctor Tallat Mahmooda, SWMO DHQ Hospital, Rawalpindi conducted the post-mortem examination of the deceased Mst. Safoora Begum wife of Muhammad Iqbal, aged about 60 years. Her dead body was brought by Ghulam Farid, H.C. No.773 on 9.9.2000.

The observations of Doctor were as follows:-

The dead body was with swollen face, eyes were protruding out. Body was putrified, wearing pink white printed shalwar and Kameez and black brazier. Rigor mortis is absent. P.M. staining present. Mouth and neck were tied with black Burka straps and green doppta. Ligature mark was covering neck and is about 7.cm in width and 61.cm.

Around the mouth and neck under lying subcutaneous tissue echymosed trachea congested, hyoid-bone intact. Scratches and bruises around both wrists present, hands partially clenched. Scalp congested. Vertebrae not opened. Membranes intact. Brain congested. Larynx and both lungs are congested. Blood vessels congested. Abdominal wall swollen and putrefied. Mouth, pharynx and esophagus, liver, spleen all are congested. External genitalia swollen putrified. Three vaginal swabs sent to the Chemical Examiner for sperm detection. In rest of the organs nothing abnormal was detected.

OPINION

In my opinion, "the deceased died due to asphyxia caused by ligature around mouth and neck leading damage to vital organ and ultimate death. The injury is ante-mortem and sufficient to cause death in the ordinary course of nature. Probable time between injury and death was within half an hour and between death and post-mortem was about 2 to 3 days." After conducting the post mortem examination, I handed over the stitched dead-body of the deceased alongwith last worn clothes and sealed bottle to the police. Exh. PB is the correct carbon copy of post-mortem report of Mst. Safoora Begum which is in my hand and bears my signature. Ex. PB/1 and Ex. PB/2 is the pectoral diagram also in my hand writing and bears my signature.

PW-3 Ikhlaq Khan, Constable No.1290 deposed as PW-3. On 2.11.2000 that non-bailable warrants of arrest of the accused Muhammad Bashir Ex.PC, Pishtoon Khan Ex.PD and Mst. Bilqees alias Tatari Ex.PE were entrusted to this witness for execution which were not executed due to non traceable and deliberately concealed themselves. His report on the non-bailable warrants of arrest of three accused are Ex.PC/1, Ex.PD/1 and Ex.PE/1 which are in his hand and bear his signature.

PW-4 Muhammad Iqbal, Head constable No.2724 appeared at the trial as PW-4 and stated that on 9.9.2000 Muhammad Akram S.I handed over to him one sealed envelope

and one sealed phail for safe custody in malkhana. On 14.9.2000, he handed over the above said sealed envelope and sealed phail to Ghulam Farid, LHC for onward delivery to the office of Chemical Examiner, Rawalpindi. No body tampered with them.

PW-5 Habibullah, Head constable No.910 appeared as PW-5 and stated that on 28.2.2001, proclamations of the accused Pishtoon Khan Ex.PF and Mst. Bilqees alias Tatari Ex.PG issued by the Illaqa Magistrate were handed over to him by Muhammad Akram S.I for their execution. I made compliance of both the proclamations according to law. His reports on the proclamations are Ex.PF/1 and Ex.PG/1 respectively.

PW-6 Ghulam Farid, Head constable No.773. This witness stated that on 9.9.2000, the I.O. handed over to him the dead body of Mst. Safoora Begum (deceased) for its post mortem examination. After the Post mortem examination, Medical Officer handed over to him the last worn clothes of the deceased consisting of Kameez P1, Shalwar P2, Burka P3, Doppta Ex.P4 and a sealed phail Ex.P5, he handed over the above said articles to the Investigation Officer who secured the same vide recovery Memo Ex.PH signed by him and attested by the Investigation Officer. On 14.9.2000, he deposited a sealed phail and a sealed envelope in the office of Chemical Examiner, Rawalpindi which were delivered to him by Investigation Officer intact.

PW-7 Sheikh Ishfaq Ahmad is a witness of disclosure memo made during investigation by accused Muhammad Bashir. Muhammad Bashir accused made the following disclosure.

1. The accused made disclosure in presence of this witness and in the presence of Khalid Saleem PW that he murdered Mst. Safoora Begum with the help of his son Pashtoon Khan and wife Mst. Balqees Begum by tying the neck of deceased with her Burka.
2. He also made disclosure that he looted one golden Bangle and one pair of ear ring and Rs.1500/-.
3. He further disclosed that he could lead for recovery of articles which he concealed under the ground near the wall of the place of occurrence. Accused pointed the place of 'wardat' and also pointed the bathroom where he had thrown the dead-body of Mst. Safoora Begum (deceased).After digging the ground, got recovered one bangle Ex.P6 and one pair of ear ring Ex.P7/1-2 which were taken into possession vide a joint recovery memo of pointation Ex.PJ signed by him and Khalid Saleem PW.

PW-8 Nazar Abbas, ASI (Retired). This witness on 9.9.2000 received complaint Ex.PK on

which, he chalked out the formal FIR Ex.PK/1 without any addition or omission.

PW-9 Javaid Iqbal. He is the son of complainant Muhammad Iqbal and Mst. Safoora Begum (deceased). He narrated the same story of occurrence as mentioned in the FIR. He supported the version of his father.

PW-10 Muhammad Iqbal complainant appeared at the trial as PW-10 and supported the contents of FIR Ex.PK/1. In his supplementary statement recorded on 9.9.2000 he stated that accused Bashir snatched a golden 'Kara' from her wife's hand, two ear rings from her ear and some money as he checked and found that these things were also missing.

PW-11 Amjad Saeed, Special Judicial Magistrate stated that on 24.2.2001 accused Muhammad Bashir was produced before him for recording his statement under section 164 Cr.P.C. by Muhammad Akram Khan, S.I. He allowed the application Ex.PM and thereafter he recorded the statement of the accused Muhammad Bashir. This witness was satisfied that the accused Muhammad Bashir was making confessional statement with his free will. The confessional statement is Ex.PN and he also given the certificate in his own hand and under his signature which is Ex.PN/1.

PW-12 Muhammad Ramzan, Inspector. On 9.9.2000 at 1.30 p.m. on telephonic information, he reached at the place of occurrence, recorded the statement of Muhammad Iqbal complainant which is Ex.PK. he read over the contents of Ex.PK to the complainant and he signed the same as a token of its correctness. Ex.PK was sent to P.S. through Ghulab Khan constable for the registration of the case.

He inspected the place of occurrence and prepared injury statement/application for post mortem examination Ex.PO, and handed over the dead body to Ghulam Farid constable for P.M. examination to the Hospital. He took into possession the 'Rassi', Ex.P6, one pair of 'sleeper' P7/1-2, one 'Nakab' Ex.P8 which he took into possession vide recovery memo Ex.PL. He recorded the statements of the PWs and searched for the accused but did not succeed. He also prepared the inquest report Ex.PP. This witness has partly investigated the case.

PW-13 Muhammad Akram, SI. he stated that the investigation of this case was handed over to him by the Inspector/SHO on 26.9.2001, he arrested accused Muhammad Bashir on 19.2.2001 at Torkham Border and got him transferred to Rawalpindi, then he obtained his physical remand on 20.2.2001.

5. According to this witness that during investigation Muhammad Bashir accused disclosed and later on got recovered gold 'Kara' Ex.P6 and two ear rings Ex.P7/1-2 which

were taken into possession vide recovery memo Ex.PJ. Accused Muhammad Bashir pointed out the place where he concealed the stolen articles and place of the occurrence through memo Ex.PJ. On 24.2.2001, the statement of the accused was recorded under section 164 Cr.P.C. where accused voluntarily confessed his guilt and was sent to Judicial Lock up. He found the accused guilty and challaned the accused to stand trial. He also got the ornaments identified by Muhammad Iqbal complainant and memo of identification Ex.PQ was prepared. He also prepared rough site plan Ex.PR.

6. Learned DDA on behalf of the state closed the case for the prosecution on 7.6.2002.

7. The appellant/accused recorded his statement under section 342 Cr.P.C. In reply to question No.11 why the PWs have deposed against him and why this case against you, he stated as under:

“The entire prosecution case is prepared on the mere suspicion that as there was no body at all in the adjacent area of the place of the occurrence and I was the last one who left the said premises. The complainant and the police misconceived that I am the murderer of the deceased”. However, he did not opt to produce any evidence or to record his statement on oath, as provided under section 340(2) Cr.P.C.

8. After hearing both the parties learned trial Court convicted and sentenced the appellant as mentioned in opening para of this judgment.

9. Learned counsel for the appellant inter alia submitted that the prosecution has utterly failed to establish the case against the appellant.

He, in support of his arguments, raised the following contentions:-

- a. That police has subsequently added section 17 (Haraba) of Offences Against Property (Enforcement of Hudood) Ordinance, 1979.
- b. That till two days from the date of alleged missing of the deceased to discovery of the dead body no report was made in this regard.
- c. That police called the complainant party for identification of allegedly theft articles on 22-2-2001, whereas the identification memo made on 26-4-2001 that is after about 2 months.
- d. That the judicial confession was recorded after 5 days of the arrest of the accused/appellant and that after recording of the confessional statement the custody of the appellant was handed over to the police which creates material illegality and damages the sanctity attached to the confessional statement.

- e. No injury report was prepared nor was mentioned in inquest report.
 - f. No record of arrest of the accused allegedly made from Torkham Border is available on record.
 - g. That the Investigating Officer has not even mentioned in the rough site plan regarding the Veil (Naqab) then how it has mentioned in the inquest report.
 - h. The police first arrested Said Ullah brother of the accused and then released him.
 - i. That allegedly the extra-judicial confession was made by the accused before Shaikh Ishfaq Ahmad, PW-7, and one Khalid Saleem but the latter was given up as has not been produced before the trial Court and no explanation has been furnished for withholding his evidence, which puts dent on the prosecution's evidence.
 - j. That accused in his statement under section 342 Cr.P.C. categorically stated that he went away to Afghanistan one month prior to the occurrence.
 - k. That there is no direct evidence and any last seen evidence available on the record and as such it is a case of no evidence.
10. He relied upon 2001 SCMR page-168 on the point of judicial confession that it can be taken as corroboration and not in isolation.

11. That the learned counsel for the complainant in rebuttal mainly argued that section 17 Haraba of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 has inserted on the supplementary statement of complainant after feeling missing of golden ornaments and cash amount. That a report of missing of deceased got lodged on 8-9-2000 by Javed son of deceased and it has been mentioned in evidence. That admittedly the accused was living in a room with his family situated in under construction plot and that the accused was disappeared only after the occurrence without intimation, this fact strengthen the commission of offence at the hands of accused. That Shaikh Ishfaq Ahmad PW-7 is an independent witness and not related to any one as such his deposition is trust worthy and confidence inspiring and therefore cannot be ignored casually. That no plausible justification was given by the accused while recording statement under section 342 Cr.P.C. as to the retraction from the judicial confession. That the Medical Report is supportive of the manner in which the deceased was murdered. That the delay in recording of confession as pointed out by the counsel for the appellant is immaterial and could not render the confessional statement defective and that in support of his contentions he placed his reliance on PLJ 2007 SC page-403(Nazeer alias Wazir Vs. The State). He next argued that

the recovery of theft articles was made on the pointation of the accused in the presence of independent witness namely Shaikh Ishfaq Ahmad PW-7. He finally argued that in the presence of such a material i.e. judicial confession against which no substantive and material discrepancy or irregularity was pointed out by the defence which could lead to demolish the sanctity attached to confessional statement and moreover the extra-judicial confession of the accused was also before an independent witness namely Shaikh Ishfaq Ahmad PW-7 which carries weight and above all disappearance/absconsion of the accused from his room situated at the place of occurrence with his family without intimation to the complainant, the prosecution successfully made out the case beyond any shadow of doubt against the accused.

12. Learned Additional Prosecutor General for State contended that the accused after recording of his judicial confession was sent to judicial lock up and not to the police custody as alleged and therefore, the probative value of judicial confession is intact and can be made basis to convict the accused/appellant. He further submitted that the report as to the arrest of the accused/appellant from Torkham Border is also available on file at page-51 and he further submitted that he adopts the contentions already raised by the learned counsel for the complainant and support the impugned judgment as it does not suffer from any infirmity and illegality and in the end he contended that prosecution has established its case on the basis of worth of credence evidence.

13. We have heard the learned counsel for the parties. The entire evidence has been thrashed out with the eminent assistance of the learned counsel and the judgment of the learned trial Court has been perused thoroughly. It has been observed that the appellant was named in the FIR which was promptly lodged immediately after the dead body of missing deceased was found from the under construction plot of the complainant. The report as to the missing of Mst. Safoora Begum was also made wherein the name of appellant was not mentioned which depict the fairness on part of the complainant party and takes away the possibility of false implication of the appellant. That admittedly the accused/appellant was living in a room situated within the boundary wall of a under construction plot. It has been categorically stated by the accused/appellant in his statement recorded under section 342 Cr.P.C. while replying the question No.3 that his stay in the under construction house was till the continuation of the construction but in the same breath he improved himself and uttered that one month prior to the occurrence as construction of house was stopped he left the said house and proceeded to Afghanistan. This statement of the accused itself elaborates that the accused left the house without intimation. That this statement under section 342 Cr.P.C. also does not find mention as to the enmity which also brushes out any chance of false implication of accused/appellant at the hands of complainant. That insertion of section 17 (Haraba) of Offence Against Property (Enforcement of Hudood) Ordinance, 1979, at the later stage also goes in favour of the prosecution as it has been inserted only after the dead body was found and the complainant party came to know that golden ornaments and the cash was not found with the dead body. That it is also on the record that theft

articles were got recovered on the pointation of the accused vide recovery memo Ex.P/J in the presence of Musheer Shaikh Ishfaq Ahmad PW-7 who is an independent witness, though in the latter proceedings i.e. recovery on the pointation, requirement of section 103 Cr.P.C. is not mandatory, as such, taking independent witness as a Musheer of recovery makes it more probable and trust worthy. That it has been also observed that the accused/appellant has got recorded his confessional statement and the Special Judicial Magistrate, Rawalpindi who recorded the statement has been produced before the trial court as PW-11 who deposed that all due measures were undertaken by him before and after recording it and that it was recorded by the accused voluntarily, he was subjected to cross-examination but nothing reasonably favourable to accused came out of it. That the learned counsel for the appellant pointed out that the confessional statement was recorded after 05 days of the arrest of the accused/appellant which was controverted by the counsel for the complainant contending that it is immaterial and he replied upon PLJ 2007 S.C.page-403. That we are in agreement with the contentions of the learned counsel for the complainant that delay in getting recorded the confessional statement does not affect adversely for the reason that it depends on the conscience, and instinct of a person as to the feelings of guilt and for which there is no time limit to occur and as such, it does not damage the probative value of confession. That as regards the aspect of absconsion/disappearance of accused/appellant from the place of occurrence after the incident of murder gains great significance inasmuch as admittedly the accused/appellant staying at the place of occurrence and he categorically stated that in his statement recorded under section 342 Cr.P.C. that his stay was there till the continuation of the construction and stated that he left the premises though according to him one month prior to the occurrence but he did not mention that he had intimated the complainant about his leaving from the plot nor any element of enmity was reported, so inference can reasonably be drawn that the accused is responsible for the death of deceased. Occurrence though was un-witnessed, but chain of circumstantial evidence is so strong that it completely excludes hypothesis of innocence of accused and leads to his guilt without leaving any room to doubt.

14. In view of what has been discussed above we find accused/appellant guilty and therefore maintain his conviction. However, looking at the aspect that the case of the prosecution is based on the circumstantial evidence although it qualifies in all material particulars that it can be made basis for conviction inasmuch as it is not possible for the prosecution to have direct evidence or eye account in every case. But there is no cavil to this settled proposition of law that it cannot take place of direct and ocular evidence in terms of quality, therefore deeming it as mitigating circumstance we are inclined to convert the death sentence to one of life imprisonment. The other sentences are maintained as awarded by the trial Court. That all the sentences shall run concurrently. The appellant shall be entitled for the benefit of section 382-B Cr.P.C.

15. Appeal is dismissed accordingly.

16. Consequently the Criminal Revision No.4/I of 2009 is dismissed so also the Criminal Murder Reference No.7/I of 2009 is no more relevant and hence answered in negative.

17. These are the reasons for our short order passed on 04-08-2011.

Islamabad, the
Dated 04-08-2011
Abdul Majeed/**