

وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

النساء (۵۷:۴)



ANNUAL REPORT FOR THE YEAR 2012 - 2013

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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 Durrani family. He is son of Late Agha Mohammad Anwer Khan landlord and prominent figure of Sindh. 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. Chief Commissioner, Pakistan Boy Scouts Association, Member, Board of Governors, University of Sindh, Jamshoro, Hyderabad, Member, Syndicate, Sindh Madressatul Islam University, Karachi.

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.

**Mr. 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) B.A from Karachi University in 1984.
- ii) Bachelor of Law (LL.B) from S.M. Law College, Karachi (Karachi University) in the year 1988.
- iii) Enrolled as an Advocate of Sub-Ordinate Courts on 25th September, 1989
- iv) Enrolled as an Advocate of High Courts on 16th October, 1991
- v) Obtained Third Position in the examination for the post of Additional District and Sessions Judge in Province of Sindh in the year 1999.

WORK EXPERIENCE:

- Practiced as an Advocate High Courts for 20 years. During such period has been associated with Barrister Khalid Anwar & Co. and Barrister Musheer Pesh Imam & Co.
- Served as Additional District & Sessions Judge, Larkana, Sindh for about one and a half year and resigned from this post in the year 2001 due to personal preference.
- Served as Special Judge, Suppression of Terrorist Activities Court.
- Served as Standing Counsel for Pakistan from 28.2.2009 to April, 2011.

COURSES ATTENDED:

- **Completed a Course in Tokyo, Japan on Intellectual Property Rights;** Selected by the Intellectual Properties Organization (I.P.O) Government of Pakistan for a Course held at Tokyo Japan on the subject of “ Enforcement of Intellectual Property Rights” in December, 2009.

**Mr. Justice Muhammad Jehangir Arshad,
Judge, Federal Shariat Court**

Born on August 08, 1946

Appointed as Judge of Federal Shariat Court on 29.03.2012

ACADEMIC QUALIFICATION

- B.A. from Govt. College Multan in 1968.
- L.L.B from Punjab University in 1970.
- Advocate lower Courts since 1971.
- Advocate High Court since 1981.
- Advocate Supreme Court since 2001.



PROFESSIONAL EXPERIENCE

- 34 years practice as an Advocate.

OTHER RELEVANT PARTICULARS

- * Worked as Assistant Advocate General Punjab from 06.02.2003 to 29.11.2004.
- * Elevated as a Judge of Lahore High Court on 01.12.2004 and retired on 17.08.2008.
- * Refused to take oath on 03.11.2007 under P.C.O issued by Military Dictator Musharaf and was deposed.
- * Actively participated in the Movement for restoration of Judiciary alongwith Hon'ble Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan.
- * Appointed Chairman Punjab Service Tribunal for three years with effect from 08.12.2008 and remained so till 10.12.2011.
- * Restored as Judge of Lahore High Court in March, 2009 along with Hon'ble Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan with effect from 03.11.2007.
- * Strongly believe that the movement for restoration of judiciary commonly known as "Black Coat Revolution" launched by the lawyers of Pakistan against constitutional lynching by military dictator on 3rd November, 2007 was a marvelous in the history of nations launched against military dictator and anti-judiciary politicians in the world and Hon'ble Iftikhar Muhammad Chaudhry

emerged as hero of freedom who was granted “The Medal of Freedom” by the most prestigious university in the world “Harvard” which was an honour bestowed on two other persons in world before him South African Nelson Mandela and Mr. Marshal of U.S.A. in the over two hundred years in the history of University.

- * Awarded Honorary Membership of Piraeus Bar Association (Greek) on 2nd February, 2010 in recognition and appreciation of valuable services and struggle for the promotion of the rule of law and protection of human rights.
- * In recognition of valuable contribution for restoration of judiciary awarded shield of “Friends of Judiciary” by Ex-Chief Justice Lahore High Court Khawaja Muhammad Sharif as well as Mr. Justice A.S. Salam of Supreme Court of Pakistan and other Honourable retired Judges of Supreme Court and Lahore High Court.
- * Presented a shield by Hon’ble Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan on the occasion of celebrating receipt of Medal of Freedom and other awards from international renewed Institution by District Bar Association, Multan.
- * Award received from District Bar Association, Multan describing him as Hero of Judiciary.
- * Awarded Iftikhar Ahmad Chaudhry Award by District Bar Muzaffargarh as hero of lawyers movement, independence of judiciary and rule of constitution and law.
- * Lahore High Court Bar Association presented award on his retirement on 18.8.2008 in appreciation of service for the rule of law in Pakistan.
- * Lahore High Court Bar Association for the first time in its history of 150 years held reference on his retirement on 18.8.2008.
- * Had been teaching:-
 - Commercial and Labour Laws for twelve years at Institute of Cost and Management Accounts of Pakistan prior to elevation as Judge of Lahore High Court;
 - Law of Torts and Contract at Multan Law College for five years.

Mr. Justice Sheikh Ahmad Farooq, Judge, Federal Shariat Court

Born on February 10, 1950

Appointed as Judge of Federal Shariat Court on 29.03.2012

ACADEMIC QUALIFICATION

- Punjab University Law College, Lahore LLB 1974-75
- Government College, Lahore M.A. (English) 1971
- Government Central Model High School, Lower Mall, Lahore Matriculation 1965
- Enrolled as an Advocate of subordinate courts in August, 1975.



- Obtained first position in the Competitive Exam for the post of Civil Judge in the Province of Punjab. Joined Service as Civil Judge, Lahore on 4-5-1977

PREVIOUS POSTINGS

- Senior Special Judge, Anti-Corruption, Punjab, Lahore 2009-10
- Administrative Judge, Accountability Courts, Lahore 2008-09
- Secretary, Law & Parliamentary Affairs Department 2003-08
- Govt. of Punjab, Lahore
- District & Sessions Judge, Gujranwala 2002
- District & Sessions Judge, Islamabad 2001-02
- Additional Secretary, Law Department, Govt. of Punjab, Lahore 1997-2001
- Additional District & Sessions Judge, Lahore 1995-97
- Deputy Solicitor, Govt. of Punjab 1991 - 94
- Civil Judge at Lahore, Shaikhupura, Gujranwala 1977 - 91

LAHORE HIGH COURT, LAHORE

- Judge, Lahore High Court, Lahore 19.02. 2010- 9.02. 2012
- Member, Board of Trustees, LUMS, Lahore
- Administrative Judge Anti-Terrorism Courts, Lahore
- Member, Punjab Subordinate Judiciary Tribunal, Punjab, Lahore
- Chairman, Building Committee, Lahore High Court, Lahore
- Custom Judge

PROFESSIONAL EXPERIENCE

- * Delivered lectures in Federal Judicial Academy, Islamabad, Police Academy, Islamabad, Civil Service Academy, Lahore, NIPA, Lahore and Punjab Judicial Academy, Lahore.
- * Worked as a Judicial Officer for more than 30 years.
- * Acting Chairman Punjab Service Tribunal in 2006.
- * Have performed the duties of District Returning Officer during General Elections held in 1988, 1990, 1997 and 2002.

COURSES ATTENDED

- | | |
|----------------------------------------------------------------------------------------------------------|------|
| * Commonwealth Seminar, New Zealand | 2007 |
| * Forty days Seminar on International Co-operation to Combat Transnational Organized Crime, Tokyo, Japan | 2000 |
| * Federal Judicial Academy, Islamabad | 1992 |

Mr. Justice Shahzado Shaikh, Judge, Federal Shariat Court

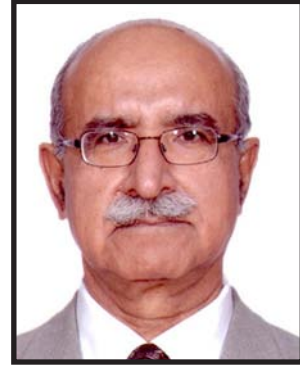
Born on September 1, 1947

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.



FOREWORD

Justice which is the soul of the state must be administered without fear or favour. Integrity, impartiality and wisdom are some of the high qualities which should characterize the judicial mind and therefore, there is a vital need to properly organize the judiciary. The role of judiciary in different societies depends also on the system factors prevailing in each society. The system factors include the nature of the constitution of that society and other circumstances prevailing at the time.

In the modern state, the judiciary occupies the apex position among the organs of the government. It acts as the protector of the rights. The administration of justice is the prime function of the courts in any society. At one time the courts were viewed as an institution for dispute resolution, in accordance with the law, but in modern world it is custodian of fundamental rights of the citizens as recognized universally by each society. The role of the courts in society has changed in a number of respects.

The greater judicialisation of society and the increasing number of cases coming before the courts have led to a search for ways to expedite judicial procedures, without sacrificing justice in the individual case. Attention should be paid to judicial mediation, alternative dispute resolution methods and to introducing measures of making the adjudicative process more efficient and less costly. The judiciary is obliged to provide fair and expeditious justice.

Modern computer technology can offer remedies to the long standing problem of disparity of sentences, which breeds both unfairness and inefficiency to the administration of justice.

During 2012-13, the priority was assigned to the disposal of the custody cases and also old criminal cases under National Judicial Policy Making Committee (NJPMC). By the Grace of Almighty Allah, we have successfully reduced the backlog of old cases except those in which the accused are absconding. Shariat Matters are also being fixed for hearing and some important decisions have been given during the year as well.

In the end, I must take this opportunity to express my appreciation of the diligence and dedication with which my brother Judges are discharging their duties. Additionally, efforts of officers and staff in completion of the report deserve commendations.

(Justice Agha Rafiq Ahmed Khan)

Chief Justice



The Chamber of Hon'ble Chief Justice, Federal Shariat Court of Pakistan at Islamabad.

Federal Shariat Court.

Introduction

It is a matter of great pleasure that the annual report 2012-13 of the Federal Shariat Court is being published to provide up-to-date information to the lawyers, intellectuals and general public about the performance and functions of this Court. Before embarking on the subject; it is pertinent to highlight some golden principles of Islam concerning centrality of dispensation of justice in Islam.

2. Allah Almighty the Lord of the Universe Himself is an “Adil” Judge. His divine justice underlies the very purpose of creation of the heavens and the earth, as appeared in the Holy Quran that: “وَخَلَقَ اللَّهُ السَّمَوَاتِ وَالْأَرْضَ بِالْحَقِّ وَلِتُجْزَىٰ كُلُّ” Allah has created the heavens and the earth with just purpose, and so that everybody is recompensed for what he (or she) earned, and they will not be wronged. The Holy Quran does not give a dictionary meaning of justice but it links the concept to the notions of balance, equity, regulation, proper measuring, truth and the state of natural order. In contrast, mischief, transgression, falsehood and disturbance in the natural order have been used as opposite of Justice. Allah is the most merciful and generous because he gives rewards to his creature for good deeds and on the other hand severe punishments have been prescribed for those who commit transgression or cause mischief and corruption on earth.

3. It is proven fact that Allah Almighty does not act in vain. All commandments revealed from Him, are based on certain objectives. The rules of Islamic law are also based on reason and “Hikmah” that devolve upon the universal goodness and benefit of both society and individual. The Holy Quran has expressed in numerous places and in a variety of contexts that the purpose, rational and benefit of its laws, are clearly goal oriented. In this respect a few

examples from the Holy Quran are enumerated to show that all injunctions are based on certain objectives. For example, Allah Almighty says that:

وَمَا خَلَقْنَا السَّمَوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا لِعِبَسٍ
مَا خَلَقْنَاهُمَا إِلَّا بِالْحَقِّ وَلَكِنَّ أَكْثَرَهُمْ لَا يَعْلَمُونَ

“We have not created the heavens and the earth and what is between them as mere idle play; none of them we have created without an inner truth but most of them do not understand”.(44:38,39)(1) In another Quranic verse, it has been “mentioned” that: أَفَحَسِبْتُمْ أَنَّمَا خَلَقْنَاكُمْ عَبَثًا وَأَنَّكُمْ إِلَيْنَا لَا تُرْجَعُونَ “So did you think that We created you for nothing, and that you will not be brought back to us?”(23:115) Likewise, the creation of this universe, the earth, the heavens and what is between these two, are not created aimlessly. Allah Almighty says that:

وَمَا خَلَقْنَا السَّمَاءَ وَالْأَرْضَ وَمَا بَيْنَهُمَا بَاطِلًا ذَلِكَ ظَنُّ الَّذِينَ كَفَرُوا

“We did not create the heavens and the earth and what is between them in vain. That is the thinking of those who disbelieve”.(38:27)

4. Thus, what is created by Allah Almighty including the stars, the moon, the sun, the earth and the heaven has been created for specific purposes and their utilities have been enumerated in the Holy Quran. Likewise the purpose of sending messengers of God to various nations was to regulate the lives of peoples through laws and regulations and to lead them towards the right path and, above all, to promote justice and equity in the society. The Holy Quran says that:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ

“We have indeed sent Our messengers with clear proofs, and sent down with them the Book and the Balance, so that people may uphold justice and equity.”(57:25).

5. The attribute most specific to God's Messengers is the revelation and enforcement of divine laws because that was God's primary objective in sending them to mankind. It is appeared in the Holy Quran that the basic theme of commandments was the revelation of laws and that was Prophet's exclusive mandate, which revealed on messengers of God from time to time. The fundamentals of religion, and objectives were the same and common between all the apostles of Allah. A fundamental tenet was the protection of the interests of the people and repelling mischief and corruption. According to Shatibi, ان الا حكام شرعت لمصالح العباد "The purpose of Islamic injunctions regarding various issues, is the protection of the interests of the people.". Imam or head of the State and the judiciary have to play vital role in the implementation of these laws and maintaining justice and equity in the society. If implementation of Islamic law is not ensured in its true spirit, the society cannot enjoy the blessings associated with the divine laws.

6. The perusal of injunctions of Islam, pertaining to dispensation of justice, reveals that only the judges have not been entrusted to maintain justice and equity in the society; rather the whole Ummah or community have been commanded to maintain justice in their affairs. This becomes evident from the perusal of the following sayings of the Holy Prophet.

"انكم تختصمون إلىّ وإنما أنا بشر، ولعل بعضكم أن يكون ألحن بحجته من بعض وإنما أفضى بينكم على نحو ما أسمع فمن قضيت له من حق أخيه شيئا فلا يأخذه فإنما أقطع له قطعة من النار"

"You people bring your cases and disputes to me for adjudication. I am human being and some of you are more eloquent and argue cases more strongly and impressively than others and I decide a case or dispute in the light of available evidences and arguments and thus decide a case in favor of a person who is eloquent and his arguments are strong. I virtually give him a portion of hell that he should not accept religiously." In other words if the right of a person is given

to another person on the basis of better presentation by an eloquent and heavily paid lawyer, while the fact is that the person in whose favor the decision has been made, is not legally entitled to it, such person is religiously bound not to accept it. This signifies the responsibility of the people in general in maintaining justice in the society.

7. In the light of Quranic injunctions, justice should be maintained at all cost and in all circumstances even if it is against the interest of your own near relatives friends or your ownself. Allah almighty says that:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ ۚ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا ۖ فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا ۚ وَإِنْ تَلَوَّا أَوْ تَعْرِضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

“O you who believe, be upholders of justice witnesses for Allah, even though it is against the interest of yourselves, your parents, and the kinsmen. One may be rich or poor, Allah is better caretaker of both. So do not follow desires, lest you should swerve. If you twist or avoid (the evidence), then, Allah is all-aware of what you do.(4:135)

It has been enjoined upon the Muslims not to commit transgression against those infidels or enemies who commit no aggression against them. Instead, justice should also be maintained in dealing these peoples. Allah almighty says that:

لَا يَنْهٰكُمُ اللّٰهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوْكُمْ مِّنْ دِيَارِكُمْ اَنْ تَبَرُّوْهُمْ وَتُقْسِطُوْا اِلَيْهِمْ ۗ اِنَّ اللّٰهَ يُحِبُّ الْمُقْسِطِيْنَ

“Allah does not forbid you as regards those who did not fight you on account of faith, and did not expel you from your homes, that you do good to them, and deal justly with them. Surely Allah loves those who maintain justice.(60:8)”

8. Pakistan came into being on 14th August, 1947, on the basis of Islamic ideology and two nation's theory. The Constitution of 1973, which is the last

one of the series, provides for bringing all the existing laws in conformity with the injunctions of Islam so that no law repugnant to such injunctions shall be enacted. In this respect, Article 2-A and 227 of the Constitution are worth mentioning in the sense that they stipulate the road map for future legislation. Article 2-A of the Constitution lays down that the principles and provisions set out in the Objectives Resolution are substantive part of the Constitution, while Article 227 makes it incumbent that all existing laws shall be brought in conformity with the injunctions of Islam. After independence, a few steps were taken in connection with Islamization of laws like establishment of Advisory Council, the Council of Islamic Ideology, Islamic Research Institute, International Islamic University etc but no serious effort was made to enforce Islamic laws in the country in letter and spirit.

9. The Federal Shariat Court was established on 28th May 1980 in substitution of Shariat Benches of the High Courts by virtue of President's Order No 1 of 1980 as incorporated in the Constitution of Pakistan (1973) under chapter 3-A. Under Article 203-D of the Constitution, this Court is entrusted with the responsibility to examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (peace be upon him).

10. The Federal Shariat Court has Appellate and Revisional Jurisdiction in respect of offences under the Hudood Laws. While examining the repugnancy of a law or provision of law in Shariat petitions or Suo Moto examination of laws, the Court at first instance, tries to find out the relevant verse or verses in the holy Quran regarding particular issue. If no specific verse is available, the traditions of the Holy Prophet are preferred. In case, no Quranic verse or tradition of the Holy Prophet are available, the views expressed by the eminent jurists of various schools of thought on the subject matter and the Quranic

verses and traditions on which they have relied in deriving Ahkam for specific issue, are also taken into consideration. The divergent views of the jurists of various schools of thought have no value and are not taken into consideration.

11. Allama Rashid Raza writes that: in circumstances where regarding any issue, no Quranic verse or tradition is available, Imam or head of the State is empowered to examine that issue on the yard stick of Maslihat (expedience) and should enact law regarding that issue with consultation of the intellectuals, jurists and 'Ahle hal wal aqd'. If they agreed on a certain point, the people should follow/accept their verdict, because Imam is the individual, responsible to protect the rights/interest of the general public (Tafseer Al-manar by Allama Rashid Raza vol.3, page 147)

12. The Court while examining laws in the light of Islamic Injunctions, also seeks assistance from religious scholars, experts, subject specialist living in Pakistan or in any other part of the world. For this purpose, The Court maintains a list of Jurisconsults representing various schools of thought and seeks their assistance when any Shariat petition is scheduled for regular hearing. Likewise, public Notices are also issued through leading news papers of the country inviting the views of Lawyers, Ulema and general public. Those who are desirous to appear before the Court in person, are also provided an opportunity to do so and argue the issue. The assistance of prominent scholars or subject specialists living in any part of the world is also sought through various means of communication and on certain occasions, they are invited to appear before the Court in person. Thus, the judgments delivered by this Court are mostly based on consensus of opinion creating harmony in the society between the followers of various sects and schools of thought. The Federal Shariat Court is playing a significant role and consistently contributing towards

the reconstruction of religious thought in Islam through its judgments which are based on rational and realistic interpretation of Islamic law.

13. This Court has Bench Registries at the four provincial head quarters. The Hon. Chief Justice constitutes Benches to hear the cases pending at principal seat, Islamabad as well as at bench registry in each provincial head quarter to clear the backlog of pending cases. Thus prompt justice is provided to the litigants at their door step without monetary obligation on their part. During the Judicial year 2012, the backlog and pendency has been brought to its lowest level.

14. Another important feature of this Court is that the person who files appeal in criminal cases from the prison, legal assistance is provided by the Court by paying due fee to the concerned lawyer.

15. Under Constitution, the Federal Shariat Court shall consist of not more than eight Muslim Judges, including the Chief Justice, to be appointed by the President of Pakistan after recommendation from judicial commission and parliamentary Committee. Not more than four Judges each of whom is competent to be a Judge of High Court shall be appointed as a Judge of Federal Shariat Court. Three Ulema Judges, who are well versed in Islamic Law, having at least fifteen years experience in Islamic Law and Research or instruction, shall also be appointed as an Alim Judge of the Federal Shariat Court. A person, who is qualified to be a Judge of Supreme Court, shall be appointed as a Chief Justice of the Federal Shariat Court.

16. During Judicial year 2012, apart from decisions in Criminal appeals and numerous miscellaneous applications, the Federal Shariat Court delivered some important judgments in Shariat Petitions filed under 203-D of the Constitution on diverse subjects like discrimination in granting leave to various

categories of Govt employees, entitlement of Government accommodation or house rent to spouses if both of them are Government employees, Article 163 of Qanoon Shahadat Act 1984, the role of armed forces and elected representatives in cantonment areas. The role of Arabic language in Pakistan and its promotion, deduction of Zakat under Zakat & Ushr Ordinance 1980 and issues related with this law etc. The above mentioned judgments have been published in annual report 2012, for the perusal of worthy readers.

Qazi Fazal Elahi

Senior Research Advisor

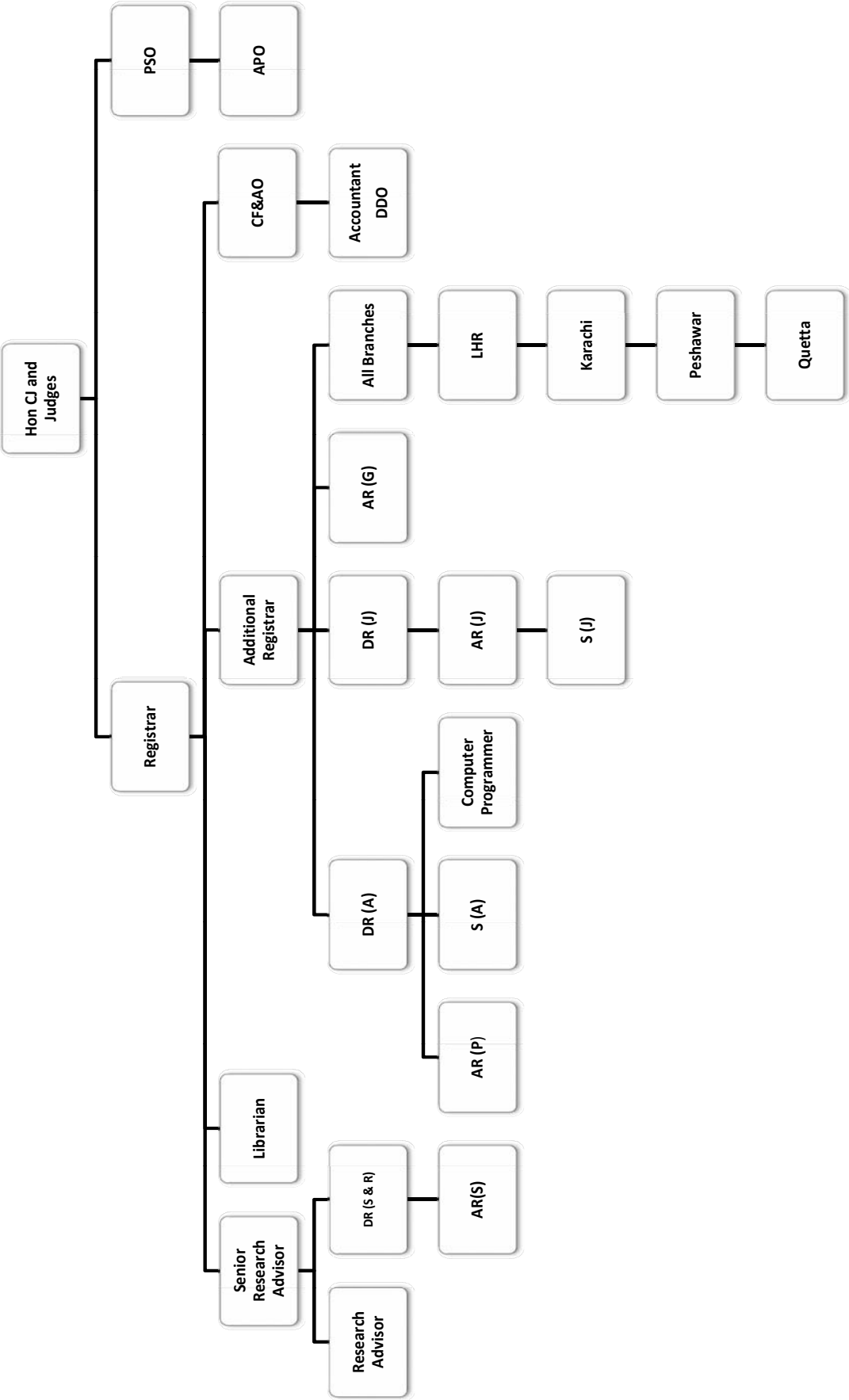
**FEDERAL SHARIAT COURT
COMPOSITION****THE CHIEF JUSTICE:**

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 Dr. Fida Muhammad Khan	05-07-2011
Mr. Justice Rizwan Ali Dodani	05-07-2011
Mr. Justice Muhammad Jehangir Arshad	29-03-2012
Mr. Justice Sheikh Ahmad Farooq	29-03-2012
Mr. Justice Shahzad Shaikh	25-04-2013

Organisational Chart





Conference Room of Federal Shariat Court of Pakistan at Islamabad.

CEREMONIES, MEETINGS AND GROUP PHOTOS



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Mr. Mahinda Raja Paks, President of Sri Lanka at Aiwan-e-Sadr, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Mr. Mahmoud Ahmadinejad, President of Islamic Republic of Iran at Aiwan-e-Sadr, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Mr. Hamid Karzai, President of Afghanistan at Aiwan-e-Sadr, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan with Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan at Supreme Court of Pakistan, Islamabad.



Photograph taken with Dr. Ekkmeleddin Ihsnoglu, Secretary General, Organization of the Islamic Conference during a reception on 22nd October, 2011 at New York, United States of America.



Mr. Justice Agha Rafiq Ahmed Khan with Mr. Justice Lord Mathew Thorpe, Judge of Wales, UK during workshop on “Judicial Protocol on Child Matters” held on 29-30 March, 2010 at Federal Judicial Academy, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan administering oath of office to Mr. Justice Shahzado Shaikh and Mr. Justice Dr. Mahmood Ahmad Ghazi at Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan administering oath of office to Mr. Justice Dr. Fida Muhammad Khan and Mr. Justice Rizwan Ali Dodani at Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Iqbal Hameed ur Rahman, Chief Justice, Islamabad High Court presiding meeting in Federal Shariat Court, Islamabad regarding Construction of Model Prison at Islamabad.



Dr. Rushdi Al-Ani, Ambassador of Iraq calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan, Islamabad.



Mr. Richard G. Olson , Ambassador of USA in Pakistan calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan at Islamabad on 17-5-13.



Mr. Said Mohammad El-Said Hindam, Ambassador of Egypt calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court presenting traditional Ajrak and Cap to Mr. Justice Md. Muzammel Hossain, Chief Justice of Bangladesh on 27-11-2012 at Supreme Court of Bangladesh, Dhaka. Mr. Afrasiab Mehdi Hashmi Qureshi, Ambassador of Pakistan in Bangladesh is also seen on right.



Mr. Yazan Al Qaisi, Charge d' Affairs, Embassy of Jordan calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan, Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan participating in the meeting of National Judicial Policy Making Committee (NJPMC) of Pakistan under the chairmanship of Chief Justice of Pakistan.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan participating in the meeting of Law and Justice Commission of Pakistan under the chairmanship of Chief Justice of Pakistan.



Mr. Rashad DAUREEAWO SC, High Commissioner of Mauritius calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan at Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan administering oath to Mr. Justice Muhammad Jehangir Arshad and Mr. Justice Sheikh Ahmad Farooq on 29-03-2012 at Lahore. Mr. Justice Mohammad AlMahamid Chief Justice of Jordan (sitting on left) and Mr. Justice Sheikh Azmat Saeed, Chief Justice, Lahore High Court, (sitting on right) can also be seen in the picture.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan presenting Annual Report, 2011 to Hon. Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice, Supreme Court of Pakistan at Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Ms Gabriela Knaul, United Nation Rapporteur, during visit to Federal Shariat Court of Pakistan, Islamabad on 21-05-2012.



Group photo of Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan with Mr. David Carter, Federal Judge of California and delegation at Islamabad on 18-12-12.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan presenting Souvenir to Mr. Justice David Carter, Judge, High Court of California during his visit to Federal Shariat Court of Pakistan, Islamabad.



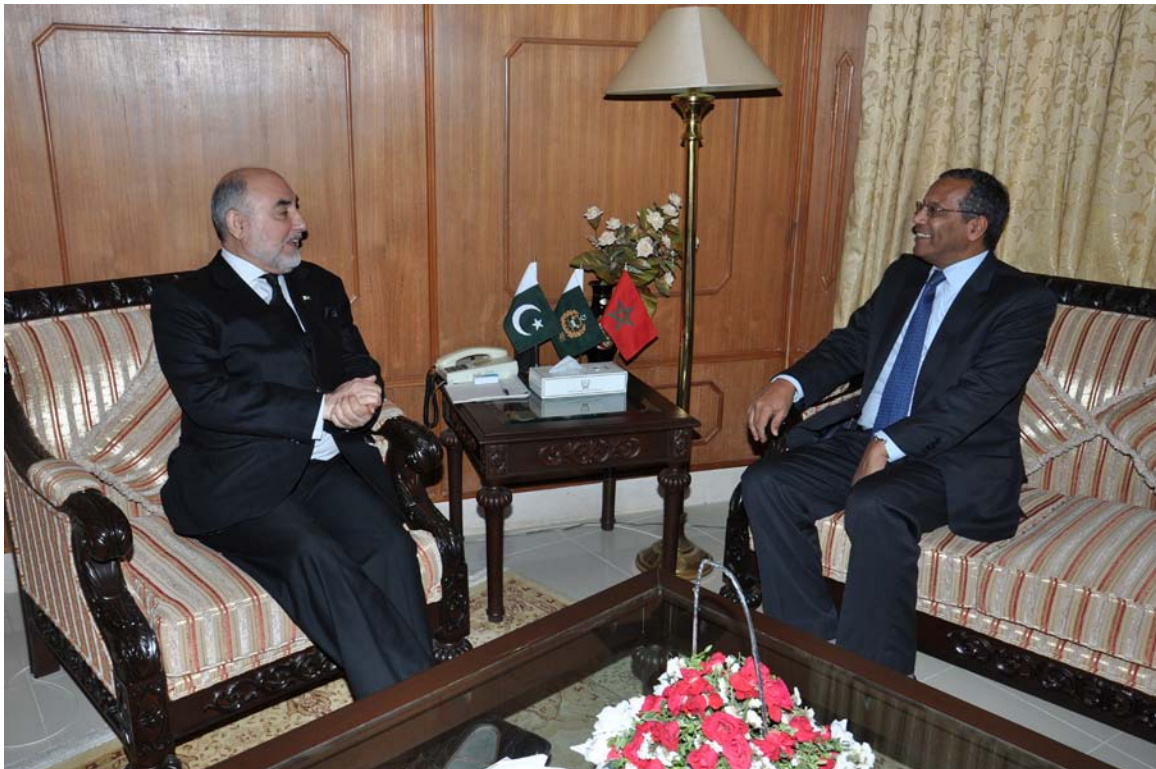
His Excellency Mr. Riyadh Ahmed Yousif Al-Raisi, Ambassador of Oman in Pakistan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad on 19-03-2013.



Mr. Abdul Aziz Bin Saleh Bin Al-Ghadeer, Ambassador of Saudi Arabia in Pakistan calls on the Chief Justice, Federal Shariat Court of Pakistan in his office at Federal Shariat Court, Islamabad.



Ms. Vigdis Kjesle , Consular Political, Embassy of Norway in Pakistan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad on 17-4-13.



Mr. Mustapha Salahddin, Ambassador of Morocco in Pakistan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad on 06-05-2013.



Mr. Justice Muhammad Anwar Khan Kasi, Chief Justice of Islamabad High Court calls on Chief Justice, Federal Shariat Court of Pakistan Mr. Justice Agha Rafiq Ahmed Khan in the Federal Shariat Court of Pakistan at Islamabad on 06-05-2013



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan and Mr. Justice Muhammad Anwar Khan Kasi, Chief Justice of Islamabad High Court chairing meeting on construction of Model Jail in Islamabad on 06-05-2013.



Ambassador of Saudi Arabia Mr. Saleh Bin Abdul Aziz meeting with Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan at dinner hosted in honor of Chief Justice of Mauritania at Islamabad on 26-7-13



Ms. Cecilie Landsverk, Ambassador of Norway calls on Chief Justice, Federal Shariat Court of Pakistan on 15th July, 2013 at Islamabad.



Mr. Andrezej Ananicz, Ambassador of Poland calls on Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in the Federal Shariat Court of Pakistan at Islamabad.



Mr. Al Shafie Ahmed Mohamed, Ambassador of Sudan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad.



A group photo of Judges with Chief Justice of Pakistan and Chief Justice Federal Shariat Court at Federal Shariat Court, Islamabad on 19-02-2010.



Ms. Bernice Bouie Donald, US Circuit Judge, Court of Appeals, United State of America calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 20-09-2013 at Islamabad.

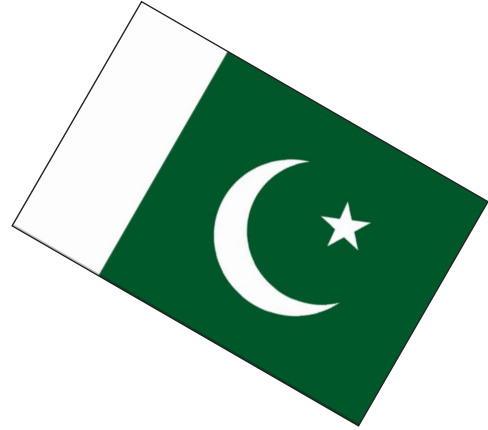
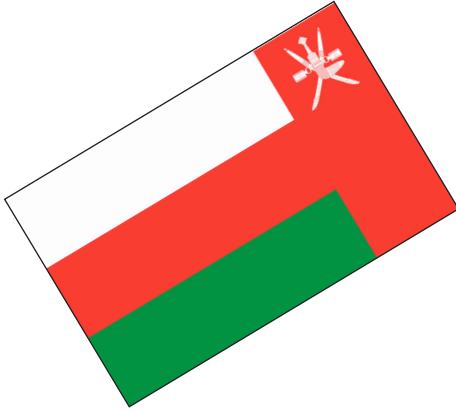


Mr. Philippe Thiebaud, Ambassador of France in Pakistan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 04-10-2013 at Islamabad.



Mr. Greg Giokas, High Commissioner of Canada in Pakistan calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 04-10-2013 at Islamabad.

**Visits of
Chief Justices of Arab countries
to Islamic Republic of Pakistan
on the invitation of
Chief Justice, Federal Shariat Court
of Pakistan**



*Visit of
Hon'ble Mr. Justice Sheikh Ishaq bin Ahmad bin Nasir Al-Busaidi,
President/Chief Justice of the Supreme Court of Oman to
Pakistan from 24th February, 2012 to 1st March, 2012.*

Visit of

**Hon'ble Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi,
President of the Supreme Court of Oman**

to
The Islamic Republic of Pakistan

from

24th February to 1st March 2012

On the invitation of Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Hon'ble Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi visited Islamic Republic of Pakistan along with his delegation from 24th Feb, 2012 to 1st March, 2012. The delegation was comprising of Hon'ble Mr. Justice Doctor Abdullah bin Rashid Al Siyabi, Vice President, Supreme Court of Oman, Mr. Justice Sheikh Salim bin Rashid Ali Qalhi, Judge, Mr. Justice Sheikh Hamad bin Khamis al Jahoori, Judge, Mr. Sultan bin Hamad al Busaidi, Director, Office of the President of Supreme Court of Oman, and His Excellency Mr. Mohamed Said Mohamed Al-Lawati, Ambassador of Oman in Pakistan.

During the visit meetings with the Hon'ble Chief Justice and Judges of Federal Shariat Court, Chief Justice of Pakistan, Chairman Senate of Pakistan and Governor of Sindh were held. Issues of mutual interests relating to judiciary were discussed. The Chief Justice of Oman appreciated the efforts being taken for providing speedy and quick justice to the common man in Pakistan.

The Hon'ble Chief Justice of Oman and his delegation visited Federal Shariat Court, Supreme Court of Pakistan, International Islamic University, Islamabad, Shakarparyan, Pakistan Monument and Museum at Islamabad and Sindh High Court, Mausoleum of Founder of Pakistan Quaid-i-Azam Muhammad Ali Jinnah and S.M. Law College, and the Museum at Karachi during their stay in Pakistan



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court receiving Mr. Justice Mr. Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman at his arrival at Islamabad Airport on 24-02-2012.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan with Mr. Justice Ishaq Bin Ahmed Al-Busaidi, Chief Justice, Sultanate of Oman with delegation during visit to Federal Shariat Court of Pakistan, Islamabad on 25.2.2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice and Judges of Federal Shariat Court with Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman and delegation at Federal Shariat Court of Pakistan, Islamabad on 25-02-2012



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan with Mr. Justice Sheikh Ishaq Bin Ahmed Al-Busaidi, Chief Justice, Sultanate of Oman and delegation during their visit to Taxila Museum on 26.2.2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice ,Federal Shariat Court and Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman and delegation with Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry at Supreme Court of Pakistan, Islamabad on 27-02-2012.



Mr. Justice Sheikh Ishaq Bin Ahmed Al-Busaidi, Chief Justice, Sultanate of Oman calls on Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry during visit to Supreme Court of Pakistan, Islamabad on 27.2.2012.



Mr. Justice Sheikh Ishaq Bin Ahmed Al-Busaidi, Chief Justice, Sultanate of Oman calls on Deputy Chairman Senate Mr. Jan Muhammad Khan Jamali at Senate of Pakistan, Islamabad on 27.2.2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman and delegation with Chief Justice of Sindh High Court, Mr. Justice Mushir Alam at Sindh High Court Karachi on 29-02-2012.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Sheikh Ishaq bin Ahmed Al Busaidi, President of the Supreme Court of Oman offering Fatiah at Quaid-e-Azam mausoleum on 29-02-2012.

PAKISTAN TODAY
February 26, 2012

Omani SC chief visits Lok Virsa

ISLAMABAD - Oman's Supreme Court President Justice Dr Sheikh Ishaq bin Ahmed Al Busaidi visited Lok Virsa (National Institute of Folk and Traditional Heritage) here on Sunday at Shakarparian. He was accompanied by Pakistan Federal Shariat Court Chief Justice Agha Rafiq Ahmed Khan and Oman's Ambassador to Pakistan Mohamed Said Mohamed Al-Lawati.

On his arrival, the distinguished guest was warmly received by Lok Virsa Executive Director Khalid Javaid and Deputy Director Museum Anwaar-ul-Haq and briefed him about the salient features of Pakistan's traditional culture with special focus on the functioning of Lok Virsa as a specialised body dealing with documentation, preservation and dissemination of the tangible and intangible cultural heritage of the country.

Later, the delegation was taken around three-dimensional creative displays at the Pakistan National Museum of Ethnology, popularly known as Heritage Museum, showcasing living indigenous folk culture and lifestyle of the people not only from the mainstream but also from the remotest parts and regions including Tharparkar, Kalash, Chitral,

Mal Kohistan and Cholistan.

The delegate took keen interest in the museum displays and praised the creativity put in by Lok Virsa in establishing and maintaining the museum according to high standards of maintainability. They were particularly impressed by the "Hall of Sufis and Shrines" wherein the services of the sufis and scholars were explained through a dioramic form showing sufis' message of peace and harmony to the mankind. The word sufi is derived from Arabic word "Safa" meaning purity. Sufism is a mystic tradition encompassing a diverse range of beliefs and practices. This mystic sufi tradition has existed in all parts of Pakistan and is a binding force that brings people of diverse cultures together. The saints whose shrines dot the landscape are the meeting place of the masses, the rich and the poor, the rulers and the ruled, and serve as a humanising force in society at both cultural and spiritual levels.

They were also extremely happy to see the "Truck Art" of Pakistan which is a colourful, dazzling, art work on vehicles and other means of transportation, which is found in abundance in Pakistan. Decorations are not done only on trucks and buses

but on all kinds of vehicles like tankers, mini-buses, trucks, rickshaws, tongas and even donkey carts moving on the road throughout the country.

The delegate was also very impressed to see the museum hall of antiquity and continuity, hall of ballads and romances, thematic display on textile presenting the mastery of women artisan, hall of architecture portraying more than 32 dying traditional architectural skills such as mirror work, marble intarsia, fresco work, tile mosaic, pietra dura and blue tiles. A live musical performance by folk artists was also a part of the visit programme for the Omani delegation. The musicians presented famous folk numbers.

In his comments in the visitors' book, the Oman chief justice wrote: "Pakistan has a very beautiful and dynamic culture. Both the countries, Pakistan and Oman, have a lot of similarities in the culture and art which need to be presented here at Lok Virsa along with the link passages of other countries. The museum is well maintained and effectively projecting the rich culture of the brotherly Islamic country Pakistan. We pray for the success and prosperity of Pakistan and its great nation."

APP

February 27th, 2012

CJ of Oman calls of CJ Iftikhar Chaudhry

ISLAMABAD, Feb 27 (APP): President of the Supreme Court of Oman, Justice Dr Sheikh Ishaq bin Ahmed Al Busaidi called on Chief Justice Iftikhar Muhammad Chaudhry on Monday. Government of Pakistan has invited chief justices of Arab countries to visit Islamic Republic of Pakistan to have first hand knowledge of the judicial system of Pakistan and its working. The Chief Justice of Oman along with four-member delegation initiated their visit by February 24, which will continue till March 1, 2012. Earlier on Sunday he visited Lok Virsa (National Institute of Folk and Traditional Heritage). He was accompanied by Pakistan Federal Shariat Court Chief Justice Agha Rafiq Ahmed Khan and Oman's Ambassador to Pakistan Mohamed Said Mohamed Al-Lawati. APP/Sohail/mka

Jang

February 25th, 2012

عمان کے چیف جسٹس وفد کے ہمراہ آج پاکستان آئیں گے

اسلام آباد (خصوصی رپورٹر) سلطنت عمان کی سپریم کورٹ کے چیف جسٹس ڈاکٹر اسحاق بن احمد البوسیدی اپنے وفد کے ہمراہ (آج) ہفتہ کو سرکاری دورہ پر اسلام آباد پہنچیں گے، وہ اپنے قیام کے دوران سپریم کورٹ کے چیف جسٹس افتخار محمد چوہدری کے علاوہ وزیر اعظم، گورنر سندھ اور سندھ ہائی کورٹ کے چیف جسٹس سے بھی ملاقاتیں کریں گے۔

Jang

February 28th, 2012

Jang

February 28th, 2012

عمان کے چیف جسٹس کا دورہ پارلیمنٹ قائم مقام چیئر مین سینٹ قائد ایوان سے ملاقات

اسلام آباد (اے پی پی) سینٹ کے قائم مقام چیئر مین میر جان محمد خان جمالی سے پاکستان کے دورے پر آئے ہوئے اومان سپریم کورٹ کے صدر شیخ اسحاق بن احمد بن ناصر البوسیدی کی سربراہی میں وفد نے پیرو پارلیمنٹ ہاؤس میں ملاقات کی جس میں دو طرفہ اور سرسیت ثقافتی اور اقتصادی تعلقات کو مزید مستحکم بنانے کے حوالے سے تبادلہ خیال کیا گیا۔



اسلام آباد: چیف جسٹس افتخار محمد چوہدری کے ہمراہ عمان کے چیف جسٹس اسحاق بن احمد اور ان کے وفد کا گروپ فوٹو

Jang
February 28th, 2012

روزنامہ نوائے وقت راولپنڈی
26 فروری 2012ء

عمان کی سپریم کورٹ کے چیف جسٹس کا وفاقی شرعی عدالت کا دورہ

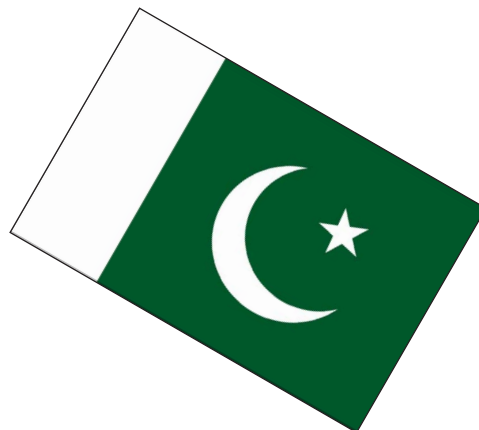
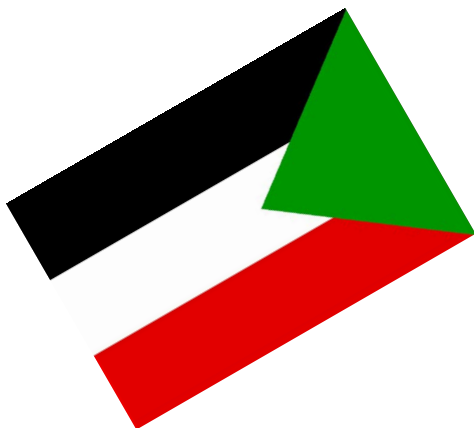
اسلام آباد (اے پی پی) سلطنت عمان کی سپریم کورٹ کے چیف جسٹس ڈاکٹر اسحاق بن احمد البوسعیدی کی سربراہی میں وفد نے ہفتہ کو وفاقی شرعی عدالت کا دورہ کیا۔ وفاقی شرعی عدالت کے چیف جسٹس آغا رفیق احمد خان نے مہمان کو عدالت کے طریقہ کار کا کردگی اور اہم فیصلہ جات کے بارے میں بریفنگ دی۔ اس کے علاوہ انہوں نے وفد کے ارکان کو عدالت کی لائبریری اور دیگر شعبوں کا دورہ بھی کروایا۔ وفاقی شرعی عدالت کے چیف جسٹس آغا رفیق احمد نے کہا کہ دونوں برادر اسلامی ممالک کے درمیان عدالتی اور قانونی امور میں ہم آہنگی و برادرانہ تعلقات میں استحکام وقت کی اہم ضرورت ہے۔ سلطنت عمان کے چیف جسٹس ڈاکٹر اسحاق بن احمد البوسعیدی نے وفاقی شرعی عدالت میں پودالگایا۔

عمان کے چیف جسٹس کی وزیراعظم گیلانی جسٹس افتخار محمد چوہدری سے ملاقاتیں

میرادوسر تہ سپریم کورٹ میں پیش ہونا ظاہر کرتا ہے عدالت و قانون کا کتنا احترام ہے یوسف گیلانی گفتگو

اسلام آباد (نیوز رپورٹر) جسٹس رپورٹر) عمان کے چیف جسٹس ڈاکٹر اسحاق بن احمد البوسعیدی نے کہا ہے کہ پاکستان میں امن اور استحکام لانے کیلئے وزیراعظم یوسف رضا گیلانی کا نام تاریخ میں سنہرے لفظوں میں لکھا جائے گا لوگ آتے جاتے رہتے ہیں لیکن تاریخ کو یاد رکھا جاتا ہے۔ انہوں نے یہ بات جیر کی شام وزیراعظم یوسف رضا گیلانی سے ملاقات کے دوران کہی جو ایک وفد کے ہمراہ پاکستان کے دورے پر آئے ہوئے ہیں۔ وزیراعظم نے انہیں بتایا کہ موجودہ منتخب جمہوری حکومت نے شہید ذوالفقار علی بھٹو کے وژن کے مطابق 1973 کے آئین کو بحال کر دیا ہے۔ حال ہی میں وہ دوسر تہ سپریم کورٹ میں پیش ہوئے جس سے یہ ظاہر ہوتا ہے کہ وہ عدالت اور قانون کی بالادستی کا کس قدر احترام کرتے ہیں۔ متفقہ طور پر وزیراعظم منتخب ہونے کے بعد پہلا حکم یہ دیا کہ سپریم کورٹ کے ججوں کو رہا کر دیا جائے۔ وزیراعظم نے عمان کے سلطان تائبوس وزیراعظم وزراء اور سول سوسائٹی کے نمائندوں کو دعوت دی کہ وہ پاکستان کا دورہ کریں۔ وزیراعظم نے کہا کہ دونوں ملکوں میں دفاعی پیداوار، انفراسٹرکچر، زراعت اور توانائی کے شعبوں میں تعاون کے وسیع امکانات موجود ہیں۔ عمان کے چیف جسٹس نے پاکستان کی حکومت اور عوام کی جانب سے گرمجوشی سے میزبانی کرنے کا شکریہ ادا کیا۔ ادھر عمان کے چیف جسٹس

ڈاکٹر شیخ اسحاق بن احمد نے جیر کو چیف جسٹس افتخار محمد چوہدری سے ملاقات کی۔ چیف جسٹس افتخار محمد چوہدری نے کہا کہ کسی بھی عدلیہ کا اہم مقصد آئین کی تشریح کرنا اور سالمین کو فوری سستے انصاف کی فراہمی ہوتا ہے اسی سے گورننس میں بہتری آتی ہے۔ عمان اور پاکستان کی عدلیہ کو ایک دوسرے کے تجربات سے فائدہ اٹھانا چاہیے کیونکہ دونوں ممالک کے قانونی نظام میں مماثلت موجود ہے۔ عدالتی وفد کے دورے جاری رہتے چاہیں۔ عمان کے چیف جسٹس نے پاکستان میں آئین کی بالادستی اور قانون کی حکمرانی کے قیام کیلئے چیف جسٹس افتخار محمد چوہدری کی کوششوں کو سراہا اور انہیں عمان کے دورے کی دعوت دی جو قبول کر لی گئی جبکہ چیف جسٹس سے سندھ کی مختلف پارلیسوی ایشیوں پر مشتمل ایک وفد نے بھی ملاقات کی۔ چیف جسٹس نے کہا کہ وکلاء برادری نے عدلیہ بحالی کی تحریک میں اہم کردار ادا کیا تھا جو کہ انتہائی قابل تحریف ہے۔ آئین آئی کے مطابق چیف جسٹس افتخار محمد چوہدری نے کہا کہ کسی بھی معاشرے میں بہتر نظم و نسق کیلئے ایک فعال عدلیہ ناگزیر ہوتی ہے، بعض عدالتی فیصلوں سے انتظامی احکامات چیلنج ہو سکتے ہیں مگر متعلقہ اداروں کو تنقید کی بجائے عدالتی فیصلوں کو قبول کرنا چاہیے۔ عمان کے چیف جسٹس نے بتایا کہ عمان کا عدالتی نظام ایک چیف جسٹس 7 ڈپٹی چیف جسٹس اور 50 ججوں پر مشتمل ہے۔



*Visit of Hon'ble Mr. Justice Jalauddin Mohammad Uthman
Chief Justice , Supreme Court of Sudan
To
Islamic Republic of Pakistan
from 13th March to 16th March, 2012*

**Visit of Hon'ble Mr. Justice Jalauddin Mohammad Uthman
Chief Justice, Supreme Court of Sudan**

To

Islamic Republic of Pakistan

from 13th March to 16th March, 2012

Hon'ble Mr. Justice Jalaluddin Mohammad Uthman visited Islamic Republic of Pakistan from 13th to 16th March, 2013 on the invitation of Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court .

Chief Justice of Sudan along-with three members delegation comprising of Mr. Abdul Rehman Mohammad, Deputy Chief Justice, Supreme Court of Sudan, Dr. Haider Ahmed Daffalla Ahmed, Judge, Supreme Court of Sudan and Mr. Mohammed Ali Abdallah Director, Chief Justice Office of Sudan arrived at Islamabad on 13th March, 2013. During their stay meetings with Chief Justice of Pakistan, Chairman Senate of Pakistan and Chief Justice and Judges of Federal Shariat Court were held. The Chief Justice of Sudan was briefed about the working of the courts in Pakistan, where-after, the Senior Judge of the Sudan briefed about the judicial system of Sudan judiciary in detail. They also discussed the matters of mutual interest relating to judiciary.

The Chief Justice of Sudan also proposed that a Memorandum of Understanding between the Pakistan and Sudan may be prepared and signed by both the governments for development of cooperation and coordination in the field of law and justice. Accordingly a draft memorandum which was prepared by the Chief Justice of Sudan was presented to Chief Justice of Federal Shariat Court of Pakistan for consideration.

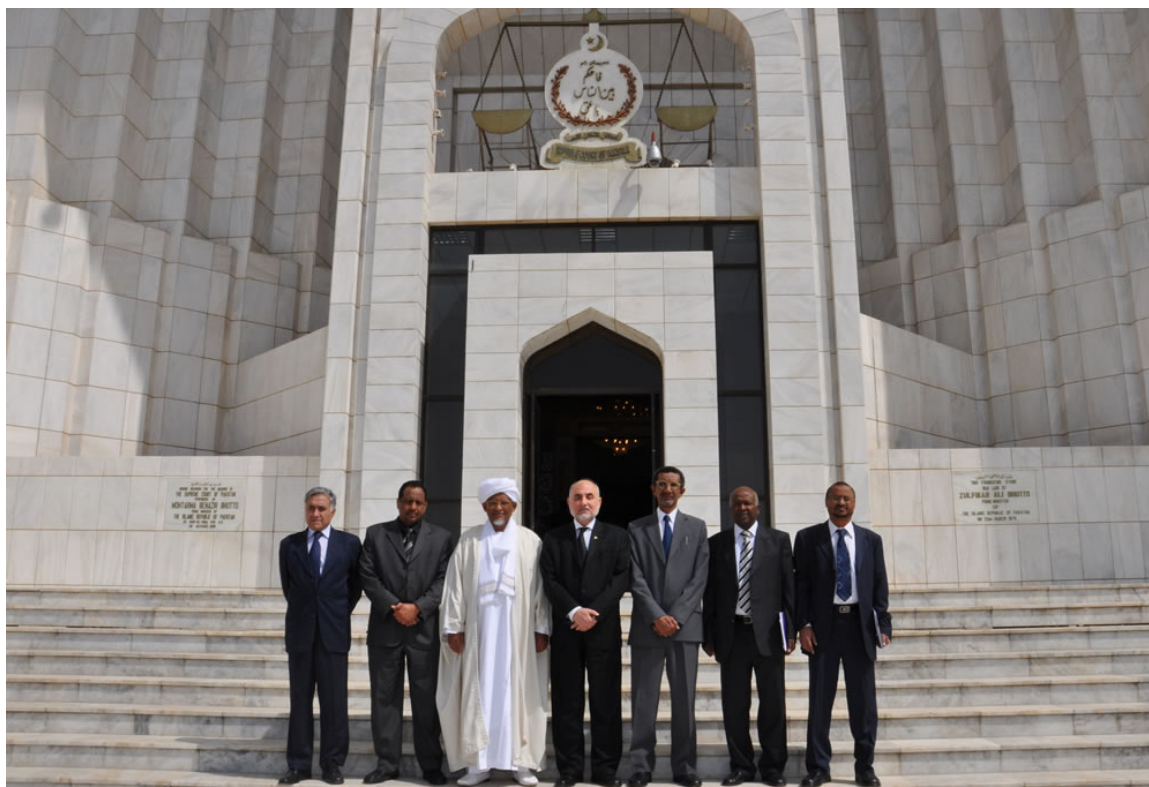
During their visit, arrangements for the visit to International Islamic University, Faisal Masjid, Shakarparyan, and national Monument were made. The visiting delegation expressed their thanks after completion of their official visit to Pakistan.



Mr. Justice Jalaluddin Mohammad Uthman, Chief Justice of Sudan presenting Souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan during his visit to Pakistan on 13.3.2012 at Marriott, Islamabad.



Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan with Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan and Mr. Justice Jalaluddin Mohammad Uthman, Chief Justice of Sudan at Dinner on 14.3.2013 at Marriott, Islamabad.



A Group photograph taken in front of Supreme Court of Pakistan at Islamabad on 14-03-2013.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Mr. Justice Jalaluddin Mohammad Uthman, Chief Justice of Sudan during his visit to Federal Shariat Court, Islamabad on 15.3.2012.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Galal Elden Mohammed Osman Goresi, Chief Justice, Supreme Court of Sudan meeting with Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan at Supreme Court of Pakistan on 18-03-2012.

Sudanese judicial team meets CJ

ISLAMABAD, March 14: A judicial delegation from Sudan, headed by Chief Justice Galal Elden Mohammed Osman Goreshi, called on Chief Justice Iftikhar Mohammad Chaudhry here on Wednesday.

Speaking to the delegation, Justice Iftikhar said such visits represented a good tradition that enabled judges to share their experiences and understand the judicial systems of other countries.

The chief justice of Sudan said there were commonalities between the legal systems of the two countries, including Islamic

laws, so mutual cooperation would be beneficial for both of them.

The delegation also visited the International Islamic University (IIU). Speaking on the occasion, he said the Shariat system was applied in every walk of life in Sudan despite a few colonial powers' efforts to stop it.

The visiting delegation called on IIU President Dr Mumtaz Ahmad and Rector Prof Fateh Mohammad Malik and discussed cooperation in education and research.

The Sudanese delegation also visited the Faisal Mosque.



اسلام آباد: چیف جسٹس افتخار محمد چوہدری سے سوڈانی ہم منصب جلال الدین عثمان کی قیادت میں وفد ملاقات کر رہا ہے

APP

March 18, 2012

Sudanese Chief Justice honoured

ISLAMABAD - The visiting Chief Justice of Sudan, Jalaluddin Muhammad Usman was given a warm reception in Islamabad by all segments of society as he also worked for independence of judiciary in Sudan.

Headed by a delegation, the Sudanese Chief Justice spent busy days in the capital interacting with all segments of society. He met with Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry and exchanged views and experiences on the matters relating to independence of judiciary and providing justice to the people.

He also held long session with Agha Muhammad Rafique, Chief Justice Federal Shariat Court, parliamentarians and visited different institutions.

Chief Justice Jalaluddin Muhammad Usman, who was officially invited to Pakistan was also a guest of honour at a reception hosted by Sudanese acting ambassador Mohamed Eldei Ali on Thursday evening where Besides Chief Justice of Federal Shariat Court, Agha Muhammad Rafique Khan and Interior Minister Rehman Malik,

diplomats from Muslim countries, Senior officials from Ministry of Foreign Affairs, members of legal fraternity, mediemen and scholars attended it at the residence of the Sudanese ambassador.

Chief Justice Usman said his visit is fruitful as he exchanged views with his Pakistani counter-part and senior officials of judiciary. Pakistan is his second home, he said.

Welcoming Sudanese guest, Chief justice Shariat Court said more Chief justices from Arab and African countries are expected to visit Pakistan. Similarly Pakistani delegations will also visit those countries, he said.

Rehman Malik said the visit will help to promote relations with Sudan. There is independence of judiciary in Pakistan. Justice should prevail everywhere, he said.

The acting Sudanese ambassador said it is a great occasion that Chief Justice of Sudan is visiting Pakistan. Pakistan and Sudan enjoy excellent relations. This visit will further cement such relations, Mohamed Eldei Ali said.

Exchange of gifts was also conducted on the occasion.

Dawn

March 14th, 2012

روزنامہ Dawn کے وقت راولپنڈی

15 مارچ 2012ء

چیف جسٹس سے سوڈان کے اعلیٰ سطح کے عدالتی وفد کی ملاقات

اسلام آباد (نمائندہ نوائے وقت) سوڈان کے ایک اعلیٰ سطحی عدالتی وفد نے چیف جسٹس محمد عثمان گورشی کی قیادت میں بدھ کو چیف جسٹس افتخار محمد چوہدری سے پیرام کوٹ میں ملاقات کی۔ وفد سے گفتگو کرتے ہوئے چیف جسٹس آف پاکستان نے کہا کہ اس طرح کے وفد کے دوروں کے تبادلے اچھی روایت ہے جو ہمیں ایک دوسرے کے عدالتی نظام کو سمجھنے اور تجربات سے فائدہ اٹھانے میں شریک کرنے کے قابل بناتے ہیں۔ چیف جسٹس سوڈان نے پاکستان کے چیف جسٹس کو دورہ سوڈان کی باضابطہ دعوت بھی دی۔

Dawn

March 14th, 2012

روزنامہ Dawn کے وقت راولپنڈی

16 مارچ 2012ء

سوڈان کے چیف جسٹس جلال محمد عثمان کا

وفاقی شرعی عدالت کا دورہ

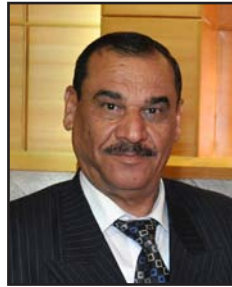
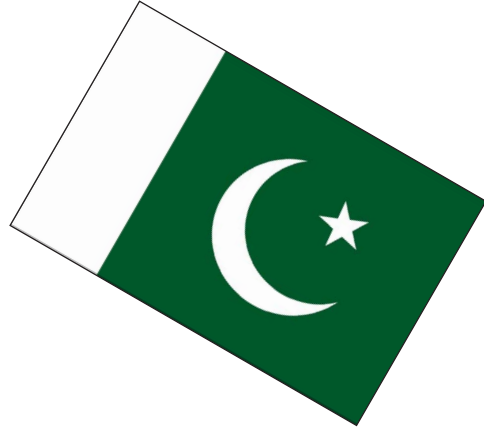
سوڈان (اے پی پی) سوڈان کے چیف جسٹس جلال محمد عثمان نے جمہوریت کو اپنے وفد کے ہمراہ وفاقی شرعی عدالت کا دورہ کیا اور عدالت کے مختلف حصوں کا معائنہ کیا۔ اس موقع پر انہیں شرعی عدالت کے دائرہ کار اور طریقہ کار پر تفصیلی بریفنگ دی گئی۔ چیف جسٹس وفاقی شرعی عدالت آغا رفیق احمد خان نے سوڈانی وفد کا استقبال کیا۔ چیف جسٹس آغا رفیق احمد خان نے وفد سے گفتگو کرتے ہوئے کہا کہ سوڈان پاکستان کا اسلامی برادر ملک ہے اور دونوں ممالک کے مابین تعلقات اللہ کی حاکمیت اور اسلامی شریعہ کے اصولوں پر قائم ہیں۔ انہوں نے امید ظاہر کی کہ دونوں ملک اسلامی قوانین کی تشریح میں ایک دوسرے کے ساتھ تعاون کریں گے جس کے مفید نتائج برآء ہوں گے۔

The News

March 14, 2012

Sudan CJ to visit Federal Shariat Court

ISLAMABAD, March 14 (APP): Chief Justice Republic of Sudan Justice Galal Elden Mohammad Osman Goreshi will visit Federal Shariat Court building on March 15. On the invitation of government of Pakistan, Chief Justice Supreme Court Sudan, accompanied with three judges is on four days visit (13-16 March), said a press release. Chief Justice Federal Shariat Court, Agha Rafiq Ahmed Khan will receive and brief the delegation about the performance and working of the court. Besides, plantation ceremony will also be held.



*Visit of
Hon'ble Mr. Justice Mohammad Almhamed Chief Justice /
President of Supreme Court of Jordan
to
The Islamic Republic of Pakistan
From 25th to 31st March , 2012*

Visit of
**Hon'ble Mr. Justice Mohammad Almhamid Chief Justice/
President of Supreme Court of Jordan**
to
The Islamic Republic of Pakistan
From 25th to 31st March , 2012

On the invitation of Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Hon'ble Mr. Justice Mohammad Almhamid Chief Justice Supreme Court of Jordan along with his delegation visited Pakistan from 25th March, 2012 to 31st March, 2012. The delegation was comprising of Mr. Justice Jamil Almhadin, Mr. Justice Ammar Al Huseini, Judge, Mr. Justice Abdoh Shamoot, Judge, Mr. Zeid Al Tlafih. Mr. Yazan Al Qiai, Charge d' Affairs, Embassy of Jordan in Pakistan also remained associated with the delegation during the visit.

Meetings of the delegation were held with Hon'ble Chief Justice and Judges of Federal Shariat Court, Chief Justice of Pakistan, Chief Justice of Islamabad High Court. The delegation also visited Lahore for three days with effect from 28-3-2012 to 31-3-2012 and had meeting with Chief Justice of Lahore High Court, and Governor of Punjab. The delegation discussed the issues of mutual interests relating to judiciary and assured bilateral cooperation in the field of law & justice.

The Hon'ble Chief Justice of Jordan and his delegation visited Federal Shariat Court, Supreme Court of Pakistan, Islamabad High Court, Shakarparyan, Pakistan Monument and Museum, National Assembly of Pakistan at Islamabad and Wagha Border, Allama Iqbal Mausoleum, Minar-e-Pakistan and Badshahi Masjid at Lahore during their stay in Pakistan.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court presenting flowers to Mr. Justice Mohammad Almhmid, Chief Justice/President of Supreme Court of Jordan of Pakistan at Benazir International Airport, Islamabad on 25.3.2012.



Photograph taken during the briefing by Mr. Justice Agha Rafiq Ahmed Khan to Mr. Justice Mohammad Almhmid, Chief Justice/President of Supreme Court of Jordan, on 26th March, 2012 at Federal Shariat Court Islamabad.



Mr. Justice Mohammad Almhamid, Chief Justice/President of Supreme Court of Jordan presenting Souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan during his visit to Federal Shariat Court, Islamabad on 26.3.2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan and Judges with Mr. Justice Mohammad Almhamid, Chief Justice/President of Supreme Court of Jordan and delegates on 26th March, 2012 at Federal Shariat Court, Islamabad.



Mr. Justice Mohammad Almhamid, Chief Justice/President of Supreme Court of Jordan during meeting with Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry and Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Islamabad on 26.3.2012.

روزنامہ جنگ راولپنڈی
25 مارچ 2012ء

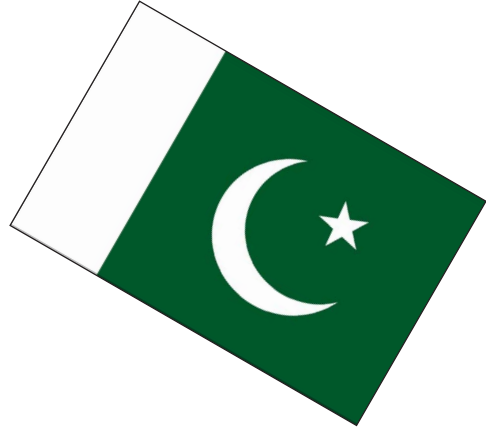
اردن کے چیف جسٹس ایک ہفتے کے دورے پر آج اسلام آباد پہنچیں گے

اسلام آباد (آن لائن) چیف جسٹس وفاقی شرعی عدالت آغا رفیق احمد خان کی دعوت پر مملکت اردن کے چیف جسٹس محمد المحامد اپنے پانچ رکنی وفد کے ہمراہ آج اتوار سے پاکستان کے ایک ہفتے کے دورے پر اسلام آباد پہنچیں گے۔ پاکستان میں اپنے قیام کے دوران معزز مہمانان گرامی چیف جسٹس آف پاکستان افتخار محمد چوہدری سے ملاقات کے علاوہ وفاقی شرعی عدالت اسلام آباد ہائی کورٹ اور فیڈرل جوڈیشل اکیڈمی کا دورہ بھی کریں گے۔ دونوں ممالک کے وفود عدالتی امور میں باہمی تعاون و اشتراک عمل پر تبادلہ خیال کریں گے۔ مہمانان گرامی دورہ لاہور کے دوران لاہور ہائی کورٹ کے چیف جسٹس اور ججز صاحبان سے ملاقات کریں گے اور لاہور کے تاریخی مقامات کی سیر بھی کریں گے۔

روزنامہ اوصاف اسلام آباد
25 مارچ 2012ء

اردن کے چیف جسٹس وفد کے ہمراہ آج اسلام آباد پہنچیں گے

اسلام آباد (نیوز رپورٹر) چیف جسٹس وفاقی شرعی عدالت آغا رفیق احمد خان کی دعوت پر مملکت اردن کے چیف جسٹس محمد المحامد اپنے پانچ رکنی وفد کے ہمراہ آج اتوار سے پاکستان کے ایک ہفتے کے دورے پر اسلام آباد پہنچیں گے۔ پاکستان میں اپنے قیام کے دوران معزز مہمانان گرامی چیف جسٹس آف پاکستان افتخار محمد چوہدری سے ملاقات کے علاوہ وفاقی شرعی عدالت اسلام آباد ہائی کورٹ اور فیڈرل جوڈیشل اکیڈمی کا دورہ بھی کریں گے۔



*Visit of
Hon'ble Mr. Justice Mohamed Hossam Elddin El Gheriany
Chief Justice, Supreme Court of Egypt/
Chairman of Supreme Council of Justice
To
Pakistan from 1st April to 6th April, 2012*

Visit of
Hon'ble Mr. Justice Mohamed Hossam Elddin El Gheriany
Chief Justice, Supreme Court of Egypt/
Chairman of Supreme Council of Justice
To
Pakistan from 1st April to 6th April, 2012

The visit of Hon'ble Mr. Justice Mohamed Hossam Elddin El Gheriany, Chief Justice of Egypt along with his delegation to Islamic Republic of Pakistan commenced from 1st April to 6th April, 2012. The delegation was comprising of Mr. Justice Mohamed Hossam Elddin El Gheriany, Chief Justice of Egypt and Mr. Justice Ali Mohamed Ali, Deputy Chief Justice, Supreme Court of Egypt.

Hon'ble Chief Justice of Egypt had meetings with Hon'ble Chief Justice of Pakistan, Hon'ble Chief Justice and judges of Federal shariat Court of Pakistan, Chairman Senate of Pakistan at Islamabad. During their stay at Karachi the delegation had meeting with Chief Justice, Sindh High Court, Governor of Sindh, Chief Minister Sindh and Speaker of Sindh Assembly. Egyptian Chief Justice appreciated the judicial system of Pakistan and expressed that judiciary in Pakistan is functioning independently in the country. He said that relations between two countries are based on Islamic brotherhood. The exchange of visits of judicial delegations would certainly help in developing better understanding of judicial system of both the countries.

Hon'ble Chief Justice also visited International Islamic University, Faisal Masjid, Shakarparyan, National Monument and Quaid-e-Azam Mausoleum during his stay in Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan presenting souvenir to Mr. Justice Mohamed Hossam Elddin El Gheriany Chief Justice, Supreme Court of Egypt/ Chairman of Supreme Council of Justice on 2nd April, 2012 at Federal Shariat Court Islamabad.



Mr. Justice Agha Rafiq Ahmed Khan presenting flowers to Mr. Justice Mohamed Hossam Elddin El Gheriany Chief Justice, Supreme Court of Egypt/ Chairman of Supreme Council of Justice on 2nd April, 2012 at Islamabad.



Photograph taken during the briefing by Mr. Justice Agha Rafiq Ahmed Khan to Mr. Justice Mohamed Hossam Elddin El Gheriany Chief Justice, Supreme Court of Egypt/ Chairman of Supreme Council of Justice on 2nd April, 2012 at Federal Shariat Court Islamabad.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan and Judges with Mr. Justice Mohamed Hossam Elddin El Gheriany Chief Justice, Supreme Court of Egypt and delegates on 2nd April, 2012 at Federal Shariat Court, Islamabad.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Mohamed Hossam Elddin El Gheriany, Chief Justice, Supreme Court of Egypt with Syed Qaim Ali Shah, Chief Minister Sindh at Karachi on 02-04-2012.

Nawa-e-Waqt

April 4th, 2012

روزنامہ نوائے وقت راولپنڈی
01 اپریل 2012ء

مصر کے چیف جسٹس کی اسلام آباد آمد صدر اور وزیراعظم سے بھی ملاقاتیں کریں گے

اسلام آباد (نمائندہ نوائے وقت) چیف جسٹس وفاقی شرعی عدالت آغا رفیق احمد خان کی دعوت پر مصر کے چیف جسٹس محمد حسام الدین العربیائی اپنے دور کئی وفد کے ہمراہ گزشتہ روز پاکستان کے ایک ہفتے کے دورے پر اسلام آباد پہنچ گئے ہیں۔ پاکستان میں اپنے قیام کے دوران معزز مہمان صدر وزیراعظم، چیئرمین سینیٹ کے علاوہ چیف جسٹس افتخار محمد چوہدری سے بھی ملاقات کریں گے۔

مصری چیف جسٹس کی وزیراعظم یوسف رضا گیلانی سے ملاقات



اسلام آباد: وزیراعظم یوسف رضا گیلانی مصر کے چیف جسٹس کا محترم کر رہے ہیں

اسلام آباد (نمائندہ خصوصی) مصر کے چیف جسٹس محمد حسام الدین نے کہا ہے کہ ان کے وزیراعظم پاکستان یوسف رضا گیلانی سے ملاقات ان کے دورہ پاکستان کے سب سے خوشگوار یادگار ہے۔ انہیں یہ جان کر خوشی ہوئی ہے کہ پاکستان میں عدلیہ آزادانہ طور پر کام کر رہی ہے اور ساری دنیا بھی یہ بات جانتی ہے۔ مصر کے چیف جسٹس نے یہ بات وزیراعظم سید یوسف رضا گیلانی سے گفتگو کرتے ہوئے کہی۔ ملاقات میں مصر کے ڈپٹی چیف جسٹس علی محمد محمد علی بھی موجود تھے۔ وزیراعظم نے کہا کہ پاکستان کے عوام مصر کے ساتھ تعلقات کو قدر کی نگاہ سے دیکھتے ہیں۔ انہوں نے کہا کہ مصر میں پارلیمانی انتخابات اور نئے آئین کی تشکیل سے عوام کی بلوغت کا اظہار ہوتا ہے۔ انہوں نے کہا کہ آئین پاکستان میں لکھا گیا ہے کہ اقتدار اعلیٰ اللہ تعالیٰ کے پاس ہے انہوں نے مصری چیف جسٹس سے کہا کہ وہ مصر کے وزیراعظم کے لئے نیک خواہشات کا پیغام پہنچائیں۔

OnePakistan
April 23, 2012

Islamic Shariah only weapon for survival: Egyptian Chief Justice

Islamabad : Despite the fact that the non-Muslims have ruled over the Muslims and destroyed the Islamic identity badly, there is a hope that the leadership will soon realize that Islamic Shariah is the only weapon for their survival.

This was stated by Egyptian Chief Justice Mohamed Hossam El Eddin El Ghariany on occasion of his visit to the International Islamic University, Islamabad (IIUI), Tuesday, accompanied by his deputy, Justice Ali Mohamed Mohamed and Egyptian Ambassador Said Muhammad El Said.

Talking about the Muslim scholars, he said they (Islamic scholars) are not confined to any territory or region because they are the combined legacy of the Muslims and all Muslims are getting benefits from them. He said Egyptian scholars had played a great role in promotion of Islam.

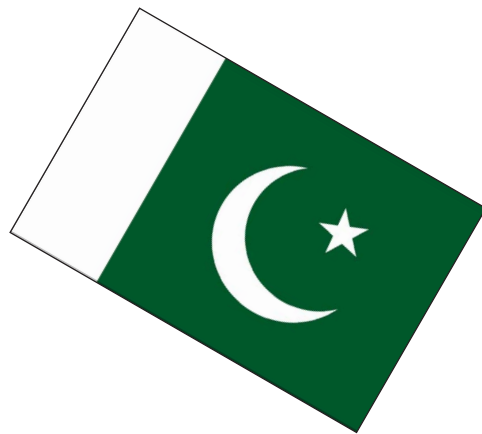
Egyptian students are interested in getting education in the IIUI. The Egyptian chief justice said Pakistan has a larger Muslim population, adding they should meet each other, breaking the barriers of colour and ethnicity. He said Federal Shariat Court and the IIUI working for the same purpose.

While addressing to the

faculty members of Faculty of Shariah and Law of IIUI, he said that he was pleased to see that this faculty is providing integration to both Shariah and Law education. He said that all human laws are not against Shariah. He urged the teachers to follow the Federal Shariat Court and to point out the non-Shariah laws to stop their implementations in the society.

IIUI Rector Prof. Fateh Muhammad Malik welcomed the Egyptian guests and said Al-Azhar University scholars had shown Quaid-e-Azam the way forward. President IIUI Prof. Dr. Mumtaz Ahmad said the visits will strengthen bilateral relations between Egypt and Pakistan. He said Egypt is a center of intelligence and Islamic traditions.

IIUI Vice President, Prof. Dr. Sahibzada Sajid ur Rehman and others were also present on the occasion. Director General Shariah Academy, Dr. Tahir Mansoori briefed the delegation about the performance and future plans of IIUI. Dean Faculty of Shariah & Law Dr. Zia ul Haq briefed the delegation about the performance of faculty at their visit to the faculty. Dr. Mumtaz Ahmad presented IIUI crest to the distinguished guests. At the end the delegation also visited the Faisal Mosque.



*Visit of
Hon'ble Mr. Justice Mustapha Fares,
First President/Chief Justice Court of Cassation,
Kingdom of Morocco
to
The Islamic Republic of Pakistan
from 16th to 22nd April 2012*

Visit of

**Hon'ble Mr. Justice Mustapha Fares,
First President/Chief Justice**

Court of Cassation, Kingdom of Morocco

to The Islamic Republic of Pakistan

from 16th to 22nd April 2012

Hon'ble Mr. Justice Mustapha Fares Chief Justice Supreme Court of Morocco visited Islamic Republic of Pakistan along with his delegation from 16th to 22nd April, 2012. The delegation was comprising of Mr. Brahim Zaim, President of Chambers at the court of Cassation, Mr. Ahmed Benzakou, President of Chambers at the court of Cassation, and Mr. Abderrahmane Mesbahi El Aouame, President of Chambers at the court of Cassation.

During the visit, meetings with the Hon'ble Chief Justice of Pakistan, Chief Justice and Judges of Federal Shariat Court, Chief Justice, Islamabad High Court were arranged at Islamabad. The Chief Justice of Morocco and his delegation visited Federal Shariat Court, Supreme Court of Pakistan, International Islamic University, Islamabad, Shakarparyan, Lok Virsa, Pakistan Monument and Museum. The delegation also visited Lahore and called on the Chief Justice Lahore High Court besides the visit of the Court. The Chief Justice of Morocco focused on mutual cooperation between two countries in justice sector and explored possibilities as to how administration of justice could be made effective with cooperation in the prevailing judicial system of both the brotherly countries. At Lahore visits of Mausoleum of Allama Iqbal, Fort and Badshahi Masjid were arranged.

While visiting the province of Sindh, the delegation also paid visits to Sindh Governor, Chief Minister of Sindh, and Speaker Sindh Assembly. The delegation also proceeded to Hyderabad and were warmly welcomed by the members of the Hyderabad Bar Association. The Chief Justice of Morocco inaugurated the Masjid-e-Mohammad situated in the Sindh Judicial Officers Housing Society at Hyderabad. At the end of the visit, the Chief Justice of Morocco extended gratitude for the love, affection and hospitality by the Chief Justice Federal Shariat Court of Pakistan.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan presenting flowers bouquet to Mr. Mustafa Fares, Chief Justice, Supreme Court of Morocco during his visit to Pakistan on 16.4.2012.



Mr. Justice Agha Rafiq Ahmed Khan Chief Justice, Federal Shariat Court of Pakistan presenting souvenir to Mr. Mustapha Fares, First President/Chief Justice, Supreme Court of Morocco, at Islamabad on 17-04-2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Mustapha Fares, First President/ Chief Justice Supreme Court of Morocco and delegation at Federal Shariat Court of Pakistan, Islamabad on 17-04-2012.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice ,Federal Shariat Court and Mr. Mustapha Fares, First President/ Chief Justice Supreme Court of Morocco and delegation at Supreme Court of Pakistan, Islamabad on 18-04-2012.



Group photograph of Mr. Justice Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Judges, Federal Shariat Court of Pakistan and Mr. Mustafa Fares, Chief Justice, Supreme Court of Morocco and delegation with Mr. Justice Shaikh Azmat Saeed, Chief Justice, Lahore High Court and Acting Governor Punjab at Governor House, Lahore during visit on 18.4.2012.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan, Judges, Federal Shariat Court of Pakistan and Mr. Mustafa Fares, Chief Justice, Supreme Court of Morocco with Mr. Justice Shaikh Azmat Saeed, Chief Justice, Lahore High Court during their visit to Lahore High Court, on 19.4.2012.



Rana Muhammad Iqbal Khan, Speaker, Punjab Assembly receiving Mr. Mustapha Fares, Chief Justice of Morocco, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court on their arrival at Punjab Assembly, Lahore on 19-04-2012.



A group photograph taken at Lahore High Court, Mr. Mustapha Fares, Chief Justice of Morocco, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court with Chief Justice Sheikh Azmat Saeed on 19-04-2012.



A group photograph taken at Chief Minister House, Karachi with Mr. Justice Mustapha Fares, Chief Justice of Morocco, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court with Chief Minister, Sindh, Syed Qaim Ali Shah on 20-04-2012.



A group photograph taken at Sindh High Court, Karachi with Mr. Justice Mustapha Fares, Chief Justice of Morocco, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Mushir Alam, Chief Justice, Sindh High Court on 20-04-2012.



A group photograph of Mr. Justice Mustapha Fares, Chief Justice of Morocco and Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court with Chief Minister, Sindh, Syed Qaim Ali Shah at Chief Minister House, Karachi on 20-04-2012.



Mr. Justice Mustapha Fares, Chief Justice of Morocco inaugurating "Masjid-e-Muhammad" along with Mr Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court at Judicial Officers Cooperative Housing Society, Hyderabad on 21-04-2012.



From Left: Mr. Qadir Bux Umrani, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court, Mr. Mustapha Fares, Chief Justice of Morocco, and Mr. Justice Mushir Alam, Chief Justice, Sindh High Court at Judicial Officers Cooperative Housing Society, Hyderabad on 21-04-2012.

The News
April 13, 2012

Morocco judges called on Chief Justice Iftikhar Chaudhry

ISLAMABAD: A delegation of Morocco judges Wednesday called on Supreme Court Chief Justice Iftikhar Chaudhry here at the Supreme Court building.

The delegation, headed by Mustapha Fares Chief Justice of Supreme Court of Morocco, also included Brahim Zaim, president of Chamber at the Court of Cassation, Ahmed Benzakour, president of Chamber at the Court of Cassation, Abderrahmane Mesbahi El Aouame, President of Chamber at the Court of Cassation and Mohammad Rida EL Fassi, ambassador of Kingdom of Morocco in Pakistan.

Welcoming the delegation, the CJ said it was an honour to receive such a high level judicial delegation from Morocco. Exchange of delegations is always a healthy and a good tradition to take advantages

from each other's experience and knowledge, he said and added since both countries are Muslim where Islamic laws are enforced, it is a good opportunity to share some experiences and reforms.

The chief justice of Morocco reciprocated the sentiments and explained his judicial system and informed about Supreme Court and other subordinate courts. He also invited the CJ to visit Morocco, which Chief Justice Iftikhar Chaudhry accepted.

Federal Shariat Court is also functioning to examine and determine as to whether or not a certain provision of law is repugnant to the injunctions of Islam and appeal against the decision of Federal Shariat Court is heard by Shariat Appellate Bench of Supreme Court.

The Express Tribune
April 21, 2012

Morocco's Apex Court Head, visits Mazar-e-Quaid

KARACHI: - The head of Morocco's apex court, Justice Mustapha Fares, visited Mazar-e-Quaid and attended a dinner hosted by Prof. Khurshid A Hashmi and the faculty members of SM Law College on Friday.

Justice Fares was given a tour of the library and sat in classrooms during lectures.

The chief justice of Morocco was very happy to be in Karachi. He said that both Islamic countries had a good relationship and the judiciaries had developed closer ties and increased collaboration. He added that the credit for this collaboration lay with the chief justice of the Shariat Court who visited Arab countries and invited their chief judges to visit Pakistan.

According to Fares, these trips and exchange of delegations would help strengthen judicial relations. While talking to the media, he said that an agreement would be signed by the judiciaries of Pakistan and Morocco for increased interaction. "We will also hold a conference on strengthening judicial links," he said. "Both judiciaries are different but both are independent and delivering justice."

While talking to the media at the mausoleum, the Sindh High Court Chief Justice Musheer Alam said that the shortage of judges in court would be resolved in the next couple of weeks. The chief justice of the Federal Shariat Court, Justice Agha Rafique Ahmed Khan was also there.

PAKISTAN OBSERVER
April 22, 2012

Justice to people prime aim of judges: Morocco CJ

Staff Reporter

Hyderabad: Chief Justice, Supreme Court of Morocco Justice Mustapha Fares said the prime objective of the judges and the court is to provide justice to the people and the provision of justice could be made in an effective manner with active cooperation of the bench and the bar. Justice Mustapha Fares, who also held the office of the President of Morocco expressed these views while addressing the members of Hyderabad Bar and later talking to media persons here on Saturday afternoon. He was on a 6 day visit to Pakistan on invitation of Justice Agha Rafiq Ahmed Khan, Chief Justice of Pakistan Federal Shariat Court. Among others, the Chief Justice Federal Shariat Court Justice Agha Rafiq Ahmed Khan, Chief Justice Sindh High Court Justice Musheer Alam and judges of Sindh High Court Justice Aqueel Ahmed Abbasi, Justice Nisar Shaikh, Justice Shafiq

Muhammad Siddiqui, Justice Nadeem Ahmed, District and Sessions Judge Hyderabad Amjad Bohiyo, Registrar Sindh High Court Abdul Rasool Memon, President Sindh High Court Bar Association Hyderabad Allah Bachayo Soomro advocate, President District Bar Association Hyderabad Nisar Durrani and Honorary Consul General of Morocco at Karachi Ishtiaq Baig were also present on the occasion.

Justice Mustapha Fares said lawyers belong to a respectable profession and their job is to get justice for the people adding that getting justice for oppressed persons is the success of any lawyer.

Terming the founder of Pakistan Quaid-e-Azam Mohammad Ali Jinnah a great lawyer, Justice Mustapha Fares said that he made remarkable efforts for the creation of Pakistan. Pakistan is an Islamic country where the people have deep love with the religion, he

said and added that both Pakistan and Morocco enjoy brotherly relations.

About his visit to Pakistan, Justice Mustapha Fares said that during recently held Judges Conference in Morocco, the Chief Justice Federal Shariat Court of Pakistan Justice Agha Rafique Ahmed Khan had invited him to visit and review the judicial system in Pakistan. In Morocco, he said the lawyers of the country are playing their due role like a right hand of judges for getting justice for oppressed people of their country.

Earlier on arrival at the District and Session Court Hyderabad, Justice Mustapha Fares was accorded a rousing welcome by the judges and the lawyers. He was also briefed about the judicial system of Pakistan at Darbar Hall of the District and Sessions Court. The Chief Justice of the Supreme Court of Morocco also inaugurated the newly constructed mosque in the Judicial Colony at Kohisar, Latifabad.

روزنامہ جنگ راولپنڈی
19 اپریل 2012ء

چیف جسٹس افتخار چوہدری سے

مراکش کی عدلیہ کے وفد کی ملاقات

اسلام آباد (سچل رپورٹر) چیف جسٹس افتخار چوہدری نے مراکش کی عدلیہ کے وفد سے گفتگو کرتے ہوئے کہا کہ دونوں کے تبادلے ایک دوسرے کے تجربات سے فائدہ اٹھانے کیلئے ہمیشہ اہم ثابت ہوتے ہیں۔ دونوں اسلامی ممالک ہیں جن میں کئی اسلامی قوانین نافذ ہیں جن سے دونوں ممالک کی عدلیہ فائدہ اٹھا سکتی ہے۔

روزنامہ نوائے وقت راولپنڈی
18 اپریل 2012ء

Nawa-e-Waqt
April 17th, 2012

Morocco CJ arrives in capital

روزنامہ جنگ راولپنڈی
17 اپریل 2012ء

ISLAMABAD: The Chief Justice of Supreme court of Morocco Mustapha Fares has arrived here on a 5 days official visit.

According to a press release, he will call on president, prime Minister and the Chief Justices of the Supreme Court and Shariat Court.

The Chief Justice of Morocco will also visit Karachi and offer Fatiha at Maza-e-Quaid.

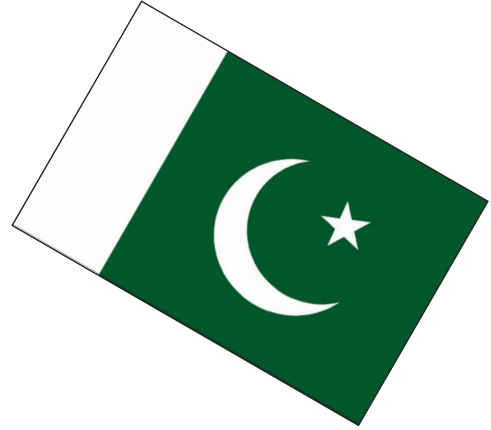
He will also call on governor Sindh, Chief Minister and Chief Justice of Sindh High Court.

مراکش کے چیف جسٹس کا دورہ پاکستان

کراچی (پ ر) سپریم کورٹ مراکش کے چیف جسٹس مصطفیٰ فارس 5 روزہ دورے پر پاکستان پہنچے ہیں۔ اسلام آباد میں قیام کے دوران وہ صدر، وزیراعظم، چیف جسٹس آف پاکستان اور شریعت عدالت کے چیف جسٹس سے ملاقاتیں کریں گے۔ چیف جسٹس مراکش، چیف جسٹس شریعت عدالت اور پاکستان میں مراکش کے سفیر کے ساتھ کراچی بھی آئیں گے اور مزار قائد پر فاتحہ خوانی کریں گے۔ اس کے علاوہ وہ گورنر سندھ، وزیراعلیٰ اور چیف جسٹس سندھ ہائی کورٹ سے بھی ملاقاتیں کریں گے۔ اس دوران کراچی میں مراکش کے اعزازی تو فیصل جنرل اشتیاق بیگ چیف جسٹس مراکش کے ہمراہ ہوں گے۔

مراکش کے چیف جسٹس کی چیف جسٹس اسلام آباد ہائی کورٹ سے ملاقات

اسلام آباد (دقائق نگار) مراکش کے چیف جسٹس نے منگل کے روز اسلام آباد ہائی کورٹ کے چیف جسٹس اقبال حمید الرحمن سے ملاقات کی۔ ملاقات میں چیف جسٹس فیڈرل شریعت کورٹ جسٹس آغا رفیق بھی شریک ہوئے۔ مراکش کی سپریم کورٹ کے چیف جسٹس نے اسلام آباد ہائی کورٹ کا وزٹ کیا اور چیف جسٹس اسلام آباد ہائی کورٹ سے قانونی اور دیگر باہمی دلچسپی کے امور پر تبادلہ خیال بھی کیا۔ بعد میں معزز مہمان کے اعزاز میں ظہرانے کا بھی اہتمام کیا گیا۔



*Visit of
Hon'ble Mr. Justice Masoud Mohamed Al-Ameri,
Chief Justice, Court of Cassation of Qatar
to
The Islamic Republic of Pakistan
from 24th to 27th April 2012*

Visit of
Hon'ble Mr. Justice Masoud Mohamed Al-Ameri,
Chief Justice, Court of Cassation of Qatar
to
The Islamic Republic of Pakistan
from 24th to 27th April 2012

On the invitation of Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan Hon'ble Mr. Justice Masoud Mohamed Al-Ameri visited Islamic Republic of Pakistan along with his delegation from 24th April, 2012 to 27th April, 2012. The delegation was comprising of His Excellency Dr. Alshammari, Deputy Chief Justice, Court of Cassation, Mr. Ahmed Hassan Al-Kuwari, Director of the President's office, Mr. Mohamed Rashid Alnuaimi, President's Assistant and Mr. Omar Gamin Mohamed, Head of Interantional Cooperation Department.

During the visit, meetings with the Hon'ble Chief Justice of Pakistan, Chief Justice and Judges of Federal Shariat Court, and Chairman Senate of Pakistan were held. Issues of mutual interests relating to judiciary were discussed. The Chief Justice of Qatar appreciated the efforts being taken for providing speedy and quick justice to the common man in Pakistan.

The Hon'ble Chief Justice of Qatar and his delegation visited Federal Shariat Court, Supreme Court of Pakistan, International Islamic University, Islamabad, Shakarparyan, Pakistan Monument and Museum, Lok Virsa and Taxila Museum during their stay in Pakistan.

The foreign delegation expressed its pleasure and satisfaction over their successful visit to Pakistan and as a reciprocal gesture invited hon'ble Chief Justice Federal Shariat Court to visit Qatar and get acquaintance with the mechanism for dispensation of justice in State of Qatar which was accepted by the Chief Justice Federal Shariat Court.



Mr. Justice Agha Rafiq Ahmed Khan, Federal Shariat Court of Pakistan presenting flowers to Mr. Justice Masoud Mohamed Al-Ameri, Chief Justice of Qatar at Benazir International Airport, Islamabad on 24th April, 2012



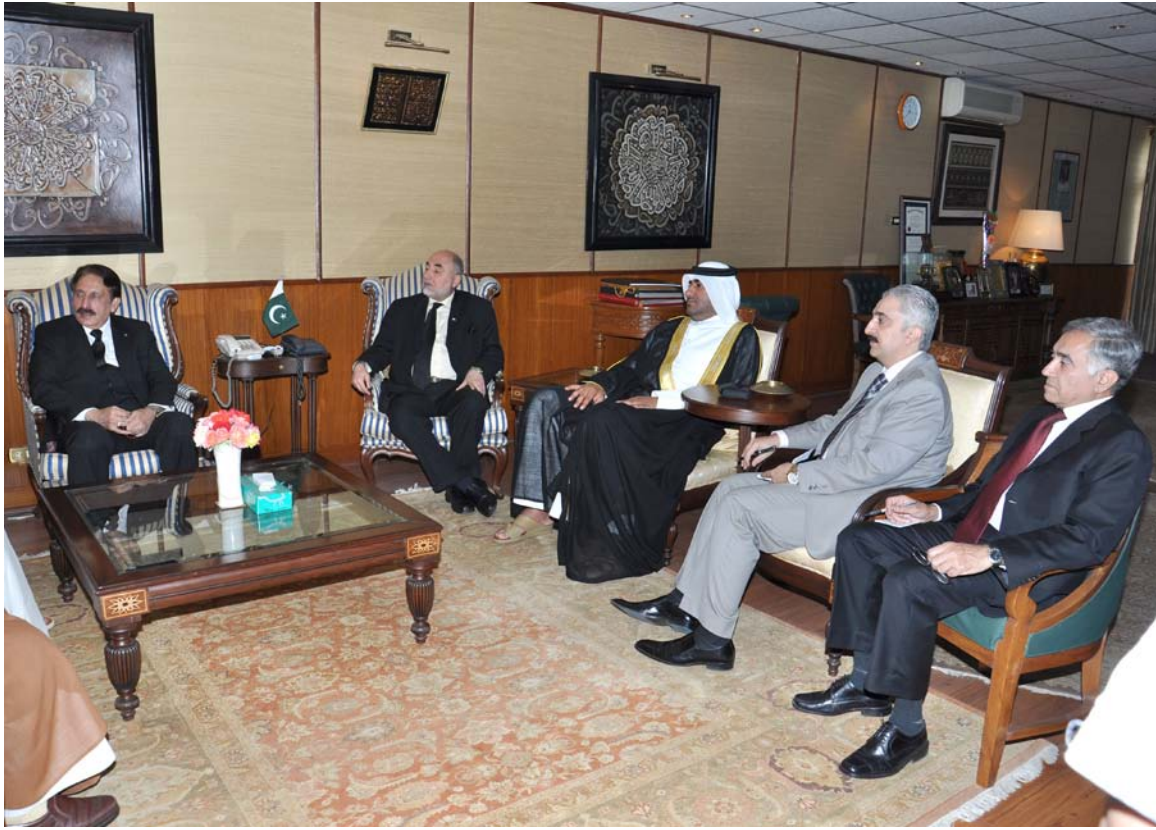
Meeting of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan with Mr. Justice Masoud Mohamed Al-Ameri, Chief Justice Supreme Court of Qatar during his visit to Federal Shariat Court, Islamabad on 25.4.2012.



Mr. Justice Agha Rafiq Ahmed Khan Chief Justice, Federal Shariat Court of Pakistan presenting souvenir to Mr. Justice 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 on 25-04-2012.



Group photograph of Mr. Justice Agha Rafiq Ahmed Khan Chief Justice, Federal Shariat Court of Pakistan and Mr. Justice 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 and delegation at Faisal Masjid, Islamabad on 25-04-2012



Mr. Justice Masoud Mohamed Al-Ameri, Chief Justice Supreme Court of Qatar during his visit to Supreme Court of Pakistan meeting with Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice, Supreme Court of Pakistan and Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 26.4.2012.

Nawa-e-Waqt
April 27th, 2012



اسلام آباد: چیف جسٹس افتخار چوہدری سے قطر کے چیف جسٹس ملاقات کر رہے ہیں

Nawa-e-Waqt
April 27th, 2012

قطر کے چیف جسٹس کی جسٹس افتخار سے ملاقات

اسلام آباد (نمائندہ نوائے وقت) سپریم کورٹ آف قطر کے چیف جسٹس مسعود محمد العمیری کی سربراہی میں ایک وفد نے جمعرات کو چیف جسٹس افتخار محمد چوہدری سے سپریم کورٹ میں ملاقات کی۔ وفد سے گفتگو کرتے ہوئے چیف جسٹس آف پاکستان نے کہا کہ عدالتی وفد کے تبادلے ایک دوسرے کے تجربات سے فائدہ اٹھانے کا ایک اچھا طریقہ ہے۔ اس طرح کے وفد کے تبادلے دونوں ممالک کی عدلیہ میں تعاون بڑھانے میں معاون ثابت ہو سکتے ہیں۔

روزنامہ نوائے وقت راولپنڈی
27 اپریل 2012ء

قطر کے چیف جسٹس کی جسٹس افتخار سے ملاقات

اسلام آباد (نمائندہ نوائے وقت) سپریم کورٹ آف قطر کے چیف جسٹس مسعود محمد العمیری کی سربراہی میں ایک وفد نے جمعرات کو چیف جسٹس افتخار محمد چوہدری سے سپریم کورٹ میں ملاقات کی۔ وفد سے گفتگو کرتے ہوئے چیف جسٹس آف پاکستان نے کہا کہ عدالتی وفد کے تبادلے ایک دوسرے کے تجربات سے فائدہ اٹھانے کا ایک اچھا طریقہ ہے۔ اس طرح کے وفد کے تبادلے دونوں ممالک کی عدلیہ میں تعاون بڑھانے میں معاون ثابت ہو سکتے ہیں۔

PAKISTAN TODAY
April 26, 2012

Qatar chief justice visits Faisal Masjid

ISLAMABAD The chief justice of the Supreme Court of Qatar, Justice Masoud Mohamed Al-Ameeri, visited the Faisal Masjid on Wednesday and took keen interest in the structure of the mosque.

He appreciated the calligraphy of the Quran placed in the main hall of the mosque. Later, during a lunch in IRD guesthouse of the International Islamic University Islamabad (IIUI), he discussed a number of bilateral issues with IIUI President Prof Dr Mumtaz Ahmad.

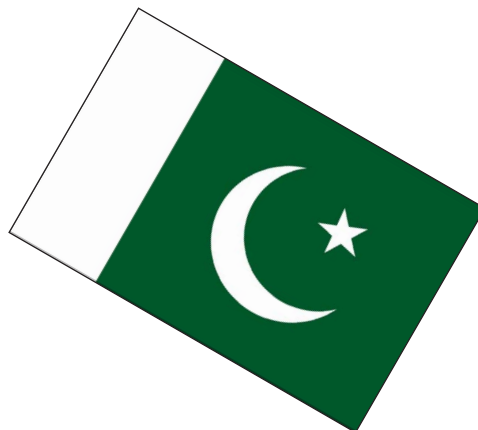
The IIUI president briefed the delegation about the progress of IIUI and its future plans. Justice Agha Rafique Ahmad Khan, chief justice, Federal Shariat Court, Pakistan, Justice Shehzad Sheikh and Justice Fida Muhammad Khan also accompanied the delegation.

While talking to IIUI President Dr Mumtaz Ahmad, Justice Masoud Mohamed Al-Ameeri said that Shariah Academy, a constituent unit of IIUI, was playing a pivotal role in training the lawyers of Pakistan and other countries. He was glad to know that Shariah Academy was imparting training not only in Urdu but also

in Arabic and English. He said the teachers of IIUI should teach in the universities of Qatar.

Dr Mumtaz Ahmad said that Qatar played an important role in the economic development of some countries. He added Qatar television channel, Al-Jazeera, had brought revolution in communication and broken the monopoly of the western media.

Polio immunisation in full swing, says DHO: The district health department claimed that over 1,00,000 children had been administered anti-polio drops in the rural areas of Islamabad since April 23 in which educational officers, notable teachers, university students, union council officials and 300 lead health worker took part. District Health Officer (DHO) Dr Azhar Khan said the polio immunisation campaign was going on successfully which would end today. He said the health department, Islamabad, had made special arrangements for the campaign and the number of polio teams were increased which were imparted special training by the master trainers of the health department and World Health Organisation.



Visit of
Hon'ble Mr. Justice Kamal B.A. Dhan,
President of the Supreme Court of Libya
to
The Islamic Republic of Pakistan
From 21st to 26th January, 2013

Visit of
Hon'ble Mr. Justice Kamal B.A. Dhan,
President of the Supreme Court of Libya
to
The Islamic Republic of Pakistan
From 21st to 26th January, 2013

On the invitation of Chief Justice, Federal Shariat Court of Pakistan, Hon'ble Mr. Justice Kamal B.A. Dhan, Chief Justice of Libya visited Islamic Republic of Pakistan along with his delegation commencing from 21st to 26th January, 2013. The delegation was comprising of Mr. Justice Saleh A.S. Abouzid, Judge, Mr. Justice Ramdan. F.F. Beleil, Judge, Mr. Justice Noureddeen A. Alakrami, Judge and Mr. Fuad Muhamad Salem and Registrar, Supreme Court of Libya.

During their visit to Pakistan, meetings with the Hon'ble Chief Justice of Pakistan, Chief Justice and Judges of Federal Shariat Court, Chief Justice of Sindh High Court and Governor of Sindh were arranged in which matters of bilateral relationship in the filed of law were discussed. It was hoped that Memorandum of Understanding between two countries may be initiated for developing the ideas and exchange of delegations for sharing their skilful experiences for improvement the justice delivery system in both the brotherly countries.

A meeting of the delegation with the Chief Justice and Judges of the Federal Shariat Court was held wherein a detailed presentation was given to the guests about the working of Federal Shariat Court and other superior courts of the country. The foreign delegation was impressed with the prevailing procedure in judiciary of Pakistan and they also highlighted their own judicial system. They were of the view that apparently in many respects the judicial system is identical in both the countries. It was emphasized by them that exchange of judicial delegations will be more useful for development of judicial system and in dispensation of justice.

The Hon'ble Chief Justice of Libya and his delegation also visited Federal Shariat Court, Supreme Court of Pakistan, National Assembly Building, International Islamic University, Islamabad, Shakarparyan, Pakistan Monument and Museum at Islamabad and Sindh High Court, Mausoleum of Founder of Pakistan Quaid-i-Azam Muhammad Ali Jinnah and S.M. Law College at Karachi. A special visit was arranged at Hyderabad, where Chief Justice of Libya also inaugurated Masjid-e-Mohammad at Sindh Judicial Officers Housing Society, Hyderabad.



Mr. Justice Kamal B.A.Dhan, Chief Justice of Libya calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad on 21-01-2013.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan and Mr. Justice Kamal B.A.Dhan, Chief Justice of Libya meeting with Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry at Supreme Court of Pakistan, Islamabad on 21-01-13



Group photograph of Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan and Mr. Justice Iftikhar Muhammad Chaudhry at Supreme Court of Pakistan, with Chief Justice of Libya, Mr. Justice Kamal B.A.Dhan and delegation at Islamabad on 21-01-2013



Mr. Justice Kamal B.A.Dhan, Chief Justice of Libya calls on Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at Islamabad on 22-01-2013.



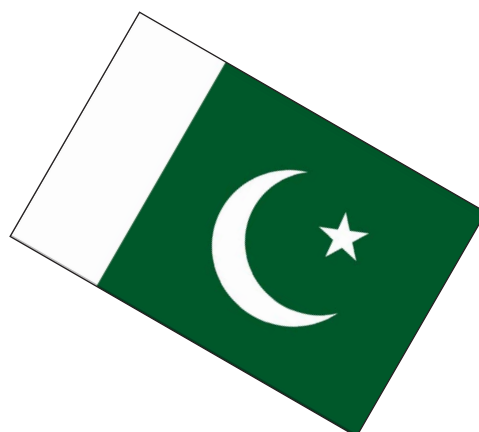
Mr. Justice Mushir Alam, Chief Justice High Court of Sindh presenting souvenir to Mr. Justice Kamal B.A.Dhan, Chief Justice of Libya at Karachi on 24-01-2013.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Kamal B.A.Dhan, Chief Justice of Libya offering Fatiah at Quaid Azam mausoleum on 25-01-2013.



A Group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Kamal B.A. Dhan, Chief Justice of Libya with Nisar Ahmed Khuhro, Speaker Sindh Assembly at Karachi on 25-01-2013.



Visit of
Hon'ble Mr. Justice Sidi Yahefdhou
Chief Justice, Supreme Court of Mauritania
to
The Islamic Republic of Pakistan
From 24th June to 1st July 2013

Visit of

Hon'ble Mr. Justice Sidi Yahefdhou
Chief Justice, Supreme Court of Mauritani

to

The Islamic Republic of Pakistan

From 24th June to 1st July 2013

Mr. Justice Sidi Yahefdhou visited Islamic Republic of Pakistan along with his delegation from 24th June to 1st July 2013 on the invitation of Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan. The delegation was comprising of Mr. Justice Ba Moukhtar and Mr. Justice Cheikh Ateh Cheikh Ahmed Manhood.

A meeting of the delegation with the Chief Justice of Pakistan was arranged besides the visit of Supreme Court of Pakistan. Visit to Federal Shariat Court of Pakistan and meeting with Hon'ble Chief Justice and Judges was also fixed at Islamabad. Detailed deliberations were held in the Conference Room where briefing of working of Federal Shariat Court and other superiors courts was given to the foreign guests. The delegation also visited Lahore for few days and availed the opportunity by holding meetings with Chief Justice of Lahore High Court, and Governor of Punjab. The delegation of both the countries discussed the matters of mutual interests and assured to continue their cooperation in the field of judiciary to meet the challenges of modern era.

The Hon'ble Chief Justice of Mauritania and his delegation visited Federal Shariat Court, Supreme Court of Pakistan, International Islamic University, Shakarparyan, Pakistan Monument and Museum at Islamabad. While visiting Lahore, they visited Lahore High Court, Badshahi Masjid, Fort and at Karachi they went to Quaid-e-Azam Mausoleum founder of Pakistan for offering of Fateha and called on Chief Justice, Sindh High Court and Speaker, Sindh Assembly.



Mr. Justice Sidi Yahefdhou, Chief Justice, Supreme Court of Mauritania calls on Chief Justice , Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan in Federal Shariat Court of Pakistan at Islamabad on 25-06-2013



Mr. Justice Sidi Yahefdhou, Chief Justice, Supreme Court of Mauritania meeting with Chief Justice , Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan and judges of Federal Shariat Court of Pakistan at Islamabad on 25-06-2013



Mr. Sidi Yahefhdhou, Chief Justice, Supreme Court of Mauritania called on Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry along with Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court on 26-06-2013 at Supreme Court of Pakistan, Islamabad.



Group photograph of Chief Justice, Federal Shariat Court of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan with Mr. Justice Sidi Yahefhdhou, Chief Justice, Supreme Court of Mauritania and delegation at National Monument , Islamabad on 26-06-2013.



A Group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Sidi Yahefdhou, Chief Justice, Supreme Court of Mauritania with Makhdoom Ahmed Mehmood, Governor of Punjab at Governor House Lahore on 29-06-2013.



A Group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Sidi Yahefdhou, Chief Justice, Supreme Court of Mauritania with Mr. Justice Umar Ata Bandial, Chief Justice, Lahore High Court at Lahore on 29-06-2013.

Mauritania's chief justice visits Federal Shariat Court

ISLAMABAD: Chief Justice of Islamic Republic of Mauritania Sidi Yehedhou along with a two-member delegation on Tuesday visited the Federal Shariat Court in the federal capital.

The delegation, which also comprised of Justice Ba Moukhtar and Justice Cheikh Atef Cheikh Ahmed Manhood, held a meeting with Chief Justice Agha Rafiq Ahmed Khan and other judges of the Federal Shariat Court. The visitors were apprised about the jurisdiction and modus operandi of examination of laws and disposing of criminal appeals by the Federal Shariat Court. The Chief Justices of both the countries discussed the matters of mutual interests and agreed to continue cooperation in the field of judiciary to meet the challenges of modern era.

Chief Justice of Mauritania arrives

ISLAMABAD: Chief Justice of Islamic Republic of Mauritania Sidi Yehedhou, along with Justice Ba Moukhtar and Justice Cheikh Atef Cheikh Ahmed Manhood, arrived here on an eight-day official visit on the invitation of Chief Justice of the Federal Shariat Court, Justice Agha Rafiq Ahmed Khan.

The delegation would also visit Lahore and Karachi to meet with the Governor, the Chief Minister and the Chief Justices of Lahore and Sindh High Courts apart from visiting historical places in these cities.

**FOREIGN VISITS OF
HON'BLE CHIEF JUSTICE,
FEDERAL SHARIAT COURT
OF PAKISTAN**

In pursuance of the approval by the President, Islamic Republic of Pakistan, Mr. Justice Agha Rafiq Ahmed Khan, Hon'ble Chief Justice, Federal Shariat Court visited Kingdom of Morocco, State of Qatar, Islamic Republic of Sudan and Sultanate of Oman during the period from 2010 to 2013.

The main objectives of the tours were to get acquaintance to the mechanism of the dispensation of justice in the respective countries.

- Process of reforms in the justice delivery system.
- Visit the Principal offices and the Courts.
- Promote similar other interactions with the counterparts.

The details of country wise interaction are given ahead: -

Visit Of
Hon'ble Chief Justice, Federal Shariat Court
 To
Kingdom Of Morocco 07.06.2010 to 14.06.2010
& to participate in 2nd conference of Chief Justice of Arab Countries
from 16-17 September, 2011



Kingdom of Morocco got independence on 2nd March, 1956 from France. The area of the country is about 710,850 sq.km having 33 million of population with a growth rate of 1.50 %. The capital of Morocco is Rabat and Literacy rate is about 52.3 %. The Population is 98.7 % Muslims, 1.1 % Christian and 0.2 % are Jews. In Morocco Arabic-Berber dialects and French languages are often used for the Government and the Commerce. The King Mohammed VI is the head of State.

The Supreme Court of Morocco was established immediately after independence on 27th September, 1957. It crowns the judicial hierarchy and controls all subordinate courts in the Kingdom of Morocco. The Jurisdiction and organization are defined by the Royal Edict of July 15, 1974 setting up the judicial organization of the Kingdom, the Code of Civil Procedure and certain provisions of the courts of penal procedure of the military justice.

The Supreme Court is presided by the First President and the prosecution is represented by the Public Prosecutor assisted by the Deputy Public Prosecutor.

The Supreme Court comprises of six chambers: a civil chamber, (called first chamber), a chamber of personal status and inheritance, a commercial chamber, an administrative chamber, a social chamber and a penal chamber. Every chamber is headed by a president of chamber and can be divided into several sections.

The Supreme Court is a collegial jurisdiction and as such, the hearing are held and the decrees rendered by five magistrates. In various cases, the number of magistrates is increased and the decrees rendered by two chambers. Certain affairs are examined by all the chambers gathered in a plenary session.

Meeting With Mr. Mustapha Fares, Chief Justice/First President, Supreme Court Of Morocco.

The Chief Justice/First President, Supreme Court of Morocco and other officials of the Court warmly welcomed Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan. They expressed pleasure over the visit and hoped that relationship of Morocco and Pakistan will flourish further and assured all cooperation in judicial system between two countries.

Undoubtedly the Moroccan Judicial System has developed and is useful for dispensation of justice to their countrymen. An interesting aspect is that all the courts in Morocco are established separately like Supreme Court, Courts of Appeal, Communal and District Courts, Administrative Courts and Commercial Courts which are working within their domain and a common man is much aware as to which court he/she should approach for redressal of the grievances.

As a reciprocal, the First President of the Supreme Court of Morocco and Minister of Justice of Kingdom of Morocco with their delegates have been invited to visit the Islamic Republic of Pakistan to see working of the superior courts and study the Judicial System in Pakistan.

It was suggested that exchange of information relating to the judicial system may also be conducted between the two countries. Exchange of appraisals in the domain of judicial administration for the improvement of justice delivery especially the usage of computerization should also be taken into consideration. Initial and regular training of the judges/magistrates and judges of the superior courts may be exchanged between both the countries. A Draft Protocol on judicial cooperation agreement between the Government of Morocco and the Government of Islamic Republic of Pakistan was initiated in the year 2008 and is required to be finalized at the earliest to streamline the working cooperation in the judicial system between the Kingdom of Morocco and the Islamic Republic of Pakistan.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court was called on Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court Of Morocco on 08-06-2012 at Supreme Court of Morocco, Rabat.



Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court Of Morocco presenting souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 08-06-2012 at Supreme Court of Morocco, Rabat



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice , Federal Shariat Court during meeting with Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court Of Morocco on 08-06-2012 at Supreme Court of Morocco, Rabat.



Group photograph taken of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court during and Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court Of Morocco on 08-06-2012 at Supreme Court of Morocco, Rabat.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court during meeting with Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court of Morocco and Mr. Mustapha Middah Attorney General of Supreme Court, on 08-06-2012 at Supreme Court of Morocco, Rabat.



Mr. Muhammad Taieb Naciri, Minister of Justice, Kingdom of Morocco present souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan on 08-06-2012 at Supreme Court of Morocco, Rabat.



A group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court during meeting with Mr. Justice Mustapha Fares, Chief Justice/First President, Supreme Court of Morocco and Mr. Mustapha Middah Attorney General of Supreme Court, on 08-06-2012 at Supreme Court of Morocco, Rabat.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with Mr. Justice Essam Abdel Wahab al-Samawe, Chief Justice of Yemen during a meeting at Kingdom of Morocco.



A group photograph of Chief Justices of Arab countries taken during the 2nd conference held at Morocco from 16-17th of September, 2011.

Visit Of
**Hon'ble Chief Justice,
Federal Shariat Court**
To
State of Qatar
10.06.2012 to 14.06.2012



The Qatar is an Islamic State with a peninsula having area of 11,437 sq. kilometers located halfway down the west coast of the Gulf. The country is centrally placed among the states of the Gulf Cooperation Council (GCC) which groups it with Saudi Arabia, Kuwait, Bahrain, the United Arab Emirates and Oman.

The total population is estimated as more than one and a half million and has been increasing at a rate of 9% per annum in recent years. Almost 50% population resides in the city of Doha which is the business and administrative capital of the country.

The state of Qatar is a constitutional monarchy ruled by the His Highness Sheikh Hmad Bin Khalifa AL Thani. Qatar is a land of wonderful contrasts. Beautiful mosques, the tradition of poetry, stores and handicrafts. Shops and markets greet the customers where everything from the exotic to the common place items can be found.

Meeting With His Highness Sheikh Ahmed Bin Khalifa Al-Thani On Monday The 11th June, 2012 At Doha, Qatar

During the visit Chief Justice, Federal Shariat Court of Pakistan Mr. Justice Agha Rafiq Ahmed Khan called on His Highness Emir of Qatar Sheikh Hamad bin Khalifa Al-Thani on Monday 11th June 2012 at Doha, who welcomed the Chief Justice for his visit to the Court of Cassation on their invitation. He also discussed matters of mutual interests pertaining to judiciary. The Emir of Qatar expressed the view that such visits will boost the understanding and cooperation between esteemed institutions of the brotherly countries in the larger interest of Justice. He also conveyed best wishes for the leadership of the country and the people of Islamic Republic of Pakistan. The Emir also desired that the Chief Justice Federal Shariat Court may see and visit the newly established Qatar Education Foundation in Doha which is a source of education in the field of science and technology.

The Chief Justice Federal Shariat Court lauded the accomplishments of His Highness which has boost up the moral of the people, and new dimensions for the development have been set up in the country. He also congratulated the Emir of Qatar for fast growing progress in his country under his patronage and able leadership.

Meeting With His Excellency Mr. Masoud M. Al-Ameri, President Of Supreme Court Of Qatar

The Chief Justice Federal Shariat Court of Pakistan alongwith his delegation met with the President of Supreme Court of Qatar in the Supreme Court Building at Doha. The Chief Justice was warmly welcomed, and thereafter the court rooms, chambers of Judges, Library, Conference Rooms and Trial Rooms were inspected besides the office of the President/Chief Justice of Supreme Court of Qatar.

A meeting with Judges was also arranged in the Conference Room of Supreme Court. In his opening remarks, the Chief Justice Federal Shariat Court stated that for him visiting of Qatar is indeed an honour and added that the love and affection which has been extended during the visit will long be remembered. He specially conveyed the gratitude to the President of Supreme Court of Qatar for arranging such a memorable visit and for arranging exclusive meeting with His Highness Emir of the Qatar.

The President/Chief Justice of the Supreme Court of Qatar while reciprocating the cordial thoughts, thanked the Chief Justice who spared his precious time from the busy schedule, and visited his second home Qatar and thus created an opportunity for mutual understanding of the judicial system of the two brotherly countries.

The President Supreme Court of Qatar informed that the judiciary is independent in the state of Qatar. Its decisions are taken and implemented strictly in accordance with the law. Usually, the proceedings of the courts are opened to the public. However, in some cases where courts feel necessary, these are kept in close session but in all cases, sentences are pronounced in public sessions.

Arabic is the official language in the courts of law in Qatar. The court hears the evidence of non-Arabic speaking parties and witnesses through a translator who works under oath and observes all norms of honesty, integrity and sincerity.



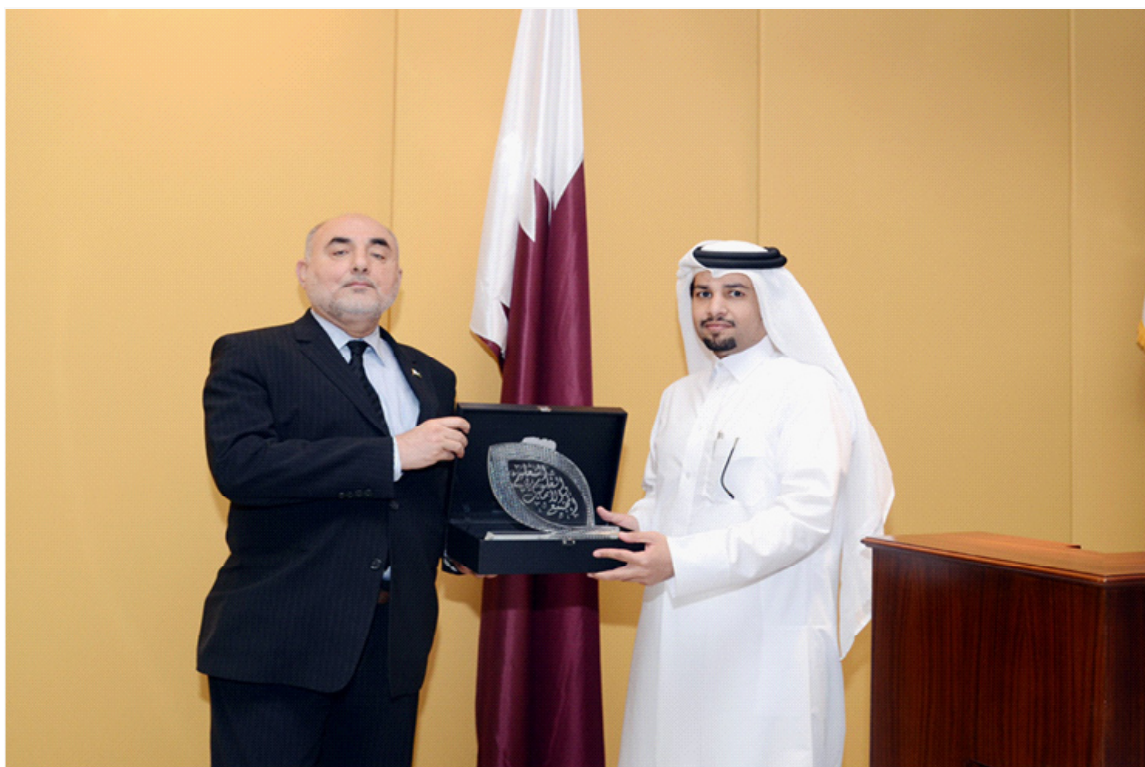
Mr. Justice Agha Rafiq Ahmed Khan with Mr. Justice Masoud al-Ameri in his office at Supreme Court of Qatar on 11th June 2012.



His Highness the Emir Sheikh Hamad Bin Khalifa Al-Thani receiving Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan on 11th June, 2012 at Emiri Diwan Doha, Qatar

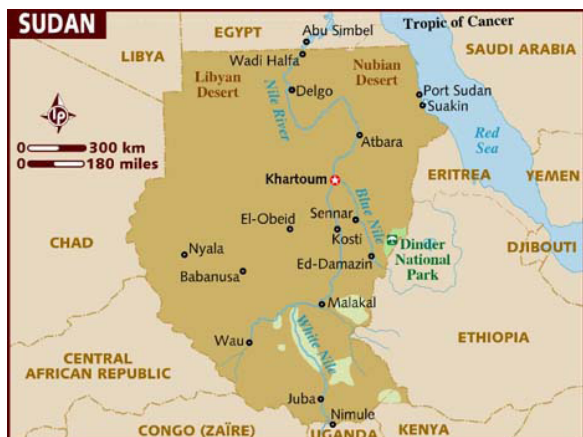


Group photograph of Mr. Justice Agha Rafiq Ahmed and Dr. Yousaf al-Karthawi on 12th June, 2012.



The Incharge Islamic Museum Presenting souvenir to Mr. Justice Agha Rafiq Ahmed at Islamic Museum, Qatar on 13th June 2012.

VISIT TO ISLAMIC REPUBLIC OF SUDAN



On the invitation of the Chief Justice, Supreme Court of Sudan, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan visited Khartoum, Republic of Sudan to participate in the Third Conference of the Heads of Superior Judiciary of Arab Countries held on 23rd to 25th September, 2012.

The Ambassador of Sudan in Pakistan had earlier personally presented the invitation letter in the office of Chief Justice, Federal Shariat Court of Pakistan to represent

Pakistan in the said Conference. Accordingly, with the approval of the Government of Pakistan, the visit for Khartoum was undertaken. The delegation was headed by Hon'ble Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court, and comprised of Mr. Justice Dr. Fida Muhammad Khan, Judge of the Federal Shariat Court along with Mr. S. Nadeem Haider, Deputy Registrar of Federal Shariat Court.

The Chief Justices of various Arab Countries participated in the Conference. The delegations of Pakistan, Indonesia and Malaysia participated as 'Observer' on account of being non-Arab Countries. The participants were extended warm welcome and impressive reception at the Airport and all other places by the host. Chief Justice of Sudan and his colleagues showed generous hospitality and tremendous affection to the visiting delegation during their stay at Sudan. The conference was scheduled for three days. i.e. from 23rd to 25th September, 2012, with morning and evening sessions. The first session was presided over by the Chief Justice of Supreme Court of Morocco Mr. Mustapha Fares.

The conference commenced with the recitation of Holy Quran. In his inaugural speech, the Chief Justice of Sudan, Mr. Jalaluddin Mohamed Osman, welcomed the participants in the conference and said that the expectations of the Arab and Islamic world are very high for the outcome of the third Conference of the Presidents of the Supreme Courts in the Arab Countries.

The Chief Justice expressed that the papers and detailed studies which would be discussed in the Conference are of rich knowledge and expertise, as selected by the 2nd conference. The sublime objectives of the conference was to make easier the means of comparison between the legislative and judicial systems in the Arab countries and to create similarity in the sources of law amongst the Arab countries which should be mirror/ guide of interests for the Ummah in future. In his inaugural speech he also welcomed and thanked the Chief Justices, Scholars, Lawyers, members of delegations, Ministers, Diplomats of Islamic Countries, Mr. Abdul Rehman Al-Saleh Assistant Secretary General and Chairman Centre of Research for Law and Judiciary, Mr. Ali Zatri the representative of UNO and other participants. He stressed that the conference is expected to give positive, fruitful and lasting result in promotion of judicial performance through exchange of useful knowledge and accumulated expertise in further sessions that are characterized with fraternity and for promoting mutual understanding of all brotherly countries. Keeping in view these objectives, the slogan of this conference was decided to be "harmony in the legislation of the Arab countries and establishment of Judiciary based on complete justice".



Mr. Jalaludin Mohammed Usman presenting souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court on 25th September, 2012 at Khartoum.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court and Mr. Justice Dr. Fida Muhammad Khan during the conference of Chief Justice of Arab countries at Sudan on 24th September, 2012.



Group photograph taken at the third conference of Chief Justices of Arab countries at Khartoum, Sudan on 24th September, 2012.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court addressing at the conference of Chief Justice of Arab countries at Sudan on 24th September, 2012.



Chief Justice, Supreme Court of Sudan, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan during meeting with Mr. Jalaludin Mohammed Usman Chief Justice of Sudan and Mr. Mustapha Fares, Chief Justice of Morocco on 25th September, 2012 at Khartoum.

SULTANATE OF OMAN



On the invitation of hon'ble Chief Justice of Oman Dr. Ishaq bin Ahmed bin Al-busaidi, Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice Federal Shariat Court of Pakistan undertook the official visit to the Sultanate of Oman along with Mr. Justice Rizwan Ali Dodani, Mr. Justice Sheikh Ahmad Farooq and Mr. Nadeem Haider, Deputy Registrar of the Federal Shariat Court with effect from 22nd February, 2013 to 27th February, 2013.

The main objective of the visit was to study the judicial system prevailing in Oman and to obtain knowledge about the mechanism for dispensation of justice to the common man in the Sultanate of Oman. Accordingly, with the approval of the President, Islamic Republic of Pakistan duly notified by the Law & Justice Division vide Notification dated 23-02-2013 the official visit was undertaken.

VISIT TO SUPREME COURT OF OMAN

The Chief Justice Federal Shariat Court and his delegates were warmly welcomed by the Chief Justice of Oman at the Supreme Court of Oman. An internal visit of the court rooms, chambers of Judges, Library, Conference Room was arranged on this occasion.

A meeting with the Hon'ble Judges of the Supreme Court of Oman was also fixed in the Court premises. In his introductory remarks, the Chief Justice of Oman thanked the Chief Justice Federal Shariat Court for sparing his valuable time from the busy schedule to visit Sultanate of Oman. He stressed the need for frequent exchange of delegations of legal fraternity between Pakistan and Oman to understand each other's judicial system. He further said that the visits of the two Chief Justices shall give new momentum to improve co-operation in judicial fields between the two countries. He also cherished the memories of his visit to Islamic Republic of Pakistan last year in the month of February.

The Chief Justice Federal Shariat Court while reciprocating the gesture, thanked the host for the love, affection and hospitality extended during this visit. He said that Oman and Pakistan hold out great potential for co-operation in the field of judicial development and studies. There can be exchange of faculty and students between the well established Judicial Academy of Oman and Pakistan and this will pave the way for greater co-operation in the legal and judicial fields between the two sides. After describing the constitutional powers and functions of the Federal Shariat Court, the Chief Justice asked Mr. Justice Shaikh Ahmad Farooq to brief about the judicial system of Pakistan, who precisely explained the participants about the working of the courts in Pakistan followed by a session of question-answer.

The Chief Justice of Sultanate of Oman thereafter asked the Deputy Chief Justice Supreme Court of Oman to give briefing on the judicial system in Oman.

Meeting with the Deputy Prime Minister of Sultante of Oman H.E. Mr. Fahad Bin Mehmood Al Saiyidi

The Chief Justice, Federal Shariat Court of Pakistan Mr. Justice Agha Rafiq Ahmed Khan called on His Highness Deputy Prime Minister of Sultanate of Oman Mr. Fahad bin

Mehmood Al Saiyidi on Monday the 25th February, 2013.

His Highness the Deputy Prime Minister of Oman who is the real cousin of the King of Oman warmly received the Chief Justice, Federal Shariat Court and his delegates at the Prime Minister House of the Sultanate. Issues of mutual interests were discussed. He expressed that such visits will boost the understanding and cooperation between esteemed institutions in the larger interests of justice. He showed concern over the difficulties being faced by Pakistan due to war on terrorism, and expressed his best wishes for the people of Islamic Republic of Pakistan.

The Chief Justice, Federal Shariat Court lauded the accomplishments of His Highness particularly the pace of development in Oman during short span of time. He also suggested exchange of visits of Judges between Oman and Pakistan, which was agreed by His Highness and assured full cooperation in this regard.

The Chief Justice, Federal Shariat Court expressed that due to patronage and able leadership of His Highness Sultan Al-Qaboos, the fast progress and development of Sultanate of Oman could be made possible.

During the official tour, visit of Army Museum, Grand Sultan Qaboos Mosque, Nizwa Forte, Shura Council and Administrative Judiciary was also arranged for the delegates.



Mr. Justice Ishaq bin Ahmed bin Al-Busaidi, Chief Justice Sultanate of Oman, receiving Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan at his arrival at Muscat Airport, Oman on 22-02-2013.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan meeting with His Highness, Deputy Prime Minister of Sultanate of Oman Mr. Fahad bin Mehmood Al-Saiyidi on 25-02-2013 at Muscat, Oman.



Mr. Justice Ishaq bin Ahmed bin Al-Busaidi, Chief Justice Sultanate of Oman, meeting with Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan during visit of Supreme Court of Oman on 23-02-2013



Mr. Sheikh Hussain bin Al-Al-Helali, Prosecutor General, Sultanate of Oman presenting Souvenir to Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan during visit to Office of Prosecutor General, Sultanate of Oman on 24-02-2013.



Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan presenting Souvenir to Mr. Sheikh Abdul Malik bin Abdullah Al-Khalili, Minister for Justice, Sultanate of Oman on 24-02-2013.



Group photograph of Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice, Federal Shariat Court of Pakistan and delegation with Mr. Justice Ishaq bin Ahmed bin Al-Busaidi, Chief Justice Sultanate of Oman and Judges of Supreme Court of Oman during visit to Supreme Court of Oman on 23-02-2013.



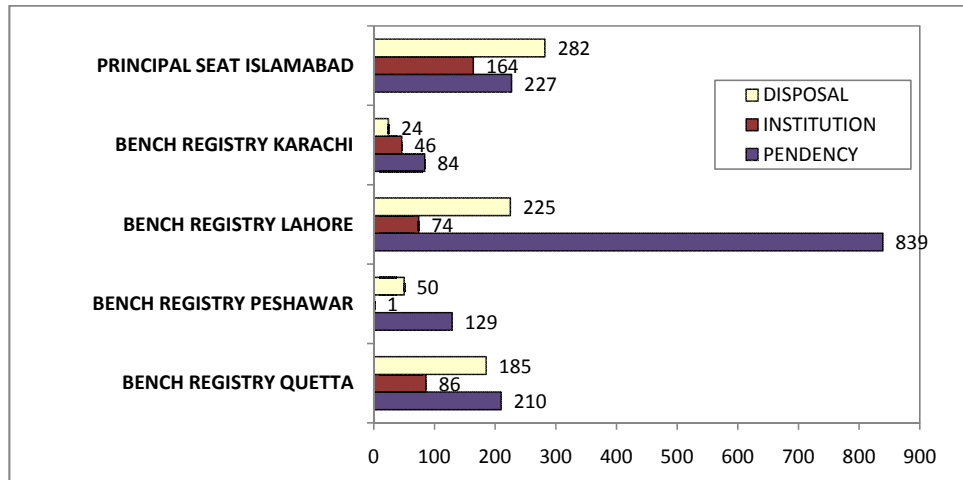
A group photo taken at grand Sultan Qaboos Mosque on 25th February, 2013 at Muscat, Oman.

**STATISTICAL TABLE
AND
COURT BUDGET**

Consolidated Position at Principal Seat
and Bench Registries for the period from 01-01-2012 to 31-12-2012

CRIMINAL MATTERS

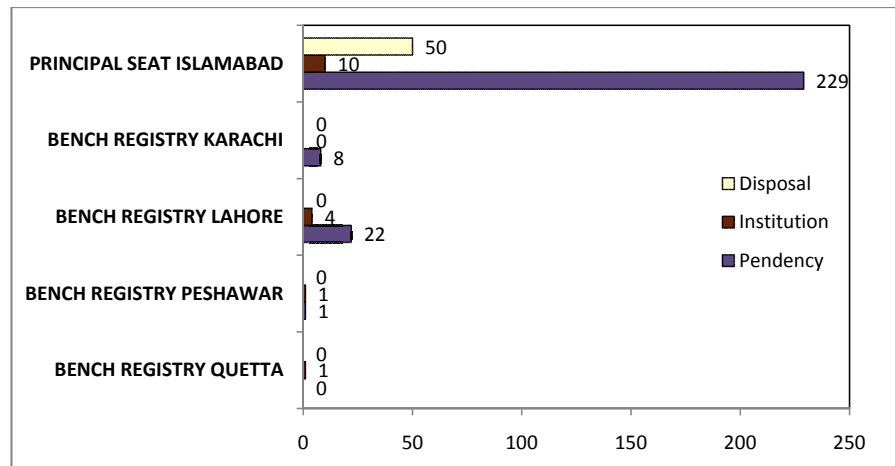
Sr.No.	CATEGORY OF CASES	PENDENCY ON 31-12-2011	INSTITUTION FROM 1.1.2012 TO 31.12.2012	TOTAL	DISPOSAL FROM 1.1.2012 TO 31.12.2012	BALANCE ON 31.12.2012
1.	PRINCIPAL SEAT ISLAMABAD	227	164	391	282	109
2.	BENCH REGISTRY LAHORE	839	74	913	225	688
3.	BENCH REGISTRY KARACHI	84	46	130	24	106
4.	BENCH REGISTRY PESHAWAR	129	01	130	50	80
5.	BENCH REGISTRY QUETTA	210	86	296	185	111
TOTAL		1489	371	1860	766	1094



Consolidated Position at Principal Seat
and Bench Registries for the period from 01-01-2012 to 31-12-2012

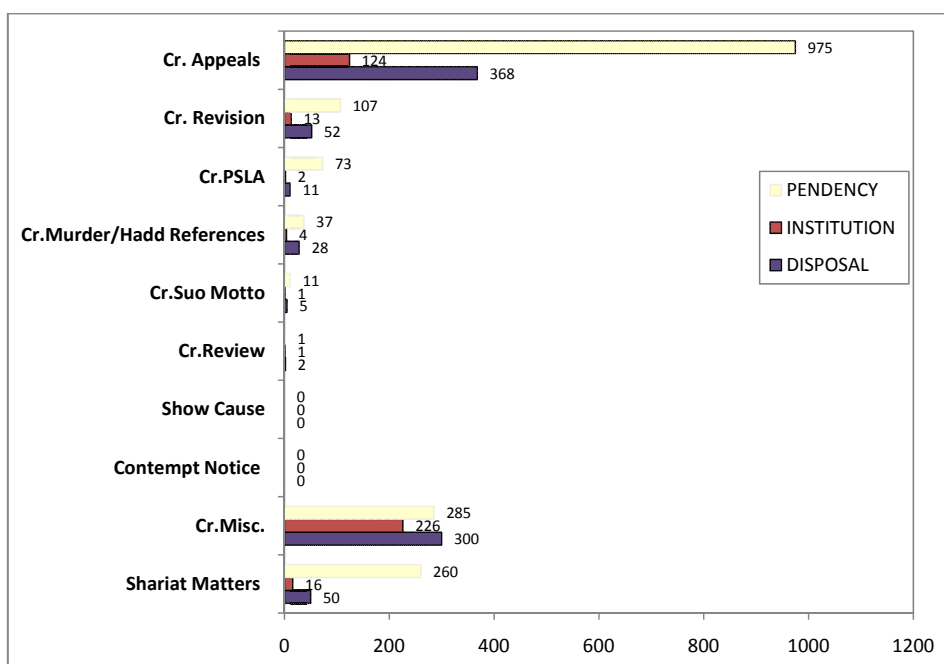
SHARIAT MATTERS

Sr.No.	PRINCIPAL SEAT ISLAMABAD	229	10	239	50	189
1.	BENCH REGISTRY LAHORE	22	04	26	-	26
2.	BENCH REGISTRY KARACHI	08	-	08	-	08
3.	BENCH REGISTRY PESHAWAR	01	01	02	-	02
4.	BENCH REGISTRY QUETTA	-	01	01	-	01
	TOTAL	<u>260</u>	<u>16</u>	<u>276</u>	<u>50</u>	<u>226</u>



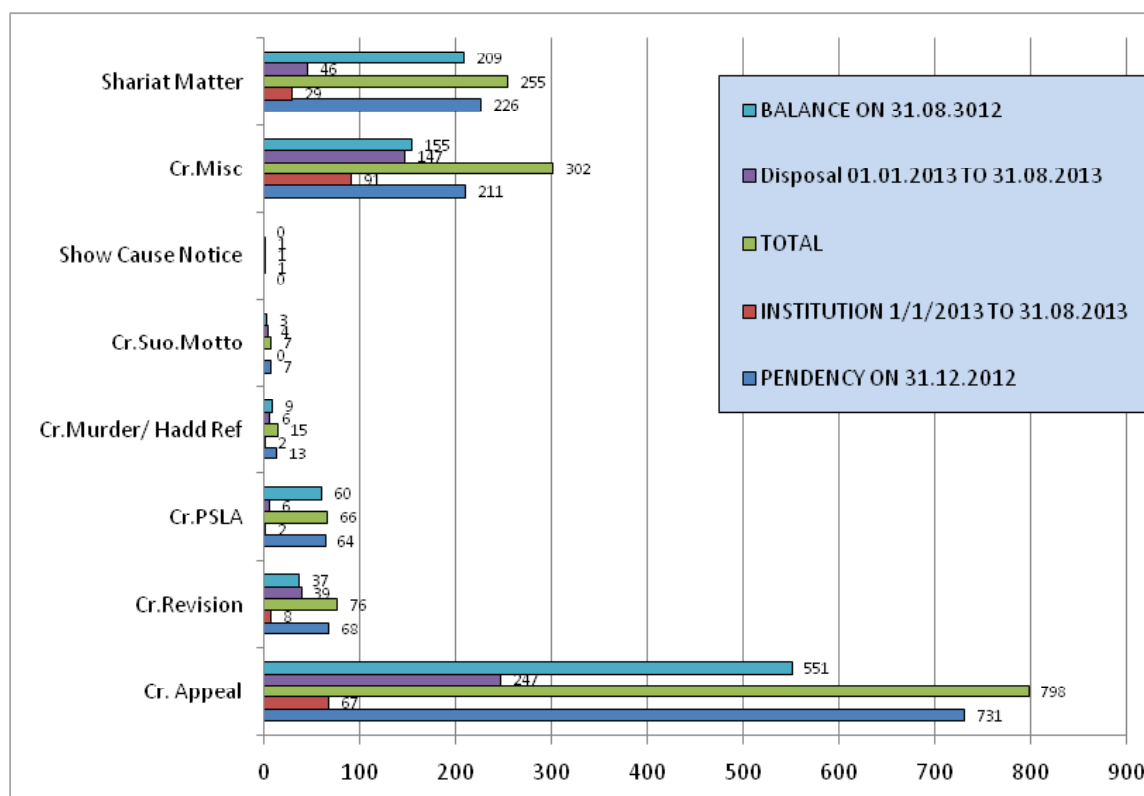
Judicial Activity and Statistics
Court Performance during the year 2012
Category Wise Consolidated position during the year 2012

Sr.No.	CATEGORY OF CASES	PENDENCY ON 31-12-2011	INSTITUTION FROM 01.01.2012 TO 31.12.2012	TOTAL	DISPOSAL FROM 01.01.2012 TO 31.12.2012	BALANCE ON 31.12.2012
1.	Cr. Appeals	975	124	1099	368	731
2.	Cr. Revision	107	13	120	52	68
3.	Cr.PSLA	73	02	75	11	64
4.	Cr.Murder/Hadd References	37	04	41	28	13
5.	Cr.Suo Motto	11	01	12	05	07
6.	Cr.Review	01	01	02	02	-
7.	Show Cause	-	-	-	-	-
8.	Contempt Notice	-	-	-	-	-
9.	Cr.Misc.	285	226	511	300	211
10.	Shariat Matters	260	16	276	50	226
Total		1749	387	2136	816	1320



**CONSOLIDATED CATEGORYWISE STATEMENT OF INSTITUTION & DISPOSAL
OF CRIMINAL/SHARIAT MATTERS FROM 01-01-2013 TO 31-08-2013.**

Category of Cases	Pendency On 31.12.2012	Institution 01-01-2013 To 31-08-2013	Total	Disposal 01-01-2013 To 31-08-2013	Balance on 31-08-2013
Cr. Appeal	731	67	798	247	551
Cr.Revision	68	08	76	39	37
Cr.PSLA	64	02	66	06	60
Cr.Murder/ Hadd Ref	13	02	15	06	09
Cr.Suo.Motto	07	-	07	04	03
Show Cause Notice	-	01	01	01	-
Cr.Misc	211	91	302	147	155
Shariat Matter	226	29	255	46	209
Total	1320	200	1520	496	1024



**DETAIL OF BUDGET ALLOCATION AND ACTUAL EXPENDITURE.
INCURRED DURING THE FINANCIAL YEAR 2011-2012**

HEAD OF ACCOUNT	SANCTION BUDGET 2011-12	SUPPLEM- ENTARY GRANT	RE-APPROPRIATION		NET BUDGET ALLOCATION 2011-12	EXPENDITURE
			(+)	(-)		
A01-Employees Related Exp	225,704,000	2,000	18,750,000	25,140,000	213,173,000	212,768,560
AO1-PAY	61,357,000		7,800,000		68,857,000	68,729,362
A011-1 Pay of Officer	47,509,000				47,509,000	47,453,829
A011-2 Pay of Staff	13,848,000		7,800,000		21,348,000	21,275,533
12-Allowance	164,347,000	2,000	10,950,000	25,140,000	144,316,000	144,039,198
A012-1 Regular Allowance	155,957,000	2,000	8,040,000	24,150,000	134,469,000	134,262,255
A012-2 Others Allowance	8,390,000		2,910,000	990,000	9,847,000	9,776,943
A01271-Overtime Allow	350,000				297,000	295,315
A01273-Honoraria	800,000			350,000	40,000	39,000
A01274-Medical Charges	1,200,000		300,000	600,000	900,000	864,551
A01277-Contingent paid staff	6,000,000		2,610,000		8,610,000	8,578,077
A01278-Leave Salary	40,000			40,000	000	0
A03-Operating Expenses	26,480,000	1,000	7,480,000	1,778,000	32,183,000	31,952,809
A032-Communication	2,850,000		440,000		3,290,000	3,278,402
A03201-Postage & Stamp	400,000				400,000	400,000
A03202-Telephone & Trunk Calls	2,400,000		410,000		2,810,000	2,806,632
A03205-Courier and Pilot Service	50,000		30,000		80,000	71,770
A033-Utilities	380,000			370,000	10,000	6,347
A03301-Gas Charges	30,000			30,000	000	0
A03302-Water Charges	10,000				10,000	6,347
A03303-Electricity Charges	330,000			330,000	000	0
A03304-Hot & Cold Weather Charges	10,000			10,000	000	0
A034-Occupancy Costs	9,100,000		1,230,000	50,000	10,280,000	10,276,044
A03402-Rent for Office Building	50,000			50,000	000	0
A03403-Rent for Residential Building	9,000,000		1,200,000		10,200,000	10,196,405
A03407-Rate and Taxes	50,000		30,000		80,000	79,639
A036-Motor vehicles	150,000			30,000	120,000	114,316
A03603-Registration	150,000			30,000	120,000	114,316
A038-Travel & Transportation	9,050,000		1,050,000	50,000	10,050,000	10,024,009
A03805-Travelling Allowance	5,000,000		250,000		5,250,000	5,248,649
A03806-Transportation of Goods	150,000			50,000	100,000	99,975
A03807-P.O.L Charges	3,500,000		800,000		4,300,000	4,291,206
A03808-Conveyance Charges	300,000				300,000	292,325
A03809-Gass Charge	100,000				100,000	91,854
A039-General	4,950,000	1,000	4,760,000	1,278,000	8,433,000	8,253,691
A03901-Office Stationery	800,000				800,000	777,900
A03902-Printing and Publication	500,000		250,000	130,000	620,000	613,003
A03905-News Papers Periodicals & Books	650,000			353,000	297,000	283,714
A-03906-Uniform/Liveries & Protective	200,000			150,000	50,000	22,705

A03907-Advertising & Publicity	300,000			235,000	65,000	61,393
A03912- Delegation Abroad	800,000		3,820,000	400,000	4,220,000	4,137,792
A03913- Contribution & Subscription	000	1,000	50,000	10,000	41,000	40,920
A03919-Payment to others for services render	400,000		140,000		540,000	525,696
A03970-Others	1,300,000		500,000		1,800,000	1,790,568
A05 Grants Subsidies	400,000			118,000	282,000	281,960
A052- Grant Domestic	400,000			118,000	282,000	281,960
A05216- Family of Civil Servants	400,000			118,000	282,000	281,960
A06-Transfers	300,000		3,000,000	650,000	2,650,000	2,480,366
A06301-Entertainment & Gifts	300,000		3,000,000	650,000	2,650,000	2,480,366
A09-Physical Assets	12,500,000		1,950,000	2,594,000	11,856,000	11,535,275
A09201- Hardware	1,200,000		1,400,000		2,600,000	2,597,306
A09202- Software	400,000			394,000	6,000	4,640
A09501-Purchase of Transport	8,000,000		5,000	2,200,000	5,805,000	5,804,200
A09601-Purchase of Plant Machineries	1,900,000				1,900,000	1,626,992
A09701-Purchase of Furniture & Fixture	1,000,000		545,000		1,545,000	1,502,137
A13- Repair & Maintenance	3,250,000		775,000	1,675,000	2,350,000	2,308,865
A13001-Repair of Transport	700,000		625,000		1,325,000	1,301,874
A13101- Repair of Machinery	400,000		150,000		550,000	548,923
A13201- Repair of Furniture & Fixture	250,000			170,000	80,000	74,224
A13301-Repair of Office Building	1,200,000			970,000	230,000	227,952
A13701-Hardware	500,000			390,000	110,000	105,492
A13702-Software	200,000			145,000	55,000	50,400
GRAND TOTAL	268,634,000	3,000	31,955,000	31,955,000	262,494,000	261,327,835

**STATEMENT SHOWING THE BUDGET ALLOCATION FOR THE
FINANCIAL YEAR 2012-2013**

Classification Head	Budget Allocation
A01-Employees Related Exp	251,026,000
A01-PAY	84,146,000
A011-1 Pay of Officer	60,793,000
A011-2 Pay of Staff	23,353,000
12-Allowance	166,880,000
A012-1 Regular Allowance	153,990,000
A012-2 Others Allowance	12,890,000
A01271-Overtime Allowance	350,000
A01273-Honoraria	800,000
A01274-Medical Charges	1,200,000
A01277-Contingent paid staff	10,500,000
A01278-Leave Salary	40,000
A03-Operating Expenses	33,534,000
A032-Communication	3,450,000
A03201-Postage & Stamp	400,000
A03202-Telephone & Trunk Calls	3,000,000
A03205-Courier and Pilot Service	50,000
A033-Utilities	430,000
A03301-Gas Charges	30,000
A03302-Water Charges	120,000
A03303-Electricity Charges	270,000
A03304-Hot & Cold Weather Charges	10,000
A034-Occupancy Costs	10,250,000
A03402-Rent for Office Building	50,000
A03403-Rent of Residential Building	10,000,000
A03407-Rate and Taxes	200,000
A036-Motor vehicles	150,000
A03603-Registration	150,000
A038-Travel & Transportation	10,954,000
A03805-Travelling Allowance	5,500,000
A03806-Transportation of Goods	150,000
A03807-P.O.L Charges	4,804,000
A03808-Conveyance Charges	300,000
A03809-Gass Charge	200,000
A039-General	8,300,000
A03901-Office Stationery	900,000
A03902-Printing and Publication	600,000
A03903-Conference /Seminar	100,000
A03905-News Papers Periodicals & Books	650,000
A-03906-Uniform/Liveries & Protective	200,000
A03907-Advertising & Publicity	300,000
A03912- Delegation Abroad	3,200,000
A03913- Contribution & Subscription	150,000
A03917-Law Charges	200,000
A03919-Payment to others for services render	400,000
A03970-Others	1,600,000
A04- Retired Employees	600,000
A041-Pension	600,000
A04114-Encashment for LPR	600,000

A05 Grants Subsidies	400,000
A052- Grant Domestic	400,000
A05216- Family of Civil Servants	400,000
A06-Transfers	950,000
A06301-Entertainment & Gifts	950,000
A09-Physical Assets	8,700,000
A09201- Hardware	1,300,000
A09202- Software	400,000
A09501-Purchase of Transport	4,000,000
A09601-Purchase of Plant Machineries	2,000,000
A09701-Purchase of Furniture & Fixture	1,000,000
A13- Repair & Maintenance	3,550,000
A13001-Repair of Transport	700,000
A13101- Repair of Machinery	450,000
A13201- Repair of Furniture & Fixture	300,000
A13301-Repair of Office Building	1,300,000
A13701-Hardware	600,000
A13702-Software	200,000
GRAND TOTAL	298,760,000

DETAIL OF BUDGET ALLOCATION AND ACTUAL EXPENDITURE.
INCURRED DURING THE FINANCIAL YEAR 2012-2013

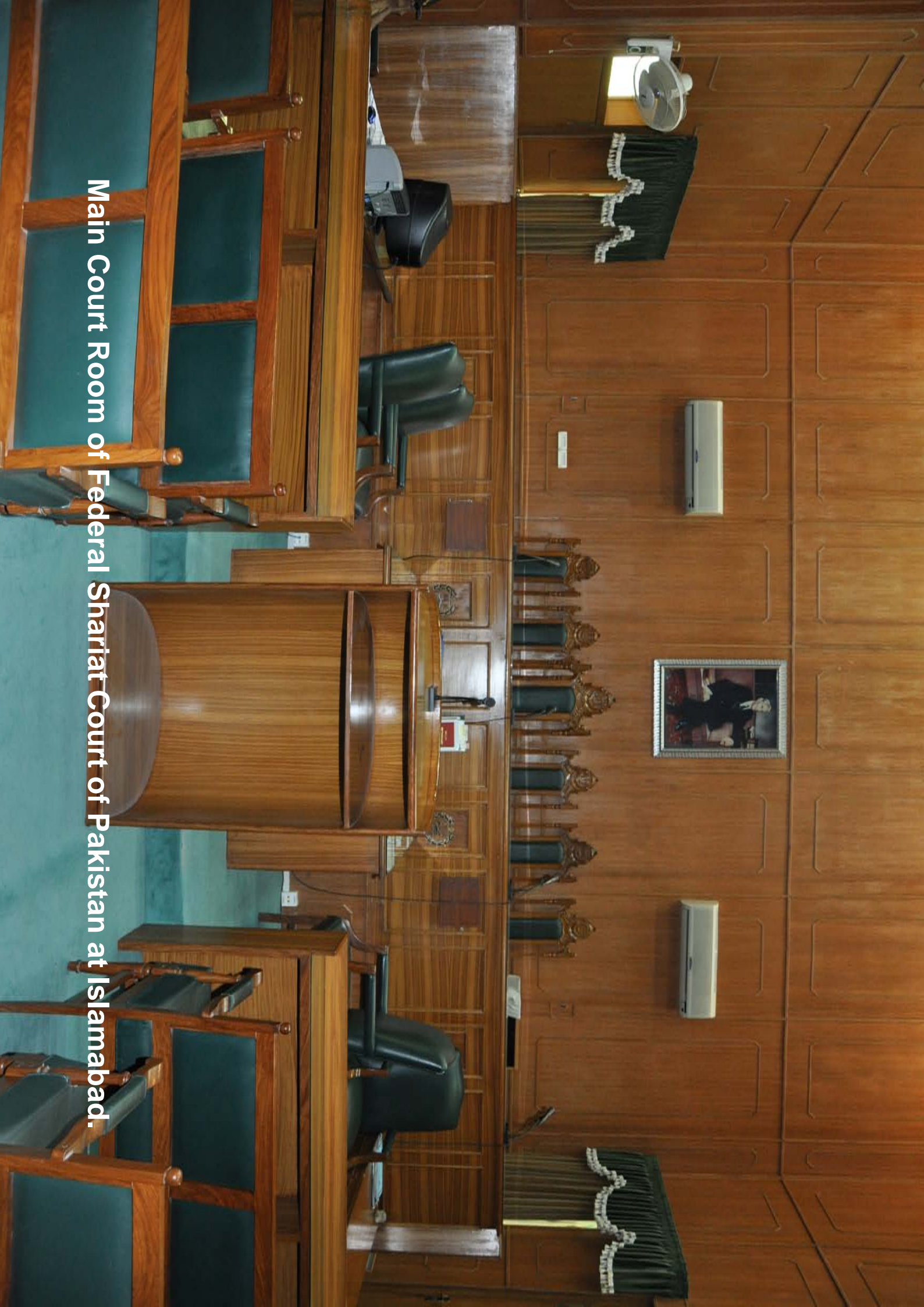
HEAD OF ACCOUNT	Sanction Budget 2012-13	Supplem- entary Grant	Re-appropriation		NET BUDGET ALLOCATION 2012-13	Expenditure
			(+)	(-)		
A01-Employees Related Exp	251,026,000	98,001,000	19,547,000	16,319,000	352,255,000	352,351,088
A01-PAY	84,146,000			3,019,000	81,127,000	80,993,478
A011-1 Pay of Officer	60,793,000			1,350,000	59,443,000	59,292,744
A011-2 Pay of Staff	23,353,000			1,669,000	21,684,000	21,700,734
A012-Allowances	166,880,000	98,001,000	19,547,000	13,300,000	271,128,000	271,357,610
A012-1 Regular Allowance	153,990,000	98,001,000	16,432,000	12,950,000	255,473,000	256,697,202
A012-2 Others Allowance	12,890,000		3,115,000	350,000	15,655,000	14,660,408
A01271-Overtime Allowance	350,000		85,000		435,000	428,352
A01273-Honoraria	800,000		1,980,000		2,780,000	1,849,370
A01274-Medical Charges	1,200,000		1,050,000		2,250,000	2,216,661
A01277-Contingent paid staff	10,500,000			310,000	10,190,000	10,166,025
A01278-Leave Salary	40,000			40,000	000	000
A03-Operating Expenses	33,534,000		5,879,000	3,358,000	36,055,000	35,862,683
A032-Communication	3,450,000		300,000	100,000	3,650,000	3,611,640
A03201-Postage & Stamp	400,000			100,000	300,000	300,000
A03202-Telephone & Trunk Calls	3,000,000		250,000		3,250,000	3,212,640
A03205-Courier and Pilot Service	50,000		50,000		100,000	99,000
A033-Utilities	430,000			424,000	6,000	5,371
A03301-Gas Charges	30,000			30,000	000	000
A03302-Water Charges	120,000			114,000	6,000	5,371
A03303-Electricity Charges	270,000			270,000	000	000
A03304-Hot & Cold Water Charges	10,000			10,000	000	000
A034-Occupancy Costs	10,250,000		1,315,000	153,000	11,412,000	11,397,658
A03402-Rent for Office Building	50,000			50,000	000	000
A03403-Rent of Residence Building	10,000,000		1,315,000		11,315,000	11,301,159
A03407-Rate of Taxes	200,000			103,000	97,000	96,499
A036-Motor vehicles	150,000			129,000	21,000	20,200
A03603-Registration	150,000			129,000	21,000	20,200
A038-Travel & Transportation	10,954,000		2,994,000	373,000	13,575,000	13,527,330
A03805-Travelling Allowance	5,500,000		2,724,000	190,000	8,034,000	8,023,007
A03806-Transportation of Goods	150,000			65,000	85,000	84,202
A03807-P.O.L Charges	4,804,000		100,000		4,904,000	4,875,961
A03808-Conveyance Charges	300,000		170,000		470,000	468,960
A03809-Gass Charge	200,000			118,000	82,000	81,200

A039-General	8,300,000		1,270,000	2,179,000	7,391,000	7,300,484
A03901-Office Stationery	900,000			310,000	590,000	586,297
A03902-Printing and Publication	600,000		900,000		1,500,000	1,488,850
A03903-Conference /Seminar	100,000			100,000	000	000
A03905-News Papers Periodicals & Books	650,000			336,000	314,000	311,493
A-03906-Uniform/Liveries & Protective	200,000		50,000		250,000	231,715
A03907-Advertising & Publicity	300,000			258,000	42,000	40,601
A03912- Delegation Abroad	3,200,000			930,000	2,270,000	2,269,173
A03913- Contribution & Subscription	150,000			45,000	105,000	102,711
A03917-Law Charges	200,000			200,000	000	000
A03919-Payment to others for services	400,000		120,000		520,000	484,300
A03970-Others	1,600,000		200,000		1,800,000	1,785,344
A04- Retired Employees	600,000			600,000	000	000
A041-Pension	600,000			600,000	000	000
A04114-Encashment for LPR	600,000			600,000	000	000
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	950,000		350,000		1,300,000	1,285,321
A06301-Entertainment & Gifts	950,000		350,000		1,300,000	1,285,321
A09-Physical Assets	8,700,000			4,330,000	4,370,000	4,352,936
A09201- Hardware	1,300,000			1,000,000	300,000	297,006
A09202- Software	400,000			400,000	000	000
A09501-Purchase of Transport	4,000,000			1,980,000	2,020,000	2,020,000
A09601-Purchase of Plant Machineries	2,000,000			830,000	1,170,000	1,159,751
A09701-Purchase of Furniture & Fixture	1,000,000			120,000	880,000	876,179
A13- Repair & Maintenance	3,550,000		305,000	1,074,000	2,781,000	2,733,159
A13001-Repair of Transport	700,000		30,000		730,000	706,433
A13101- Repair of Machinery	450,000		275,000		725,000	717,191
A13201- Repair of Furniture & Fixture	300,000			250,000	50,000	48,668
A13301-Repair of Office Building	1,300,000			425,000	875,000	874,668
13701-Hardware	600,000			200,000	400,000	386,199
A13702-Software	200,000			199,000	1,000	000
GRAND TOTAL	298,760,000	98,001,000	26,081,000	26,081,000	396,761,000	396,585,187

**STATEMENT SHOWING THE BUDGET ALLOCATION FOR THE
FINANCIAL YEAR 2013-2014**

CLASSIFICATION HEAD	BUDGET ALLOCATION
A01-Employees Related Exp	277,474,000
A01-PAY	90,208,000
A011-1 Pay of Officer	66,255,000
A011-2 Pay of Staff	23,953,000
A012-Allowances	187,266,000
A012-1 Regular Allowance	174,376,000
A012-2 Others Allowance	12,890,000
A01271-Overtime Allowance	350,000
A01273-Honoraria	800,000
A01274-Medical Charges	1,200,000
A01277-Contingent paid staff	10,500,000
A01278-Leave Salary	40,000
A03-Operating Expenses	36,334,000
A032-Communication	3,450,000
A03201-Postage & Stamp	400,000
A03202-Telephone & Trunk Calls	3,000,000
A03205-Courier and Pilot Service	50,000
A033-Utilities	430,000
A03301-Gas Charges	30,000
A03302-Water Charges	120,000
A03303-Electricity Charges	270,000
A03304-Hot & Cold Water Charges	10,000
A034-Occupancy Costs	12,050,000
A03402-Rent for Office Building	50,000
A03403-Rent of Residence Building	11,800,000
A03407-Rate of Taxes	200,000
A036-Motor vehicles	150,000
A03603-Registration	150,000
A038-Travel & Transportation	11,954,000
A03805-Travelling Allowance	6,500,000
A03806-Transportation of Goods	150,000
A03807-P.O.L Charges	4,804,000
A03808-Conveyance Charges	300,000

A03809-Gass Charge	200,000
A039-General	8,300,000
A03901-Office Stationery	900,000
A03902-Printing and Publication	600,000
A03903-Conference /Seminar	100,000
A03905-News Papers Periodicals & Books	650,000
A-03906-Uniform/Liveries & Protective	200,000
A03907-Advertising & Publicity	300,000
A03912- Delegation Abroad	3,000,000
A03913- Contribution & Subscription	150,000
A03917-Law Charges	200,000
A03919-Payment to others for services	400,000
Foreign/ Inland training Course	200,000
A03970-Others	1,600,000
A04- Retired Employees	600,000
A041-Pension	600,000
A04114-Encashment for LPR	600,000
A05 Grants Subsidies	400,000
A052- Grant Domestic	400,000
A05216- Family of Civil Servants	400,000
A06-Transfers	950,000
A06301-Entertainment & Gifts	950,000
A09-Physical Assets	8,700,000
A09201- Hardware	1,300,000
A09202- Software	400,000
A09501-Purchase of Transport	4,000,000
A09601-Purchase of Plant Machineries	2,000,000
A09701-Purchase of Furniture & Fixture	1,000,000
A13- Repair & Maintenance	3,550,000
A13001-Repair of Transport	700,000
A13101- Repair of Machinery	450,000
A13201- Repair of Furniture & Fixture	300,000
A13301-Repair of Office Building	1,300,000
13701-Hardware	600,000
A13702-Software	200,000
GRAND TOTAL	328,008,000



Main Court Room of Federal Shariat Court of Pakistan at Islamabad.

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

- ☐ Computerized Case Institution
- ☐ Searching case record
- ☐ Bench Allocation
- ☐ Date Fixation
- ☐ Checking Case Status
- ☐ Case proceedings
- ☐ Finding Judgments
- ☐ Proposed Cause List
- ☐ Report generation regarding pendency, disposal, institution, and offence wise
- ☐ statistics.

In year 2012 following tasks were performed regarding Case Flow Management System

- (a) Record of cases for the year 2012-13 including more than 2000 cases have been computerized at Principal seat.
- (b) Reported Judgment from year 2010 to 2013 have been 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 2012-13 following tasks were performed

- * Promotion History of the court staff
- * ACRs of more than 70 personnels 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.
- * Profiles of present and former Chief Justices.
- * Leading Judgments of the court (Shariat Petitions and Suo Moto cases) 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 2013 SMS ALERT SYSETM started working on testing basis.

LIBRARY

The process of Court Library automation was initiated with the revised PC-1of the project “Automation of Federal Shariat Court” approved by the then Secretary M/o Law, Justice and Human Rights Mr. Justice Agha Rafiq Ahmad Khan under Access to Justice Program. During the year 2010, integrated library software (PakLag Koha) was purchased that is compatible with the international standards. Data entry in the new software has almost been completed. Online Public Access Catalogue (OPAC) is available on LAN for the users. Books can be searched by key words, author name, title, and subject fields in all the languages of the library collection i.e English, Urdu, and Arabic. The software provides on screen keyboard searching facility for the users of oriental languages. As soon as hosting facility is provided on official website, the OPAC would be accessible for internet community.

DIGITAL LIBRARY

Digital libraries have assumed very important role in the modern world as being a new storage media and new channel for transmitting information. We speak about electronic references, full text data access, web resources, that are integral part of research services in the electronic environment. The goal can be achieved by organizing scanned as well as born digital documents/books. Federal Shariat Court Library has taken initiative and developed a collection of digital books comprising on 15084 titles with limited access on LAN only. The collection includes books on Pakistan, culture and civilization, Biography English & American Law, Islamic law, Banking and Finance, Seerat-un-Nabi (SAW), History, dictionaries and encyclopedias etc. 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 first one among the Court Libraries in Pakistan which is maintaining a digital library along with computerization of its physical collection.

There are more than 500 Encyclopedias in Pdf. Some of the important titles are as under:

- Encyclopedia of Islam 13 volumes, published at Leiden by E. J. Brill
- Encyclopedia of Quran 6 Vols. published at Leiden by E. J. Brill
- Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, in American constitution 1789-2010
- The 9/11: Encyclopedia, Vol. 1 & 2
- West's Encyclopedia of American Law 07 Vols.
- Gale's Encyclopedia of American Law
- Gale's Encyclopedia of Everyday Law
- Encyclopedia of Law and Higher Education
- Encyclopedia of Political Systems and Parties
- Encyclopedia of Social Problems
- Encyclopedia of Modern World 1900 to present
- Encyclopedia of World Biography
- Encyclopedia of Women and Islamic Cultures
- McGraw-Hill Encyclopedia of Science & Technology 19 Vols.

Similarly there are more than 100 Dictionaries in Pdf. Some of the important titles are as under:

- Oxford Dictionary of Law
- Faruqi's law dictionary English- Arabic
- Dictionary of Pseudonyms

- Nolo's plain-english law dictionary
- The new American roget's college thesaurus in dictionary form
- Black's Law Dictionary
- Al-Mawrid (Arabic English dictionary)
- The Cambridge Dictionary of Psychology
- Dictionary of Historic Documents
- The pan dictionary of famous quotations
- Historical Dictionary of Islam
- Oxford dictionary of idioms
- The Oxford Dictionary of Quotations
- Collins co-build dictionary of Idioms
- A dictionary of Islamic Terms

And so on; it's a treasure worth exploring.

PRESS CLIPPINGS

The News
January 27, 2013

Shariat court declares house rent rules un-Islamic

Our Correspondent

LAHORE, The Federal Shariat Court on Saturday declared un-Islamic the rules of government regarding deduction of rent of one house from the pay of both husband and wife (both civil servants) even if the house is allotted to one of them.

A full bench comprising Justice Dr Fida Muhammad Khan, Justice Rizwan Ali Dodani, and Justice Sheikh Ahmad Farooq passed this order on a petition filed by civil servant couple.

The bench struck down the rules followed by federal and provincial governments and observed both husband and wife performing official duties separately and independently and entitled to all facilities and benefits without any discrimination.

“In case their sons/daughters who are also civil servants whether dependent or independent and reside with them in same hired/government accommodation they are duly entitled in accordance with the NPS they hold, to all perks/privileges (including house rent) and there is no bar that deprives them of this right,” the FSC remarked. After taking into consideration several

verses of Holy Quran pertaining to fundamental right of equal protection of law and equal treatment held that the impugned rules were repugnant to the injunctions of Islam.

The FSC declared that each of the spouses in their own capacity had a right to get house rent according to his/her entitlement as mentioned in the terms and conditions of serve.

“There is no reason that in case of allotment of government accommodation to one of the spouses, both should lose 100 percent house rent and the allottee husband or wife in addition to that, should also pay an additional 5 percent of his/her pay for the same accommodation while their colleagues who are residing in the same accommodation pay only 5 percent of his/her pay, if the other spouse is not a civil servant,” the court held.

The court directed federal and all provincial governments to amend the rules so as to bring them in conformity with the injunctions of Islam by June 30, 2013 where after the said rules would become void.

The News
March 11th, 2012

Judicial Commission recommends judges for FSC, LHC

Our Staff Reporter

ISLAMABAD, March 10: The Judicial Commission (JC) on Saturday recommended the elevation of Shaikh Ahmed Farooq and Justice (retd) Rashid Jehangir as judges of the Federal Shariat Court.

Chief Justice Iftikhar Muhammad Chaudhry, who presided over the commission's meeting, also approved the names of Abdus Sami Khan, Ibadur Rehman Lodhi, Shahid Waheed, Shujat Ali Khan and Baqqir Ali Najfi as additional judges of the Lahore High Court for a one-year term.

The recommendations so suggested by the commission will now be taken up by the Parliamentary Committee (PC) for approval.

The News
March 14, 2012

Sudan CJ to visit Federal Shariat Court

ISLAMABAD, March 14 (APP): Chief Justice Republic of Sudan Justice Galal Elden Mohammad Osman Goreshi will visit Federal Shariat Court building on March 15. On the invitation of government of Pakistan, Chief Justice Supreme Court Sudan, accompanied with three judges is on four days visit (13-16 March), said a press release. Chief Justice Federal Shariat Court, Agha Rafiq Ahmed Khan will receive and brief the delegation about the performance and working of the court. Besides, plantation ceremony will also be held.

APP
March 18, 2012

Sudanese Chief Justice honoured

ISLAMABAD - The visiting Chief Justice of Sudan, Jalaluddin Muhammad Usman was given a warm reception in Islamabad by all segments of society as he also worked for independence of judiciary in Sudan.

Headed by a delegation, the Sudanese Chief Justice spent busy days in the capital interacting with all segments of society. He met with Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry and exchanged views and experiences on the matters relating to independence of judiciary and providing justice to the people.

He also held long session with Agha Muhammad Rafique, Chief Justice Federal Shariat Court, parliamentarians and visited different institutions.

Chief Justice Jalaluddin Muhammad Usman, who was officially invited to Pakistan was also a guest of honour at a reception hosted by Sudanese acting ambassador Mohamed Eldei Ali on Thursday evening where Besides Chief Justice of Federal Shariat Court, Agha Muhammad Rafique Khan and Interior Minister Rehman Malik,

diplomats from Muslim countries, Senior officials from Ministry of Foreign Affairs, members of legal fraternity, mediamen and scholars attended it at the residence of the Sudanese ambassador.

Chief Justice Usman said his visit is fruitful as he exchanged views with his Pakistani counterpart and senior officials of judiciary. Pakistan is his second home, he said.

Welcoming Sudanese guest, Chief justice Shariat Court said more Chief justices from Arab and African countries are expected to visit Pakistan. Similarly Pakistani delegations will also visit those countries, he said.

Rehman Malik said the visit will help to promote relations with Sudan. There is independence of judiciary in Pakistan. Justice should prevail everywhere, he said.

The acting Sudanese ambassador said it is a great occasion that Chief Justice of Sudan is visiting Pakistan. Pakistan and Sudan enjoy excellent relations. This visit will further cement such relations, Mohamed Eldei Ali said. Exchange of gifts was also conducted on the occasion.

The News
April 19, 2012

Morocco judges called on Chief Justice Iftikhar Chaudhry

ISLAMABAD: A delegation of Morocco judges Wednesday called on Supreme Court Chief Justice Iftikhar Chaudhry here at the Supreme Court building.

The delegation, headed by Mustapha Fares Chief Justice of Supreme Court of Morocco, also included Brahim Zaim, president of Chamber at the Court of Cassation, Ahmed Benzakour, president of Chamber at the Court of Cassation, Abderrahmane Mesbahi El Aouame, President of Chamber at the Court of Cassation and Mohammad Rida EL Fassi, ambassador of Kingdom of Morocco in Pakistan.

Welcoming the delegation, the CJ said it was an honour to receive such a high level judicial delegation from Morocco. Exchange of delegations is always a healthy and a good tradition to take advantages

from each other's experience and knowledge, he said and added since both countries are Muslim where Islamic laws are enforced, it is a good opportunity to share some experiences and reforms.

The chief justice of Morocco reciprocated the sentiments and explained his judicial system and informed about Supreme Court and other subordinate courts. He also invited the CJ to visit Morocco, which Chief Justice Iftikhar Chaudhry accepted.

Federal Shariat Court is also functioning to examine and determine as to whether or not a certain provision of law is repugnant to the injunctions of Islam and appeal against the decision of Federal Shariat Court is heard by Shariat Appellate Bench of Supreme Court.

The Express Tribune
April 21, 2012

Morocco's Apex Court Head, visits Mazar-e- Quaid

KARACHI: - The head of Morocco's apex court, Justice Mustapha Fares, visited Mazar-e-Quaid and attended a dinner hosted by Prof. Khurshid A Hashmi and the faculty members of SM Law College on Friday.

Justice Fares was given a tour of the library and sat in classrooms during lectures.

The chief justice of Morocco was very happy to be in Karachi. He said that both Islamic countries had a good relationship and the judiciaries had developed closer ties and increased collaboration. He added that the credit for this collaboration lay with the chief justice of the Shariat Court who visited Arab countries and invited their chief judges to visit Pakistan.

According to Fares, these trips and exchange of delegations would help strengthen judicial relations. While talking to the media, he said that an agreement would be signed by the judiciaries of Pakistan and Morocco for increased interaction. "We will also hold a conference on strengthening judicial links," he said. "Both judiciaries are different but both are independent and delivering justice."

While talking to the media at the mausoleum, the Sindh High Court Chief Justice Musheer Alam said that the shortage of judges in court would be resolved in the next couple of weeks. The chief justice of the Federal Shariat Court, Justice Agha Rafique Ahmed Khan was also there.

OnePakistan
April 23, 2012

Islamic Shariah only weapon for survival: Egyptian Chief Justice

Islamabad : Despite the fact that the non-Muslims have ruled over the Muslims and destroyed the Islamic identity badly, there is a hope that the leadership will soon realize that Islamic Shariah is the only weapon for their survival.

This was stated by Egyptian Chief Justice Mohamed Hossam Elddin El Gheriany on occasion of his visit to the International Islamic University, Islamabad (IIUI), Tuesday, accompanied by his deputy, Justice Ali Mohamed Mohamed and Egyptian Ambassador Said Muhammad El Said.

Talking about the Muslim scholars, he said they (Islamic scholars) are not confined to any territory or region because they are the combined legacy of the Muslims and all Muslims are getting benefits from them. He said Egyptian scholars had played a great role in promotion of Islam.

Egyptian students are interested in getting education in the IIUI. The Egyptian chief justice said Pakistan has a larger Muslim population, adding they should meet each other, breaking the barriers of colour and ethnicity. He said Federal Shariat Court and the IIUI working for the same purpose.

While addressing to the

faculty members of Faculty of Shariah and Law of IIUI, he said that he was pleased to see that this faculty is providing integration to both Shariah and Law education. He said that all human laws are not against Shariah. He urged the teachers to follow the Federal Shariat Court and to point out the non-Shariah laws to stop their implementations in the society.

IIUI Rector Prof. Fateh Muhammad Malik welcomed the Egyptian guests and said Al-Azhar University scholars had shown Quaid-e-Azam the way forward. President IIUI Prof. Dr. Mumtaz Ahmad said the visits will strengthen bilateral relations between Egypt and Pakistan. He said Egypt is a center of intelligence and Islamic traditions.

IIUI Vice President, Prof. Dr. Sahibzada Sajid ur Rehman and others were also present on the occasion. Director General Shariah Academy, Dr. Tahir Mansoori briefed the delegation about the performance and future plans of IIUI. Dean Faculty of Shariah & Law Dr. Zia ul Haq briefed the delegation about the performance of faculty at their visit to the faculty. Dr. Mumtaz Ahmad presented IIUI crest to the distinguished guests. At the end the delegation also visited the Faisal Mosque.

PAKISTAN TODAY
April 26, 2012

Qatar chief justice visits Faisal Masjid

ISLAMABAD The chief justice of the Supreme Court of Qatar, Justice Masoud Mohamed Al-Ameeri, visited the Faisal Masjid on Wednesday and took keen interest in the structure of the mosque.

He appreciated the calligraphy of the Quran placed in the main hall of the mosque. Later, during a lunch in IRD guesthouse of the International Islamic University Islamabad (IIUI), he discussed a number of bilateral issues with IIUI President Prof Dr Mumtaz Ahmad.

The IIUI president briefed the delegation about the progress of IIUI and its future plans. Justice Agha Rafique Ahmad Khan, chief justice, Federal Shariat Court, Pakistan, Justice Shehzad Sheikh and Justice Fida Muhammad Khan also accompanied the delegation.

While talking to IIUI President Dr Mumtaz Ahmad, Justice Masoud Mohamed Al-Ameeri said that Shariah Academy, a constituent unit of IIUI, was playing a pivotal role in training the lawyers of Pakistan and other countries. He was glad to know that Shariah Academy was imparting training not only in Urdu but also

in Arabic and English. He said the teachers of IIUI should teach in the universities of Qatar.

Dr Mumtaz Ahmad said that Qatar played an important role in the economic development of some countries. He added Qatar television channel, Al-Jazeera, had brought revolution in communication and broken the monopoly of the western media.

Polio immunisation in full swing, says DHO: The district health department claimed that over 1,00,000 children had been administered anti-polio drops in the rural areas of Islamabad since April 23 in which educational officers, notable teachers, university students, union council officials and 300 lead health worker took part. District Health Officer (DHO) Dr Azhar Khan said the polio immunisation campaign was going on successfully which would end today. He said the health department, Islamabad, had made special arrangements for the campaign and the number of polio teams were increased which were imparted special training by the master trainers of the health department and World Health Organisation.

PAKISTAN OBSERVER
April 22, 2012

Justice to people prime aim of judges: Morocco CJ

Staff Reporter

Hyderabad: Chief Justice, Supreme Court of Morocco Justice Mustapha Fares said the prime objective of the judges and the court is to provide justice to the people and the provision of justice could be made in an effective manner with active cooperation of the bench and the bar. Justice Mustapha Fares, who also held the office of the President of Morocco expressed these views while addressing the members of Hyderabad Bar and later talking to media persons here on Saturday afternoon. He was on a 6 day visit to Pakistan on invitation of Justice Agha Rafiq Ahmed Khan, Chief Justice of Pakistan Federal Shariat Court. Among others, the Chief Justice Federal Shariat Court Justice Agha Rafiq Ahmed Khan, Chief Justice Sindh High Court Justice Musheer Alam and judges of Sindh High Court Justice Aqueel Ahmed Abbasi, Justice Nisar Shaikh, Justice Shafih

Muhammad Siddiqui, Justice Nadeem Ahmed, District and Sessions Judge Hyderabad Amjad Bohiyo, Registrar Sindh High Court Abdul Rasool Memon, President Sindh High Court Bar Association Hyderabad Allah Bachayo Soomro advocate, President District Bar Association Hyderabad Nisar Durrani and Honorary Consul General of Morocco at Karachi Ishtiaq Baig were also present on the occasion.

Justice Mustapha Fares said lawyers belong to a respectable profession and their job is to get justice for the people adding that getting justice for oppressed persons is the success of any lawyer.

Terming the founder of Pakistan Quaid-e-Azam Mohammad Ali Jinnah a great lawyer, Justice Mustapha Fares said that he made remarkable efforts for the creation of Pakistan. Pakistan is an Islamic country where the people have deep love with the religion, he

said and added that both Pakistan and Morocco enjoy brotherly relations.

About his visit to Pakistan, Justice Mustapha Fares said that during recently held Judges Conference in Morocco, the Chief Justice Federal Shariat Court of Pakistan Justice Agha Rafique Ahmed Khan had invited him to visit and review the judicial system in Pakistan. In Morocco, he said the lawyers of the country are playing their due role like a right hand of judges for getting justice for oppressed people of their country.

Earlier on arrival at the District and Session Court Hyderabad, Justice Mustapha Fares was accorded a rousing welcome by the judges and the lawyers. He was also briefed about the judicial system of Pakistan at Darbar Hall of the District and Sessions Court. The Chief Justice of the Supreme Court of Morocco also inaugurated the newly constructed mosque in the Judicial Colony at Kohisar, Latifabad.



Emir meets Pakistan's chief justice



HH the Emir Sheikh Hamad bin Khalifa al-Thani meeting with the Chief Justice of Pakistan's Federal Shariat Court of Cassation and the president of the Supreme Judicial Council, HE Mohamed al-Ameri, also met with Justice Khan. They discussed co-operation and co-ordination in legal and judicial domains between the two countries and ways to strengthen them. The meeting was attended by Pakistan's ambassador, Mohamed Sarfraz A Khanzada.

الرأية

من قطر للعرب ومن العرب إلى العالم

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صفحة
ربيع

يومية سياسية مستقلة

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رئيس مجلس إدارة: عبدالله بن خليفة العتيبة

العامري يلتقي رئيس القضاء الفيدرالي الشرعي الباكستاني



أوجه التعاون والتنسيق في المجالات القانونية والقضائية بين السلطين القضائيتين في دولة قطر وجمهورية باكستان الإسلامية والبحث في سبل تعزيزها. حضر اللقاء سعادة السيد محمد سارفرز خان زادة سفير جمهورية باكستان الإسلامية لدى الدولة.

الدوحة - **الرأية** : التقى سعادة السيد مسعود محمد العامري، رئيس محكمة التمييز رئيس المجلس الأعلى للقضاء، سعادة القاضي آغا رفيق أحمد خان رئيس القضاء الفيدرالي الشرعي بجمهورية باكستان الإسلامية الشقيقة والوفد المرافق له، جرى خلال اللقاء بحث

Jang
March 11, 2012

لاہور ہائیکورٹ میں 6 ایڈیشنل اور وفاقی شریعت عدالت میں دو جج کے تقرر کی سفارش

جہانگیر ارشد، شیخ احمد فاروق شریعت عدالت جبکہ لاہور ہائیکورٹ کیلئے عبدالمسیح، شاہد وحید، عائشہ اے ملک، باقر نجفی، عباد الرحمن، لودھی اور شجاعت کے نام شامل ہیں

چیف جسٹس افتخار محمد چوہدری کی زیر صدارت جوڈیشل کمیشن کے اجلاس میں ہائیکورٹ کے لئے 8 ناموں پر غور کیا گیا اب نام پارلیمانی کمیٹی کو بھیجے جائینگے

اسلام آباد (سپیشل رپورٹر) جوڈیشل کمیشن آف پاکستان نے لاہور ہائیکورٹ میں 6 ایڈیشنل ججوں اور وفاقی شریعت عدالت میں 2 جج مقرر کرنے کی سفارش کی ہے۔ ہائیکورٹ میں جن 6 ایڈیشنل ججوں کی تعیناتی کی سفارش کی گئی ان میں عبدالمسیح خان، شاہد وحید، عائشہ اے ملک، باقر علی نجفی، عباد الرحمن، لودھی اور شجاعت علی خان کے نام شامل ہیں۔ جبکہ وفاقی شریعت عدالت کے ججوں میں جہانگیر ارشد اور شیخ احمد فاروق شامل ہیں۔ جوڈیشل کمیشن کا اجلاس چیف جسٹس افتخار محمد چوہدری کی سربراہی میں ہوا۔ جس میں سپریم کورٹ کے سینئر ججوں کے علاوہ انارنی جنرل وفاقی وزیر قانون مولانا بخش چانڈیو اور دیگر ممبران نے بھی شرکت کی۔ لاہور ہائیکورٹ کے لئے کل 8 ناموں پر غور کیا گیا جن میں سے چھ وکلاء کو ایڈیشنل جج

بنانے کی منظوری دی گئی ہے۔ جوڈیشل کمیشن کی جانب سے یہ نام منظوری کے لئے پارلیمانی کمیٹی کو منظوری کے لئے بھجوائے جائیں گے۔ ان این کے مطابق لاہور ہائیکورٹ کے لئے سات نام تجویز کئے گئے تھے۔ کمیشن نے ساتویں نامزدگی جس محمود مرزا کا معاملہ منسوخ کر دیا۔

Nawa-e-Waqt
March 11, 2012

پارلیمانی کمیٹی کی 7 جج کے تقرر کی منظوری، ایک کی سفارش مسترد

5 کولاہور ہائیکورٹ کا ایڈیشنل جج اور 2 کو وفاقی شریعت عدالت کا جج بنانے کی منظوری دی گئی

نیئر بخاری کے بعد سینٹ کا نیا قائد ایوان ہی جج تقرر کی کمیٹی کا سربراہ بنانے کا فیصلہ

اسلام آباد (نمائندہ خصوصی) پارلیمانی جج کمیٹی نے ایف بی آر کی شکایت پر باقر نجفی کو جج بنانے کی سفارش مسترد کر دی ہے جبکہ عدالتی کمیشن کی سفارش پر 7 جج کی تقرری کی منظوری دے دی ہے۔ عبدالمسیح، شاہد وحید، عائشہ اے ملک، عباد الرحمن اور شجاعت علی خان کولاہور ہائی کورٹ کا ایڈیشنل جج جبکہ جہانگیر ارشد اور شیخ احمد فاروق کو وفاقی شریعت عدالت کا جج بنانے کی منظوری دی گئی ہے۔ سینئر نیئر حسین بخاری کی سبکدوش کے بعد جج تقرر تقرری پارلیمانی کمیٹی کے اجلاس کی صدارت

اپوزیشن لیڈر سینٹر اعلیٰ ڈار نے کی۔ اجلاس میں ایف بی آر حکام نے بتایا کہ عدالتی کمیشن نے جن افراد کو جج بنانے کی سفارش کی ہے ان میں باقر نجفی کے پاس نیشنل ٹیکس نمبر (این ٹی ایم) نمبر نہیں ہے ایف بی آر کی شکایت پر پارلیمانی کمیٹی نے باقر نجفی کو جج بنانے کی سفارش مسترد کر دی جبکہ 8 میں سے 7 افراد کو جج بنانے کی منظوری دے دی۔ پارلیمانی کمیٹی نے فیصلہ کیا کہ نیئر بخاری کے بعد سینٹ کا نیا قائد ایوان ہی جج تقرر کی کمیٹی کا سربراہ بنے گا۔

Nawa-e-Waqt
June 12, 2012

فدا محمد نے قائم مقام چیف جسٹس فیڈرل

شریعت کورٹ کا چارج سنبھال لیا

اسلام آباد (آن لائن) چیف جسٹس فیڈرل شریعت کورٹ جسٹس رفیق احمد کی عدم موجودگی کے باعث اس عدالت کے عالم جج علامہ ڈاکٹر فدا محمد نے قائم مقام چیف جسٹس فیڈرل شریعت کورٹ کی حیثیت سے حلف اٹھا کر چارج سنبھال لیا ہے۔ حلف برداری کی تقریب فیڈرل شریعت کورٹ کے آڈیٹوریم میں ہوئی۔ جسٹس رضوان علی نے ان سے حلف لیا۔ ان کے پاس یہ چارج جسٹس رفیق احمد کی واپسی تک موجود رہے گا۔

Jang
May 19, 2012

چیف جسٹس افتخار محمد چوہدری کی سربراہی میں

لاہور ہائیکورٹ میں 6 ایڈیشنل ججوں کا اجلاس آج ہوگا

اسلام آباد (سپیشل رپورٹر) لاہور ہائیکورٹ میں 6 ایڈیشنل ججوں کا اجلاس آج (آج) ہفتہ کو ہوگا جس کی سربراہی چیف جسٹس افتخار محمد چوہدری کریں گے۔ اجلاس میں پانچوں ہائی کورٹ کے چیف جسٹس صاحبان شریعت کورٹ کے چیف جسٹس اور دیگر متعلقہ کام شرکت کریں گے۔ اجلاس میں مختلف قوانین میں ترمیم کے حوالے سے سفارشات تیار کی جائیں گی۔

Jang
April 27, 2012

چیف جسٹس نے نیشنل جوڈیشل پالیسی سازی کمیٹی

کا اجلاس آج کراچی میں طلب کر لیا

اسلام آباد (اے پی پی) چیف جسٹس افتخار محمد چوہدری نے (آج) جمعہ کو نیشنل جوڈیشل پالیسی سازی کمیٹی کا دوروزہ اجلاس کراچی میں طلب کر لیا۔ جس میں وفاقی شریعت عدالت اور تمام ہائی کورٹس کے چیف جسٹس صاحبان شرکت کریں گے۔ اجلاس کو خصوصی عدالتوں اور ٹریبونل کے حوالے سے بریفنگ دی جائے گی۔ کمیٹی کے فیصلوں پر عملدرآمد اور کمیٹی کی کارکردگی پر غور لائے جانے کے علاوہ دیگر متعلقہ امور پر بھی غور و خوض کیا جائے گا۔

January 16, 2013

دہشت گردی سے متعلق کیسوں کی سماعت

لاہور (خبرنگار خصوصی) وفاقی شرعی عدالت کے مہم جنسوں نے محمد خان، جسٹس محمد جمیل گارمہ اور جسٹس شیخ احمد فاروق پر مشتمل فل بینچ نے منگل کے روز لاہور رجسٹری میں مختلف شریعت درخوستوں کی سماعت کی۔ ان درخوستوں میں ملک میں نافذ نیکیں نظام کے قوانین، انداد و ہشت گردی سے متعلق قانون کے تحت درج قتل کے مقدمات میں فریقین سے مصالحت، نوکری سے جبری پرچاگی سے متعلق قوانین کے علاوہ پاکیزہ خوراک سے متعلق شریعت درخوستیں شامل ہیں۔

January 27, 2012

کٹوتی غیر اسلامی قرار دے دی

اس امر (تفصیل کے لئے) کے لئے شریعت کے مطابق
سرکاری رہائش گاہ حاصل کرنے والے سرکاری ملازم
مہمانوں کی نگہداشت سے ملحق ہیں۔

بقیہ 29	کٹوتی غیر اسلامی
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[illegible]

June 27, 2013

اسلام آباد (جسٹس) سوشل سائنس کی پریکٹس کے آئین میں اصلاحات کی اجازت پر پاکستان کے دور سے پ



اسلام آباد چیف جسٹس انور محمد چوہدری مورطانیہ کے ہم منصب کو شیلڈ دے رہے ہیں

June 18, 2013

ناموس رسالت قانون 295 سی کو حقد قرار دینے کی درخواست سماعت کیلئے منظور

وفاقی شرعی عدالت نے وزارت قانون سے جواب طلب کر لیا، سماعت ملتوی

ڈاکٹر اسماعیل قریشی کیس میں فیصلہ دے چکی ہے اور 295 سی کے تحت سزائے موت کو حد قرار دیا ہے، اسی لئے اس کو پی پی سی میں بطور تعزیر استعمال نہیں کیا جاسکتا ہے، اس کے تحت آئین و قانون میں مناسب ترمیم کی جائے اور مذکورہ قانون کے تحت اپیل کا حق ہائی کورٹ کی بجائے وفاقی شرعی عدالت کو دیا جانا چاہئے

اسلام آباد (ایجنسیاں) وفاقی شرعی عدالت نے تحفظ ناموس رسالت قانون 295 سی کو حد قرار دینے کے حوالے سے ڈاکٹر اسلم خاکی کی درخواست سماعت کیلئے منظور کرتے ہوئے وفاقی وزارت قانون و انصاف سے جواب طلب کیا ہے اور سماعت غیر معینہ مدت تک کیلئے ملتوی کر دی ہے، وفاقی شرعی عدالت کے 3 رکنی بنچ نے پیر کے روزکیس کی سماعت کی اس دوران ڈاکٹر اسلم خاکی نے مؤقف اختیار کیا کہ وفاقی شرعی عدالت ایسے 1991 کے

Jang
September 07, 2013

نیشنل جوڈیشل پالیسی کمیٹی کا اجلاس آج ہوگا، چیف جسٹس صدارت کریں گے

اسلام آباد (خصوصی رپورٹر) نیشنل جوڈیشل پالیسی میکنگ کمیٹی کا اہم اجلاس (آج) ہفتہ کو جبکہ لاء اینڈ جسٹس کمیشن آف پاکستان اور انصاف تک رسائی فنڈز کی گورننگ باڈی کا اجلاس اتوار کو ہوگا، دونوں اجلاسوں کی صدارت چیف جسٹس افتخار محمد چوہدری کریں گے۔ نیشنل جوڈیشل پالیسی میکنگ کمیٹی کا اجلاس (آج) ہفتہ کو دن گیارہ بجے سپریم کورٹ میں ہوگا۔ اجلاس میں فیڈرل شریعت کورٹ کے چیف جسٹس آغا رفیق احمد خان، بلوچستان ہائیکورٹ کے چیف جسٹس قاضی فائز عیسیٰ، پشاور ہائیکورٹ کے چیف جسٹس دوست محمد خان، لاہور ہائیکورٹ کے چیف جسٹس عمر عطاء بند پال، اسلام آباد ہائیکورٹ کے چیف جسٹس انور خان کا سی جبکہ سندھ ہائیکورٹ کے رجسٹرار شرکت کریں گے۔ علاوہ ازیں اس اجلاس میں آزاد کشمیر سپریم کورٹ کے چیف جسٹس محمد اعظم خان، گلگت بلتستان لیپٹ کورٹ کے سربراہ جسٹس رانا محمد ارشد خان اور آزاد کشمیر ہائیکورٹ کے چیف جسٹس غلام مصطفیٰ مغل سمیت دیگر سربراہان شرکت کریں گے۔ اجلاس میں آزاد کشمیر سپریم کورٹ اور پاکستانی عدلیہ کے درمیان باہمی تعاون کی یادداشت پر دستخط اسلام آباد ماڈل جیل میں قیام کی پیشرفت کا جائزہ اور عدلیہ کے تحت پرانے مقدمات کے نمٹانے کی رفتار کا بھی جائزہ لے گی۔ کمیٹی پہلے کے اجلاس کی سفارشات پر عملدرآمد کا بھی جائزہ لے گی۔ علاوہ ازیں اتوار کو لاء اینڈ جسٹس کمیشن اور انصاف تک رسائی فنڈز کی گورننگ باڈی کے اجلاس بھی چیف جسٹس آف پاکستان نے طلب کئے ہیں۔ اجلاسوں میں کئی اہم فیصلے بھی کئے جائیں گے۔

Jang
April 02, 2013

شریعت کورٹ مکمل بااختیار ہے اسکے فیصلوں کیخلاف اپیل نہیں کی جاسکتی سپریم کورٹ

اسلام آباد (آئی این پی) سپریم کورٹ نے قرار دیا ہے کہ شریعت کورٹ مکمل بااختیار آئینی عدالت ہے، سپریم کورٹ میں شریعت کورٹ کے فیصلوں کیخلاف اپیل دائر نہیں کی جاسکتی۔ پیر کو چیف جسٹس افتخار محمد چوہدری کی سربراہی میں 8 رکنی لارجر بنچ نے کیونٹ پارٹی کی جانب سے وفاقی شرعی عدالت کے فیصلے کیخلاف مقدمہ کی سماعت کی۔ دوران سماعت جسٹس ثاقب ثار نے کہا شریعت کورٹ مکمل بااختیار آئینی عدالت ہے سپریم کورٹ میں شریعت کورٹ کے فیصلوں کے خلاف بطور عدالت اپیل نہیں جاسکتی۔ جسٹس جواد نے دوران سماعت ریمارکس دیئے کہ ججوں کے فیصلوں کو 8 رکنی بنچ تبدیل کر سکتا ہے پانچ ججز کا فیصلہ کوئی آسانی صحیفہ نہیں ہوتا جس پر کیونٹ پارٹی کے وکیل نے دلائل دیئے شریعت کورٹ کی آئین کی تشریح کو حتمی قرار نہیں دیا جاسکتا۔ شریعت کورٹ کے فیصلوں کے بعد یہ تصور بھی قائم نہیں کیا جاسکتا کہ تمام راستے بند ہو گئے۔ چیف جسٹس افتخار چوہدری نے ریمارکس دیئے بند راستہ کھولنے کیلئے اسی دائرہ سماعت میں جانا ہوگا جہاں سیراستہ بند ہوا۔

The News
February 02, 2013

Execution law challenged at Federal Shariat Court

PESHAWAR: A lawyer has challenged the law of execution in the Federal Shariat Court (FSC), terming it illegal, un-Islamic and in violation of the constitution and national judicial policy, and claimed that the execution law was main hurdle in provision of expeditious justice in the civil nature cases that run up to decades.

Muhammad Zulfiqar Ali Khalil advocate, a resident of Peshawar, challenged the law of execution, through a Shariat petition. He made federation through federal secretary Law, Justice and Parliamentary Affairs of Pakistan respondent in the petition.

The petitioner submitted that the law of execution was repugnant to the Quran and Sunnah and against Articles 227, 23, 24 and preamble and the fundamental rights of the Constitution of Islamic Republic of Pakistan as well as against the National Judicial Policy announced by the Supreme Court of Pakistan in 2009-2012. He further stated that the law was also against the principle of natural justice.

The petitioner said after winning the case following years-long efforts and huge loss of money, he would again file an application under Order 21 of Rule 10 of the Criminal Procedure Code (CrPC) for execution of the decision

in the same court or to the officer, if any, appointed in this behalf and the execution again takes many years.

Under Order 21, Rule 11 of the CPC, where a decree is for the payment of money, the court may, on the oral application of the decree-holder at the time of passing of the decree, order immediate execution thereof by the arrest of the judgment debtor, prior to the preparation of a warrant if he is within the precincts of the court.

The petitioner said when the decree holders get success up to the Supreme Court of Pakistan after a longest legal civil travel in two or three decades, even then the decree holder (legal passenger) starts another legal travel for 10 to 15 years in the (legal vehicle), i.e. outdated law of execution of the CrPC of 1908.

In such circumstances, he said, it has been experienced that the litigants become bored and start own parallel justice system in the shape of Talibanisation or they start killing their opponents even on the courts' premises, to take their land or property's legal right through illegal ways. And some time, he added, when the same decree holder dies during civil trials, their grandsons fight for their rights in the courts.

Dawn
January 27, 2013

Civil servant couple's plea: FSC declares house rent cut from both spouses un-Islamic

By Out Staff Reporter

LAHORE, Jan 26: A Federal Shariat Court full bench has declared un-Islamic rules of the government pertained to deduction of rent for an official residence from the pay of both husband and wife (both civil servants) even if the house is allotted to one of them.

The FSC full bench comprising Justice Dr Fida Muhammad Khan, Justice Rizwan Ali Dodani and Justice Sheikh Ahmad Farooq passed this order on a petition filed by the civil servant couple.

Striking down the rules followed by federal and provincial governments in this regard the court observed both husband and wife performed official duties separately and independently of each other and were thus entitled to all facilities and benefits without any

discrimination.

"In case their son/daughters who are also civil servants, whether dependent or independent, and reside with them in same hired/government accommodation, they are duly entitled in accordance with the NPS they hold, to all perks/privileges (including house rent) and there is no bar that deprives them of this right," the FSC remarked.

After taking into consideration several verses of the Holy Quran pertaining to fundamental right of equal protection of law and equal treatment, the court held that the impugned rules were repugnant to the injunctions of Islam.

The FSC declared that each of the spouses in their own capacity had a right to get the house rent according

to his/her entitlement as mentioned in the terms and conditions of service.

"There is no reason that in case of allotment of government accommodation to one of the spouses, both should lose 100 per cent house rent and the allottee husband or wife in addition to that, should also pay an additional five per cent of his/her pay for the same accommodation while their colleagues who are residing in the similar accommodations pay only five per cent of their pay, if the other spouse is not a civil servant," the court held.

The court directed federal and all provincial governments to amend the impugned rules so as to bring them in conformity with the injunctions of Islam by June 30, where after the said rules would become void.

The News
June 26, 2013

Mauritania's chief justice visits Federal Shariat Court

ISLAMABAD: Chief Justice of Islamic Republic of Mauritania Sidi Yehefhdhou along with a two-member delegation on Tuesday visited the Federal Shariat Court in the federal capital.

The delegation, which also comprised of Justice Ba Moukhtar and Justice Cheikh Ateh Cheikh Ahmed Manhood, held a meeting with Chief Justice Agha Rafiq Ahmed Khan and other judges of the Federal Shariat Court. The visitors were apprised about the jurisdiction and modus operandi of examination of laws and disposing of criminal appeals by the Federal Shariat Court. The Chief Justices of both the countries discussed the matters of mutual interests and agreed to continue cooperation in the field of judiciary to meet the challenges of modern era.

The News
June 25, 2013

Chief Justice of Mauritania arrives

ISLAMABAD: Chief Justice of Islamic Republic of Mauritania Sidi Yehefhdhou, along with Justice Ba Moukhtar and Justice Cheikh Ateh Cheikh Ahmed Manhood, arrived here on an eight-day official visit on the invitation of Chief Justice of the Federal Shariat Court, Justice Agha Rafiq Ahmed Khan.

The delegation would also visit Lahore and Karachi to meet with the Governor, the Chief Minister and the Chief Justices of Lahore and Sindh High Courts apart from visiting historical places in these cities.

SELECTED JUDGMENTS

IN THE FEDERAL SHARIAT COURT

(Appellate/Revisional Jurisdiction)

PRESENT:**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.****MR. JUSTICE DR. FIDA MUHAMMAD KHAN****CRIMINAL APPEAL NO.34/P of 2007.**

Safiullah son of Abdul Ghani,
 R/O Kunar Afghanistan at present Jabba Sohail Abad,
 Peshawar. Appellant.

Versus

1. The State.
2. Kiftan son of Abdul Baqi, resident of Sardar Ahmed Jan
 Colony, Peshawar. Respondents

CRIMINAL REVISION PETITION NO.1/P OF 2008.

Kiftan son of Abdul Baqi, Resident of Sardar Ahmed Jan Colony, Peshawar.

.... Petitioner.

Versus

1. Safiullah son of Abdul Ghani R/o Kunar Afghanistan at present Jabba Sohail
 Abad, Peshawar.
2. The State Respondents
- Counsel for appellant. Mr. Zullfiqar AliChamkani, Advocate.
- Counsel for State Mr. Alamgir Khan Durani, Deputy Advocate
 General, KPK, Peshawar.
- FIR, Date and 903, 18.12.2005
- Police Station Hashtnagri, Peshawar.

Date of Judgment of trial court.	....	20.08.2007.
Date of Institutions	....	21.09.2007 & 29.04.2008, respectively.
Date of hearing	....	07.05.2012.
Date of decision	....	07.05.2012.

JUDGMENT

AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE:- This appeal filed by Safiullah son of Abdul Ghani is directed against the judgment dated 20.08.2007 passed by the learned Additional Sessions Judge-X Peshawar whereby the appellant/accused has been convicted under section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance) read with section 412 PPC and sentenced to imprisonment for life. However, the benefit of section 382-B Cr. P.C. has been extended to him.

2. Criminal Revision Petition for enhancement of the sentence awarded to the said appellant has also been filed by the complainant Kiftan.

3. Since both the matters arise out of one and the same judgment, therefore, we are disposing them by this single judgment.

4. Before appraisal of the evidence for deciding the appeal, we would first of all look into the Criminal Revision Petition preferred by Kiftan petitioner/ complainant, father of deceased Razi Khan, for enhancement of the sentence awarded to the appellant/accused. It transpires from the record that the Revision Petition is not admitted and is still at preliminary stage. It was fixed several times for hearing but for one reason or other it could not proceed. On 4.3.2011 it was adjourned because clerk of the learned counsel for the petitioner had informed that cousin of the latter had expired. Today also, clerk of the learned counsel informed that uncle of the learned counsel had expired and the learned counsel could not attend the Court. In this connection, it is worth mentioning that the impugned judgment was passed on 20.08.2007 but the instant Revision Petition was received in this Court on 29.04.2008. This shows that, according to rules, there is delay of six months and nine days. No reason has been given for this delay. The note put up by the office further shows that, as informed by the learned counsel, his client Kiftan petitioner is an Afghan Refugee and has gone to his native country Afghanistan permanently. To day also the learned counsel for the petitioner is absent. In view of the overall facts and circumstances referred to above, it appears that the petitioner is not interested in prosecution. Therefore, the Revision Petition is dismissed for non-prosecution.

5. Now we turn to the case of prosecution which according to FIR, lodged on 18.12.2005 at police station Hashtnagri is to the effect that complainant Kiftan used to sell vegetable in Khushal Bazar. On the day of occurrence, his son was also present in Khushal Bazar. He was present in the shop of Haji Musa Khan who deals in mobile phones. In the meanwhile Safiullah, Mansoor, Nazifullah and Pervaiz alias Tooray, armed with pistols, came over there. They forcibly snatched mobile phones from Musa Khan and ran away. His son Razi Khan chased the accused and tried to apprehend them but the accused fled

away. The appellant/accused fired at his son Razi Khan and Haji Musa Khan. Resultantly his son Razi Khan got injured and fell on the ground. He was taken to LRH, Peshawar but he expired. The complainant alleged that the occurrence was seen by him alongwith Haji Musa Khan as well.

6. One of the accused namely Safiullah who is the appellant before us was overpowered by the people. He was physically searched and one pistol 30 bore, with loaded charger carrying 4 live rounds in its chamber, and mobile phone set LG were recovered from him. He was duly arrested by the police. After completion of the necessary investigation he was challaned to face trial. Necessary legal proceedings against the other absconding co-accused have also been initiated and, according to the impugned judgment, perpetual warrants of arrest have been issued against them and they have been declared proclaimed offenders.

7. The appellant/accused was formally charged on 18.07.2006 for offences under section 17(4) of the said Ordinance as well as under section 411 PPC, to which he pleaded not guilty and claimed trial.

8. At the trial, the prosecution examined nine witnesses in all. PW.1 Dr. Sabahat Amir, KMC on 19.12.2005 conducted postmortem examination on the dead body of Razi Khan deceased which had been brought by Asmatullah and identified by Fazale Wahid and Amir Hamza. The said PW, inter-alia made the following observations:

“External Appearance.

A well built young man, 20 to 23 years of age, wearing sky blue shalwar qamees and white banyan, rigor mortus and lividity fully developed.

Injuries.

1. Fire arm entry wound left side front of abdomen 1 x .8 cm 12 cm from midline, 15 cm below costal margin.
2. Fire arm exit wound right side back of abdomen 1 x 0.6 cm, 11 cm from midline, 03 cm below costal margin.

Skull, scalp and vertebra were not injured. Thorax; not injured.

Abdomen: small intestines and large intestines were injured, right kidney injured.”

OPINION.

In his opinion the decd: died due to injury to right kidney, small and large intestines because of fire arm.

According to PW.1, the time between injury and death was immediate and between death and P.M. examination was 8 to 15 hours. P.W.2 is Asmatullah, constable. He escorted the dead body of Razi Khan deceased to the mortuary for PM examination. P.W.3 is Sir Biland Khan, Head Constable who is marginal witness to recovery memo (Ex.PW.3/1) vide which the I.O. recovered and took into possession, from the accused, one mobile set LG (Ex.P-1) and one 30 bore pistol (Ex.P-2). He stated that the pistol was without number. PW.4 is Siraj, ASI who deposed that on 18.12.2005 the complainant had brought the dead body of his son Razi Khan in the ambulance and lodged the report wherein he charged the appellant/accused Safiullah and his other co-accused namely Mansoor, Pervaiz and Nazifullah for commission of offence. He added that at that time many people brought the appellant/accused Safiullah to the police station who had been allegedly overpowered on the spot. He conducted personal search of the appellant/accused and recovered from him one mobile phone set LG and one 30 bore pistol alongwith one loaded charger and four live rounds. In the presence of marginal witnesses, he took the same into possession vide recovery memo (Ex.PW.4/1). He also prepared inquest report as well as the injury sheet and thereafter sent the dead body under the escort of Asmatullah constable to KMC for post mortem examination. P.W.5 is Amir Hamza. He identified the dead body of the deceased Razi Khan son of Kiftan at the time of P.M Examination. P.W.6 Haji Musa Khan is an eye witness who made statement in the following words:-

“I am mobile seller at Khushal Bazar. On the day of occurrence I was present in my shop whereas vegetable seller Razi Khan son of Kiftan R/o Sardar Ahmed Jan colony came to my shop and stay there. We were busy in gossiping, meanwhile four persons duly armed with pistols and their name were known to me as Safiullah, Mansoor, Pervez, Nazifullah, came there. The accused Safiullah handed over the mobile set to them and during the course of snatching more mobile I shouted and with the help of other people apprehended the accused Safiullah whereas other accused run away from the spot. The Razi Khan chased the accused and during such period the accused started firing due to which Razi Khan received injuries. The injured was taken to the hospital by the people of the locality. During transit to hospital the deceased died in the way. I handed over the accused Safiullah to the local police and during searched the accused, the local police recovered one mobile set and one 30 bore pistol without number alongwith four live rounds. I am the eye witness of the occurrence and charged the accused for the commission of the offence.”

He was cross-examined at great length. P.W.7 is Kiftan, complainant. He reiterated his statement as mentioned hereinabove. P.W.8 is Waris Khan, Head Constable in whose presence the I.O. took into possession blood stained clothes of the deceased. P.W.9 is Noor Muhammad, SI/SHO. He was entrusted with the investigation of the present case. He made an application before the Magistrate for obtaining warrant of arrest against the absconding

accused namely Mansoor, Pervaiz and Nazifullah vide his application Ex.PW-9/5 and handed over the same to the DFC concerned for its execution. Like wise, he applied for and obtained the proclamation notices in triplicate against the above said accused and handed over the same to DFC concerned for execution. He recorded the statements of PWs, received the PM report in respect of the deceased and placed the same on file. After completion of the investigation he submitted complete challan against the appellant/accused.

9. The appellant/accused made statement under section 342 Cr. P.C. wherein he denied the allegation and pleaded his innocence. He denied his presence at the place of occurrence at relevant time and stated that he was already in police custody in the police station Hashtnagri, after having been arrested by Siraj ASI with TT Pistol. He explained that actually he had been arrested by Siraj, ASI with TT Pistol in the front of the mosque in Hashtnagri and then involved in the present case because, after the brutal murder of Razi Khan, father of deceased alongwith the president of Pull Cart Association and other shop keepers who had blocked the main G.T. road in protest of the murder and consequently, as a result of pressure on the police officers, he was involved in the instant case only to satisfy the high ups of the police and the bereaved family. He further stated that he was Hafiz-e-Quran and had completed his religious course from Dar-ul-Uloom and could not even think about such a heinous act. He also produced his certificate (Ex.PK). Regarding the recovery of mobile and pistol from his possession, he stated that the case of prosecution was full of mockery because there was nothing with the police official to involve him in the instant case, therefore, his own mobile set was taken into possession by Siraj ASI at the time of his arrest, alongwith TT Pistol and planted against him in the present case as the snatched mobile. While responding to question No.4 regarding the recovery, he again made statement in the following words:-

“I was neither arrested from the place of occurrence nor any incriminating article were recovered from my possession as I have stated above that the mobile set was my own as in this respect the statement of PW Musa Khan is crystal clear in which he has categorically stated that the mobile which was snatched from him was Nokia 3220. So far as 30 bore pistol is concerned it is totally fabricated.”

Responding to the question “Why the PWs have deposed against you?” he made statement in the following words:-

“So far as PW Musa Khan and complainant are concerned they were forced by the police officials to depose against me for the success of the prosecution case. All other PWs are police officials hence, interested in the success of the instant case.”

He declined to make statement on oath under section 340(2) Cr.P.C.

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

Learned counsel for the appellant submitted that:-

- the impugned order of the learned trial court is against the law, facts and material on record and, as such, not tenable in the eye of law.
- the prosecution has failed to prove its case and the improvement made by the prosecution in the evidence has been illegally relied by the trial court.
- the alleged recovery is planted and fabricated, has not been proved beyond doubt and the contradictions in the statements of the PWs in this respect have been over looked by the trial court.
- the order of the trial court is manifestly wrong and the evidence produced by the prosecution does not connect the appellant with the alleged offence.
- the appellant has been convicted on highly flimsy, doubtful and interested evidence of prosecution. Hence conviction is bad in the eye of law and needs to be set aside.

11. Learned counsel for the State supported the impugned judgment. However, he was unable to support the case of prosecution qua the recoveries of pistol and mobile phone.

12. We have given our anxious consideration to the point raised by learned counsel for the parties and have minutely gone through the evidence on record.

13. So far as the case of prosecution against the appellant/accused is concerned, it is based on the statements of PW.6 Haji Musa Khan and PW.7 Kiftan. PW.6 is eye witness of the occurrence and PW.7 is the complainant. The deposition of both these witnesses, however, suffer from major discrepancies. PW.7 Kiftan does not seem to be an eye witness of the occurrence. It appears that he repeated whatever he had heard at the spot from other people who were present over there. His testimony thus amounts to hearsay and, as such does not inspire confidence. His statement contains major contradictions on material points as compared to that of PW.6 who is admittedly an eye witness. The deposition of PW.6 Haji Musa Khan, who is star witness of the case, reveals ocular details of the whole occurrence which hinges on his testimony alone. He has given details of the events from beginning to the end. According to him, he was present in his shop where the deceased Razi Khan had come and while they were busy in gossiping, four persons armed with pistol came

over there. PW.6 named them as Safiullah, Mansoor, Pervez and Nazifullah. The appellant/accused Safiullah entered his shop and asked for a mobile phone set and its price and then handed that over to other accused who were standing outside and, thereafter, they ran away. Razi Khan chased them and in the meanwhile the other accused started firing due to which Razi Khan received injuries and, while the people of the locality were taking him to the hospital, he died during the transit on the way. PW.6 shouted and with the help of other people, he apprehended the appellant/accused Safiullah. He handed over the appellant/accused to the local police and during search, the local police recovered one mobile set LG and one 30 bore pistol without number, alongwith four live rounds. He was cross-examined at great length. The cross-examination of PW.6 Haji Musa Khan is reproduced below. The relevant portion has been underlined to highlight the actual role and position of the present appellant/accused during the entire occurrence:

“I am matriculate and running business for the last two years. At the relevant time beside Razi Khan two employees namely Imtiaz and Asif were present on the shop. It is correct that the place of occurrence is a populated area. The deceased Razi Khan was present half an hour before the occurrence. The accused were four in number. Only accused Safiullah entered in my shop. The accused Safiullah told me to give him some mobile alongwith their rates. The accused Safiullah took one mobile from me and handed over the same to other co-accused who were present outside the shop. At that time the accused had not aimed pistol at me nor forcibly taken the mobile set from me. The accused Safiullah remained in the shop whereas the other accused ran away from the spot. In the meanwhile we followed the accused. I had not noticed any pistol etc. with the accused standing outside the shop. The number of the mobile was NOKIA 3220 which was given to the accused Safiullah for the purpose of purchase. At the relevant time many types of mobile were present in my showcase. The mobile in question was second hand and the value of the said mobile was about Rs.5000/-. The accused Safiullah handed over mobile set to his co-accused and he ran away from the spot. I was not in knowledge that the accused when snatched the mobile set from me. I considered him as customer. The accused Safiullah was standing in my shop when I heard the fire shot I started cry and thereafter with the help of other shopkeepers I overpowered the accused Safiullah. It is incorrect to suggest that after fire shot I apprehended the accused and also conducted search of the accused. Similarly, I have not recovered any mobile or pistol from accused Safiullah. It is correct that the deceased received injuries from the fire shot fired by the absconding accused. It is correct that the I.O prepared the site plan on my pointation and nothing has been added by the I.O himself. Only one fire shot was hit by the accused. It is correct that I suspected that the accused Safiullah is the companion of the absconding accused, therefore, I arrested him. I did not escort with the deceased. After

arresting the accused Safiullah we handed over the accused to the local police of P.S. Hashtnagri. It is incorrect to suggest that the accused Safiullah was not member of the absconding accused. It is also incorrect to suggest that the accused Safiullah had nothing to do with the present occurrence”.

14. Critical analysis of the statement and cross examination of PW. 6 reveals that:-

- * Imtiaz and Asif were employees of PW.6 and they had also seen the occurrence but they have neither been produced by the prosecution nor even cited as witnesses.
- * Out of the four accused, only the appellant had entered his shop and he had asked for his mobile set and its price. This does not show any malafide on his part.
- * The appellant/accused after taking mobile set from PW.6 handed over the same to other co-accused who were present outside the shop.
- * The appellant had neither aimed pistol at him nor had forcibly taken the mobile set from him. Even after the other accused had run away, the appellant/accused remained present inside his shop.
- * The mobile taken from PW.6 was Nokia 3220 but the one recovered from possession of the appellant/accused was admittedly a mobile set ‘LG’. Thus the recovered mobile was not the one taken from PW.6.
- * The appellant/accused had taken the mobile for the purpose of purchase.
- * PW.6 considered him as customer and this shows that he had neither used any force nor had given any other indication that he was a dacoit.
- * PW.6 heard fire shot from the outside and, at that time, the appellant/accused was standing inside his shop.
- * The appellant/accused was overpowered with the help of other shopkeepers because PW.6 suspected that the appellant/accused was the companion of the absconding accused.
- * The deceased got fire arm injuries from one single fire shot fired by the absconding accused and not by the appellant/accused who, according to the evidence, had not at all fired even a single shot.

15. The depositions of PW.9 Noor Muhammad Khan, Sub-Inspector and PW.3 Sir Biland Khan, H.C. are contradictory to the one made by Musa Khan (PW.6) and it is not clear to confirm who made the alleged recoveries. It is also very pertinent to mention

that neither any blood stained earth nor any empty has been recovered from the place of occurrence. This aspect of the case also raises doubt about the actual place of occurrence. The Forensic Science Laboratory report about the recovered pistol is positive, however, in the absence of any crime empty and its matching with the same, it is inconsequential. There is also no positive evidence to prove that the pistol recovered from the appellant/accused was giving smell of fresh discharge at the time of its recovery. The statements of PW.3 and PW.4 are very clear in this respect. Moreover, there is contradiction regarding the number of live bullets allegedly recovered from the appellant and those shown in the FSL report. This contradiction adversely reflects on the integrity of the investigating officer.

16. It is a well settled and universally accepted law that the prosecution is bound to prove its case beyond any reasonable doubt. However, in the instant case, the aforesaid appraisal of the evidence on record shows that the prosecution has not been able to prove its case against the appellant/accused beyond any reasonable doubt. We may also mention that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubt. If there is any single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused shall be entitled to the benefit not as a matter of grace and concession but as a matter of right.

17. The upshot of the above discussion is that, in the absence of any satisfactory basis for upholding the conviction and sentence of the appellant, we extend the benefit of doubt to him, allow his appeal, set aside his conviction and sentences, and acquit him of the charges. He shall be released forthwith if not required in any other case.

18. As a natural sequel the Criminal Revision for enhancement of the sentence is dismissed.

19. These are the reasons for our short order of even date.

JUSTICE AGHA RAFIQ AHMED KHAN

Chief Justice

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the May 07, 2012

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.****MR. JUSTICE DR.FIDA MUHAMMAD KHAN,JUDGE.****CRIMINAL APPEAL NO.03/P OF 2010.** (Linked with)**J.CRIMINAL APPEAL NO.12/I OF 2010_(Linked with)****J.CRIMINAL APPEAL NO.29/I OF 2010.**

1. Javaid son of Sadiq, R/o Qadir Abad Gul Bahar,
Peshawar.
2. Taimour Abbas son of Muhammad Abbas,
R/o Pir Pai, Tehsil & District Nowshera.
3. Muhammad Ishaq son of Muhammad Abbas,
R/o Pir Pai, Tehsil & District Nowshera.

.... Appellants

Versus

1. The State.
2. Muhammad Bila S/o Sawab Khan, resident of Hungu

.... Respondents

Counsel for appellants.	....	Mr. Amin Khattak Lachi & Mr. Khalid Khan, Advocates.
Counsel for State	....	Mr. Alamgir Khan Durani, Deputy Advocate General, KPK
FIR No. date and Police Station	....	140 dated 14.04.2008, Azakhel, Distt Nowshera
Date of impugned Judgment	....	07.01.2010
Date of Institutions	...	04.03.2010, 29.01.2010 & 02.04.2010 respectively
Date of hearing	....	09.05.2012
Date of decision	...	09.05.2012

,,,-,-,-,-

JUDGMENT:

AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.- The Appellant/accused Taimoor Abbas son of Muhammad Abbas faced trial for an offence punishable under section 17(4) of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance) as well as section 13 of the Arms Ordinance, 1965 before the Additional Sessions Judge-III, Nowshera who vide judgment dated 07.01.2010 convicted him under section 17(4) of the said Ordinance and sentenced him to life imprisonment and a fine of Rs. 250,000/- to be paid as compensation to the legal heirs of deceased with the direction that till payment of the said compensation amount, he shall be kept behind the bar. The trial court further convicted him under section 13 of the Arms Ordinance, 1965 and sentenced him to one year R.I. and a fine of Rs. 500/- or in default of payment of fine to further one month S.I. The benefit of section 382-B, Cr.P.C. has, however, been extended to him. He has filed this Appeal against the said judgment.

2. The other two connected appeals have been preferred, separately, by Javed son of Sadiq and Muhammad Ishaq son of Muhammad Abbas against a separate judgment dated 07.01.2010 delivered under the Juvenile Justice System Ordinance by Additional Sessions Judge-III, Nowshera whereby he has convicted them under section 17(4) of the said Ordinance and sentenced them to life imprisonment, each, with the direction that their guardians shall be liable to pay Rs. 500,000/-, in equal shares, to the legal heirs of the deceased as compensation and till the payment of compensation both the appellants/accused shall be kept in jail. The benefit of section 382-B, Cr.P.C. has been extended to them.

3. Since both the judgments arise out of one occurrence and the same FIR, we are disposing them by this single Judgment.

4. Briefly stated, facts of the prosecution case as disclosed in FIR (Ex.PA) registered on 14.4.2008 at Police Station Azakhel, District Nowshera on the statement of injured complainant Sawab Khan, (who expired afterwards) are to the effect that Roshanzeb Khan, ASI who was on gasht, received information regarding the occurrence. Thereafter, he proceeded to the spot where Sawab Khan, in injured condition, reported to him that on the same day three persons had hired his taxi from Hangu for Nowshera and had fixed the amount of Rs.1600/- as fare. They accordingly started journey for Nowshera. When they reached at the place of occurrence, one of the passengers fired at him. He was hit by the bullet and got injured. He stated that he could identify the accused by face. He charged all the three unknown accused for commission of the offence.

5. He was shifted to the hospital for treatment under the supervision of Nasir Khan Constable. Murasila was drafted and sent to police station for registration of the case. Later on the injured complainant succumbed to the injuries 14.04.2008. Therefore, section 302/34 PPC was substituted instead of section 324/34 PPC. However, afterwards it was converted into section 17 (4) of the said Ordinance read with section 13. Arms Ordinance, 1965.

6. During the course of investigation, on 22.04.2008, Muhammad Bilal son of Sawab Khan (deceased) recorded his statement under section 164 Cr.P.C, wherein he charged the appellants/accused by name, for the murder of his father. After arrest of the appellants/accused and completion of the investigation, they were challaned to the court to face trial. They were formally charged on 10.11.2008. However, they did not plead guilty and claimed trial.

7. At the trial, the prosecution examined fifteen PWs. A glimpse of the evidence of some important PWs is given in the subsequent paras:-

* PW.1 is Muhammad Bilal. He made deposition in the following words:-

“Deceased Sawab Khan was my father. My father was a taxi driver who was running a taxi No.1631 LOA. On 13.04.2008 my father was hired by some one from Hangu to Nowshera. On the following day in the morning we were informed that my father Sawab Khan was done to death by unknown persons. After that we were in search of the actual accused. Later on we have satisfied our self that my father was murdered by accused facing trial. During our inquiry, an investigation conducted by the police to this fact also came into our knowledge that one of the accused namely accused Javed had got injured at the time of occurrence with the fire shot of his co-accused and he was taken in a wagon of one Bader Munir for treatment. My statement was also recorded under section 164 Cr.P.C. Today I charged the accused for the commission of offence.”

* PW2 Bader Munir deposed as mentioned hereinunder:-

“Accused Taimoor and Ishaq are my co-villagers. On 13.04.2008 at 12: 00 PM I was sleeping in my house. In the meanwhile the accused Ishaq and Taimoor Abbas knocked at my door upon which I alongwith my brother Akhtar Hussain came out from our house. The accused disclosed that another person who had accompanied them was in injured condition about whom they disclosed that their companion has received fire arm injuries and he had to be shifted to the hospital. Then I started my wagon No.9611-Peshawar and had taken the injured and the accused Taimoor Abbas and Ishaq to Pabbi Hospital and they de-boarded from my vehicle at Ziarat stop. When I came back to my house I heard that the accused had committed murder of a taxi driver at night time. My statement under section 161 Cr.P.C. was also recorded by the police as well as before the court (under section 164). I have seen both my statements which bear my thumb impression.”

* PW.3 Akhtar Hussain made statement in the following words:-

“On 13.04.2008 at 12.00 midnight accused Muhammad Ishaq and Taimoor Abbas who happened to be my co-villager had knocked at our door upon which my mother had opened the door. Taimoor Abbas and Muhammad Ishaq had asked for wagon in which they wanted to shift their companion to the hospital. I alongwith my brother Bader Munir had accompanied the accused facing trial and their companion who was in injured condition, to the hospital. We had de-boarded the accused Taimoor Abbas, Muhammad Ishaq and their companion near Ziarat stop Pabbi. When we returned to our village the people of the village had informed us that the taxi driver has been murdered in Pir Pai Khuwar with motor car by some one. My statement was recorded under section 161 Cr. P.C. and 164 Cr.P.C. The people disclosed that the murder of taxi driver was committed by the accused facing trial. We were also informed that three natural deaths of our villagers had taken place. The accused Taimoor Abbas and Muhammad Ishaq told on our way to the hospital that accused Javed was hit by their bullet shot.”

* PW.4 Rehman Shah stated as under:-

“That on having a medical store in Hangu bazaar. On 13.04.2008 I was present in my shop at about 06:00 PM. Sawab Khan came into my medical store in his vehicle No.1634-LQA who run the same as taxi. He informed me that the people who were sitting in motorcar, one on front seat and two on rear seat, were going to be taken to district Nowshera who had hired his taxi. Sawab Khan had purchased some tablets for headache. Later on I came to know about the names of the accused facing trial as Taimoor Abbas, Muhammad Abbas and Javed. My statement was also recorded under section 161 Cr.P.C.”

* PW.5 Israfeel deposed that deceased Sawab Khan was his father in law as well as his cousin. He identified dead body of the deceased in DHQ hospital Nowshera.

* PW.6 is Amir Zaman Khan, ASI who deposed in the following words:-

“After registration of the case, I visited the spot and prepared the site plan Ex.PB at the instance of Roshan Zeb ASI. I had taken into possession from the place of injured then deceased blood stained stone (Bajri) and sealed into parcel No.01. And two empties of 30 bore pistol and sealed into parcel No.2 vide recovery memo Ex.PW6/2A. Similarly I had taken into possession

blood stained clothes of deceased consisted upon Qamiz, shalwar of malashia colour and one jacket of Naswari (Kharr) colour and sealed into parcel No.03 vide recovery memo Ex.PW6/2 which was brought by constable Safi Ullah No.1276 from the hospital. I produced PWs Bader Munir and Akhtar Hussain before the court for recording their statements u/s 164 Cr.P.C vide my application Ex.PW6/3 and their statements were recorded by the court. Similarly I also produced PW Muhammad Bilal for recording his statement before the court u/s 164 Cr.P.C via my application Ex.PW6/4 and the same was recorded by the court. I also submitted application Ex.PW6/5 for production of accused through Zamima "B". I also issued card of arrest Ex.PW6/6 of accused Muhammad Ishaq. I prepared the pointation memo Ex.PW6/7 vide which the accused Muhammad Ishaq lead the police party to the place of occurrence. I also took into possession one 30 bore pistol and the same was sealed into parcel vide recovery memo Ex.PW6/8. I also prepared the sketch of the house of the accused which is Ex.PW6/9, pistol 30 bore is Ex.P.1, blood stained clothes of the deceased consist upon Qamiz P.2, Shalwar of Malashia colour P.3, white Baniyan P.4 and brown (Kharr) colour jacket P.5, blood stained pebbles (Bajri) P.6 and 02 empties of 30 bore P.7. I also make insertions in the site plan Ex.PB on the pointation of the accused Muhammad Ishaq. During the court of investigation I also drafted application Ex.PW6/10 for the permission identification parade and the same was allowed. I also prepared injury sheet Ex.PW6/11 of accused Javed. I also drafted application for FSL which are Ex.PW6/12 and Ex.PW6/13 reports of which are Ex.PK and Ex.PK/1. I also apply for warrants u/s 87 Cr.P.C and proclamation notices u/s 204 Cr.P.C vide my application Ex.PW6/14 and Ex.PW6/15. I also drafted application Ex.PW6/16 to Halqa Patwari regarding any property of accused Taimoor Abbas. After arrest of the accused Taimoor Abbas I prepared his supplementary challan and accused lead the police party for pointation and in this respect pointation memo Ex.PW6/17 was prepared and I produced the accused before the court for recording his confessional statement vide my application Ex.PW6/18. I also recorded the statements of the PWs under section 161 Cr.P.C. Today I have seen all the above mentioned documents which correctly bear my signatures. I handed over the case file to SHO concern for onward submissions"

* PW.7 is Naik Muhammad constable. He is marginal witness to the recovery memos Ex.PW6/2 and Ex.PW6/2A, vide which the Investigation Officer took into possession blood stained clothes of the deceased and blood stained pebbles alongwith two empties of 30 bore pistol. He verified the above mentioned recovery memos and his signatures on the same. He also verified the memo Ex.PW6/8 regarding the recovery of 30 bore pistol as well as the pointation memo Ex.PW6/7 to be correct and bears his signatures.

* PW.8 is Jehanzeb Khan SHO. He deposed that he had partly investigated the present case. According to his investigation, he produced Muhammad Ishaq accused before the court for obtaining police custody vide application Ex.PW8/1. He has also arrested the accused Javed alias Matabo, who made pointation vide memo Ex.PW8/3 in the presence of marginal witnesses. He has also produced the accused before the court for recording his confessional statement, but the accused refused and was sent to judicial lock up. He recorded the statements of the accused and the PWs under section 161 Cr.P.C.

* PW.9 Hidayat MHC stated that after receipt of murasila he chalked out the FIR Ex.PA. He verified the contents of the FIR to be in his hand writing.

* PW.10 is Doctor Musarrat Hussain. He deposed that he conducted post-mortem examination of the deceased and made deposition in the following words:-

“During the days of occurrence I was posted at DHQ Hospital, Nowshera as MO. I have conducted the autopsy on the dead body of the deceased Sawab Khan s/o Nawab Khan aged about 35/36 years r/o Hangoo and observed the following:

Body brought by: Police (Nasir Khan constable)

Body identified by: Ismail and Israfeel sons of Ashraf r/o Nowshera.

Whence brought, Village, PS & Distt: Pir Pai, Aza Khel, Nowshera.

DATE & HOUR OF

Death: 14.04.2008 at 12.30.a.m.

Examination of Body: at 01.00.p.m. on 14.04.2008

Symptoms observed before death: Gaspine

Information furnished by police: F.A.I.

EXTERNAL APPEARANCE

Mark of ligature on neck and dissection etc: Nil

Condition of subject-stout emaciated,
decomposed, etc. clothing:

Soft body, yellow colour
Qameez & Shalwar white
color Baniyan, Khaki color,
Jacket All were blood stained.

Wounds, bruises, position, size, nature

- i. Fire arm entry wound size 1x1 cm on frontal region of scalp.
- ii. Fire arm exit wound size 3x2 cm on the occipital region of scalp.
- iii. Fire arm entry wound size 1x1 cm on the front of right side of chest lateral to the right nipple.
- iv. Fire arm exit wound size 3x4 cm on the epigastrium.
- v. 02 fire arm entry wounds size 1x1 cm on the front of right forearm.
- vi. 02 fire arm exit wounds size 2x3 cm and 2x2 cm respectively on the back of the right forearm.
- vii. Fire arm entry wound size about 1x1 cm on the front of left forearm.
- viii. Fire arm exit wound 2x3 cm on the back of left forearm.

CRANIUM AND SPINAL CORD.

Scalp, Skull and Vertebrae	Skull fractured and scalp injured
Membranes-Brain	injured.

THORAX

1. Walls, ribs and cartilages	Injured
2. Plurae	Injured
3. Larynx and trachea	NAD
4. Right lung	Injured
5. Left lung	NAD
6. Pericardium and heart	NAD
7. Blood vessels	Injured

ABDOMEN

1. Walls	Injured
2. Peritoneum	Injured
3. Mouth, pharynx and Oesophagus	NAD
4. Diaphragm	Injured
5. Stomach and its contents	Injured and containing digested food.
6. Pancreas	Healthy
7. Small intestines and their	Healthy Contents.
8. Large intestines and their	Healthy Contents.
9. Liver	Healthy
10. Spleen	Healthy
11. Kidneys	Healthy
12. Bladder	Healthy

13. Organs of generation external Healthy.
and internal

MUSCLES, BONES, JOINTS

REMARKS BY MEDICAL OFFICER

In my opinion death occurred due to injury to brain and right lung caused by fire arm injury. The PM report consist upon 06 sheets alongwith pictorial is Ex.PM. I also endorsed the injury sheet Ex.PW-10/1 and in-quest report Ex.PW-10/2. Today I have seen all the above mentioned documents which are correct and correctly bears my signatures.

Probable time between injury and death within 01 & half hour about. Probable time between death and PM within half and hour.”

* PW.11 is Taimoor Khan constable. He was entrusted with the process issued against the appellant/accused Taimoor Abbas under section 87 Cr.P.C as well as under section 204 Cr.P.C. He processed the same as required.

* PW.12 is Nasir Khan constable. He stated that he is marginal witness to the recovery memo Ex.PW12/1, vide which the Investigating Officer recovered and took into possession motorcar bearing registration No.1631 LOA from the spot. He verified the recovery memo to be correct. He further deposed that the Investigating Officer handed over to him the injury sheet which he took to the civil hospital Nowshera alongwith injured and handed over the same to the doctor.

* PW.13 is Asghar Ali LHC. He is marginal witness to the pointation memo Ex.PW6/7, conducted by the appellant/accused Muhammad Ishaq and recovery memo Ex.PW6/8 through which the accused had handed over the 30 bore pistol to the Investigating Officer as weapon of offence. He is also marginal witness to the pointation memo Ex.PW1/3 of accused Javed. He verified the above mentioned memos to be correct.

* PW.14 is Dr. Ijaz Ahmad SMO. He stated as under:

“During the days of occurrence I was posted in DHQ Hospital Nowshera. On 25.04.2008 at 14.05 p.m. I examined Javed Khan and found the following:

Being an old time lapse case it should be reformed to a standing Medical Board for opinion to LRH Peshawar. These was my observations which are Ex.PW.14/1.then the accused Javed Khan referred to DNA examination through letter No.438 dated 29.04.2008, the letter is Ex.PW14/2. Then I received expert opinion from Forensic Science Laboratory Khyber Medical College Peshawar which I noted on 09.05.2008. The same is Ex.PW14/3”

* PW.15 is Roshan Zeb Khan Sub-Inspector. While on gasht on 13.4.2008 at 23.30 hours, he received information regarding the occurrence. He rushed to the spot where injured Sawab Khan son of Nawab Khan resident of Hangu reported the matter to him and he reduced that in the shape of murasila (Ex.PA/1). He read over the same to the injured complainant who, after admitting the same to be correct, thumb marked the same. He verified the murasila to be correct and signed by him. He also prepared the injury sheet Ex.PW10/2 of the deceased then injured. He further informed the police station that the deceased then injured had died due to his injuries and in this respect a Naqal Mad No.38 dated 14.04.2008 PS Aza Khel Ex.PW 15/1 was prepared by the Muharrir. He also prepared the inquest report of the deceased which is ex.PW15/2 and injury sheet Ex.PW10/1. He verified all the above mentioned documents to be prepared by him and bear his signatures.

8. After close of the prosecution evidence, the appellants/accused made statements under section 342 Cr.P.C, wherein they denied the allegations of the prosecution and pleaded their innocence. However, they neither opted to record their statements on oath nor produced any evidence in their defence.

9. We have heard the learned counsel for the appellants as well as learned counsel for the State and have perused the record with their assistance.

10. Learned counsel for the appellant Javaid submitted that:-

- this was an unseen occurrence wherein the appellant has been falsely implicated. The FIR was registered against unknown persons and the appellant was not nominated as an accused.
- name of the appellant/accused appeared only after ten days in the statement of Bilal son of the deceased Sawab Khan. He made statement under section 164 Cr.P.C on his "satisfaction" about the involvement of the accused but he has not disclosed the source of his satisfaction.
- PW.2 Bader Munir and PW.3 Akhtar Hussain are the witnesses who took one of the insured appellant/accused to the hospital and only on the basis of conjectures they concluded that they were the accused who had committed the offence.
- No proper identification parade was conducted through PW.4 Rahman Shah.
- The charge under section 17 (4) Harabah requires that the accused should be adult. However, the appellant was 15 years old at that time.

11. The learned counsel who represented the other two co-accused namely Taimoor Abbas and Muhammad Ishaq submitted that:-

- The case of prosecution is based on the last seen evidence provided by

PW.4 Rahman Shah but besides the fact that he had not seen the accused immediately before the occurrence, he has not disclosed any features of the appellants.

- The recovery of weapon of offence is also doubtful as the ingredients of section 103 Cr.P.C have been violated and no witness from the public was associated.
- The motive is not known because the vehicle of the deceased was not snatched.
- The pointation of the place of occurrence is immaterial for the reason that it was already known to the Investigating Officer and was located on a thoroughfare.
- Whether co-appellant was really injured and taken on the night to the hospital, is not established on record.
- The empties were not sent to the Forensic Science Laboratory immediately. These were sent with the pistol together.
- No identification parade was conducted.

Learned counsel for the State submitted that the case of prosecution is proved by the evidence of last seen provided by PW.4, the recovery of weapon of offence and the statement of Bilal as well as the statements made by PW.2 and PW.3 under section 164 Cr.P.C.

12. We have given our anxious considerations to the points raised by the learned counsel for the parties and have minutely gone through the evidence on record.

It transpires that the deceased Sawab Khan was a driver who was running taxi No.1631-LOA. On 13.4.2008 his taxi was hired by some unknown persons at Hangu for Nowshera. According to the FIR lodged on the statement made by the deceased before his death, when they reached at the place of occurrence one of the three persons fired at him and resultantly he got seriously injured. Admittedly the three persons were unknown to him and therefore no one was nominated by him in the Murasila, which was recorded at 11.30 p.m on 13.4.2008. It was incorporated into FIR thereafter. The said complainant thereafter succumbed to the injuries next day and could not survive to identify anyone of the accused. Subsequently, on 22.04.2008, PW.1 Muhammad Bilal son of the deceased Sawab Khan made statement, under section 164 Cr.P.C, wherein, inter alia, he stated that he was searching the accused on his own and after having been “convinced”, nominated the appellants/accused Taimoor Abbas, Muhammad Ishaq and Javed as the accused who had committed the murder of his father. A day earlier, PW.2 Bader Munir and PW.3 Akhtar Hussain had also recorded their statements under section 164 Cr.P.C. wherein, inter alia, they stated that Taimoor Abbas, Muhammad Ishaq and one other person had hired their wagon for hospital and had disclosed them on the way that their companion had got

injured and they were to take him for treatment. The said three persons debarked from that wagon near the hospital and when both these PWs returned, they came to know that murder of a person had taken place at Pir Pai Mor. Another piece of evidence was brought on record by PW.4 Rahman Shah who was having a Medical Store in Hangu. He deposed that on 13.4.2008 the deceased Sawab Khan had come to his shop at 6.00 p.m. in his vehicle No.1631-LOA and had informed him that the three persons sitting in the motor car had hired his taxi and he was taking them to District Nowshera. The deceased had purchased some tablets for headache. Later on this PW came to know about the names of the accused facing trial as Taimoor Abbas, Muhammad Ishaq and Javed. He had recorded his statement under section 161 Cr.P.C. The Investigating Officer PW.6 Amir Zaman Khan ASI whose statement has been reproduced hereinabove, arrested the appellant accused Muhammad Ishaq and on his pointation he prepared memo (Ex.PW.6/7). He also took into possession one 30 bore pistol. He also arrested the appellant/accused Javed and prepared his injury sheet (Ex.PW6/11). After necessary proceedings under section 87 and 204 Cr. P.C., he, subsequently, arrested the appellant/accused Taimoor Abbas also and prepared his supplementary challan.

13. As is evident from the above, the occurrence was unwitnessed and the deceased himself, prior to his death, lodged an FIR against some unknown persons. Therefore, it is a case of circumstantial evidence only and the whole case of prosecution hinges on the testimony of PW.1 Muhammad Bilal, PW.2 Bader Munir, PW.3 Akhtar Hussain and PW.4 Rehman Shah. However, for the reasons summed up in the subsequent paras, their evidence does not provide complete links of the chain and each testimony of these PWs stops at a certain point and does not advance the case to the neck of the appellants/accused, as is required in all cases based on circumstantial evidence. Their evidence seems to be totally based on conjectures and surmises. The names of these appellants/accused were disclosed by PW.2 and PW.3 on 21.4.2008 but their statements only reveal that they owned a wagon which was hired by the three appellants/accused who had asked him to take one of their injured companion to the hospital on the night of occurrence, and when, thereafter in the morning, they came to know that murder of a taxi driver has taken place, they on their own inferred that the appellants must be the persons who were involved in that murder. They have given no reason why they came to that conclusion when the place of occurrence where the murder had taken place was more than a mile away from their house. None of them had referred to any evidence that could provide basis or any link for their opinion. Moreover, as deposed by PW.14 Dr. Ijaz Ahmed SMO had examined the injured appellant Javaid Khan on 25.4.2008 and not on 13.4.2008, i.e. the day of occurrence. The other Doctor who allegedly examined the appellant/accused Javed on the night intervening between 13 and 14 April, 2008 has not been produced. Even otherwise having some injury on his person and going to the hospital on the said night is not a proof in itself that the injured person must have committed murder of some person unless there is evidence that he got injured in cross firing. Admittedly there is nothing on record to show that Sawab Khan deceased had any weapon which was used during struggle between him and the unknown accused.

The deceased himself has mentioned nothing about any such scuffle, even in the Murasila/ FIR. So far as the statements of PW.1 Muhammad Bilal is concerned, it was recorded on 22.04.2008 thereafter and is obviously in line with the statements of PW.2 and PW.3. He himself must be “convinced” but he has not disclosed any source of evidence which had made him to believe that the appellants/accused had committed the murder of his father. He has also admitted that he was not present with his father at the time he was driving the taxi neither was present on the taxi stand at Hangu from where it was hired by some unknown persons. At that time, he was residing at Peshawar and as admitted by him he is not eye witness of the occurrence. In his cross examination he has also admitted that his father had not disclosed the names of the accused facing trial as they were strangers to him. According to him, the actual fact regarding the hiring of taxi of his father was not even in knowledge of his cousin PW.4 Rehman Shah. As stated above, PW.4 was having a medical store wherefrom the deceased purchased some tablets for headache. He only informed him that three persons sitting in the car had hired his taxi for Nowshera. He had named none of them as they were strangers to him. In his examination-in-chief he stated that later on he came to know about the names of the accused. However, he has not disclosed the source who told him the names. It is also not stated by him that the three accused or even any one of them had deboarded from the car at that time or that he himself had gone near the taxi to see off the deceased. Therefore, he had no occasion to see the accused or give their features. According to him, the names of the accused were disclosed to him by son of the deceased and as stated above, PW.1 Bilal son of the deceased was not eye witness of the occurrence. The accused belonged to a very far-flung area and none of PW.1 or PW.4 knew their names. PW.4 had admitted that he had not identified the accused during investigation. Admittedly no proper identification parade was conducted by the prosecution despite the application moved for this purpose. Such is the position of recording of confessional statement when the appellants refused to make any confession. Regarding the contention about recovery of pistol we agree with the learned counsel that, report submitted by the Forensic Science Laboratory report is doubtful. As mentioned above, the two empties had been recovered from the place of occurrence on 14.4.2008 and the pistol was recovered from the appellant/accused Muhammad Ishaq on 24.4.2008. However, the empties as well as the pistol were sent together to the FSL where these were received on 30.04.2008. The experienced Investigation Officer was supposed to send the empties separately as soon as they were recovered before the recovery of the pistol which was allegedly used for firing these shots. His failure to do so has resulted in creating doubt and this factum is sufficient to shatter the sanctity of FSL report. One also wonders why under what circumstances and what for the deceased was put to death when his vehicle was not snatched and was recovered from the spot. There is also no other reason why a person belonging to Hangu District was brought to District Nowshera and done to death just for no rhyme or reason.

14. Keeping in view the above appraisal of evidence, we have come to the irresistible conclusion that the case of prosecution is based on conjectures, presumptions and surmises and it is well-settled that conjecturers and surmises how strong these may be, cannot take

the place of legal evidence and particularly in cases which carry capital punishment.

15. Consequently, for the reasons stated above, all the three appeals are allowed, conviction and sentences of the appellants namely Javaid, Taimour Abbas and Muhammad Ishaq are set aside and by extending them the benefit of doubt, they are acquitted of the charges. The said appellants are in jail, they shall be released forthwith if not required in any other case.

16. These are the reasons for our Short Order of even date.

JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the 9th May, 2012.

IN THE FEDERAL SHARIAT COURT**(Appellate Jurisdiction)****PRESENT:****MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE.****CRIMINAL APPEAL NO.24/I OF 2012.**

Habibullah alias Omai S/o Aziz Ullah, alias Ramzan
Resident of Killi Habib Jan Chaman.

.... Appellant.

Versus

The State.

.... Respondent.

Counsel for appellant.

.... Mir Aurangzeb, Advocate.

Counsel for State

.... Mr. Tahir Iqbal Khattak
Addl: Prosecutor General,
Baluchistan.

FIR No. date and Police Station. P.S Levies Chaman.

.... No.166, dated
11.10.2011,

Date of impugned Judgment.

.... 11.05.2012.

Date of Institution

.... 07.06.2012.

Date of hearing

.... 23.10.2012.

Date of decision

.... 25.10.2012.

JUDGMENT

JUSTICE AGHA RAFIQ AHMED KHAN, C.J. — Appellant Habibullah alias Omai son of Azizullah alias Ramzan has impugned the judgment dated 11.05.2012 delivered by the learned Additional Sessions Judge, Kila Abdullah at Chaman, whereby he has convicted the appellant/ accused under section 392 PPC and sentenced him to undergo four years rigorous imprisonment with payment of Rs.20,000/- as fine, or in default thereof to undergo three months simple imprisonment. He was however extended the benefit of section 382-B, Cr.P.C.

2. Brief facts of the prosecution case as disclosed from the contents of FIR Ex.PA/1 registered at police station Levies Chaman, District Killa Abdullah are that on 11.10.2011 Muhammad Haq Dafidar, Levies alongwith other Levies Officials was on patrolling duty with Muhammad Siddique Khasadar. In the meantime Nazir Ahmed son of Muhammad Khan of Mohallah Haji Ahmed, Qila Chaman came and informed him that two dacoits had snatched his motor Cycle-70, Model 2009 from him on gun point. The complainant immediately started investigation and on the pointation of Nazir Ahmed fired at the dacoits. The accused attempted to run away after leaving the motor bike but the Levies officials apprehended one dacoit Habibullah, the present appellant, alongwith the robbed motor cycle. He reported the matter to the high officers who reached at the spot alongwith the Levies personnel. They tried to apprehend the other dacoits. During search when they reached near the graveyard of Killi Haji Habib, the accused pointed out his accomplice Akhtar Muhammad who on seeing them, started firing with his T.T pistol. The Levies officials also retaliated and arrested the accused alongwith his T.T pistol. The accused was injured. On the pointation of the arrested dacoits, three other dacoits of their gang were arrested. After completion of the investigation, the appellant/accused alongwith his co-accused was challaned under section 173 Cr.P.C to face trial. The appellant/accused and his co-accused were charged on 9.2.2012, to which they pleaded not guilty and claimed to be tried.

3. The prosecution in order to prove its case, examined as many as six witnesses in all. The resume of their evidence is as under:-

- i. PW.1 is Muhammad Haq, Levies Dafidar whose role has been discussed in detail, as mentioned above. However, he verified the contents of the report Ex.PA/1-A and his signature on the same.
- ii. PW.2 is Naseebullah, Levy Risaldar Major. He stated that on 11.10.2011 he was present in his office at Levies Headquarter. He was informed by Qadeer Hawaldar that he was chasing the thieves and one thief has entered into a House at Killi Umer Khan and that he was not ready to surrender before Levies and threatened of dire consequences. According to this PW, he himself reached the spot alongwith Levies officials and overpowered the

accused Akhtar Muhammad and snatched the pistol from him. The accused had received a bullet injury on his foot, therefore, he was sent to hospital for treatment. The recovered pistol was handed over to Tehsildar, who took the same into possession vide mashirnama Ex.P/2-A. This PW verified the said mashirnama to be correct and bear his signature as its marginal witness.

- iii. PW.3 is complainant Nazir Ahmed. He narrated the same version as contained in the FIR mentioned above.
- iv. PW.4 Muhammad Siddique deposed that on 11.10.2011 at about 9.00 a.m. Nazir Ahmed came out of his house on his motor bike. He passed through Levies station. When he reached Haji Ahmed's house, two men riding on a motor bike, stopped him. In the meantime, Nazir Ahmed called them and stated that thieves had snatched his motor bike from him. Thereafter they went towards them. They saw that the accused were riding two different bikes and one of them had a pistol. This PW called them to stop and surrender to them but they did not do so. They tried to escape in a street but the Levies party fired at them and also chased them. According to this PWs, in the meantime, Muhammad Haq Dafidar also came and joined them. Due to firing made by the Levies Official, one of the motor bike fell down, however, the other accused who had a pistol, succeeded in decamping from the scene. He arrested the appellant/accused and took him to the Levy Station. Thereafter he informed his high ups who came to the spot.
- v. PW.5 Abdul Qadeer deposed that he was present in the Katchery when Siddique Khasadar informed him on telephone that he had apprehended a dacoit while three had run away. On this information he reached the spot and saw that the appellant/ accused had been arrested by Levies. The accused disclosed about Baghan accused whose shop was situated in old graveyard. He was also arrested and accordingly Assistant Commissioner Chaman was informed. Thereafter they went to Killi Obsawal. Accused Habibullah pointed out the other accused persons who were standing in the graveyard alongwith motor bike and on seeing them they tried to run away and threw the motor bike. One of them entered a house. Accordingly he was arrested, who disclosed his name as Akhtar Muhammad.
- vi. PW.6 is Amanat Husain, Naib Tesildar, who registered the case FIR Ex.P/6-A and thereafter conducted investigation. He prepared the site plan Ex.P/6-B, recovery memo Ex.P/6, and recorded statements of the PWs under section 161 Cr.P.C. He also recorded statements of the witnesses under section 164 Cr.P.C. After completion of the investigation he submitted challan against the accused.

4. After close of the prosecution evidence, the appellant/accused and his co-accused were examined under section 342 Cr.P.C, wherein they denied the allegations and pleaded to be innocent. They however, did not produce any evidence in their defence and also did not record their statements as provided under section 340 (2) of the Criminal Procedure Code.

5. I have heard arguments of the learned counsel for the appellant/ accused as well as that of the learned Additional Prosecutor General for State and have perused the record with their assistance.

6. Learned counsel for the appellant has conceded that appellant had committed the offence but according to him since the complainant Nazir Ahmed has not stated that the motor cycle was snatched from him by force, therefore, the offence would fall under section 381 PPC and not under section 392 PPC. He requests that the appellant may be convicted under section 381 PPC and his sentence may be reduced to the period already undergone.

7. The learned Additional Prosecutor General for State has strongly opposed the suggestion of appellant's counsel and has argued that prosecution has fully proved the case. Both the accused persons had snatched the motor cycle from the complainant on pistol point and the present appellant was arrested from the spot.

8. I have minutely gone through the evidence on record. Complainant in his report has clearly stated that both the accused persons robbed motor cycle from him and also cash amount on pointation of pistol. In his statement before the court he also deposed that two culprits riding on a bike came near him and one of them searched his pocket and took out Rs.1220/- and told him to leave his motor bike and the other accused took away his bike. He informed the Levies about the incident who reached at the spot. The other witnesses have also supported the prosecution case and have stated that the present appellant was arrested by them from the spot. From the evidence on record it is quite clear that this is not a case of theft but robbery, which is punishable under section 392 PPC, therefore, the appellant was rightly convicted by the learned trial court.

9. In view of the above stated facts and circumstances, this appeal has no force, which is accordingly dismissed.

JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

Present.

JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

CRIMINAL APPEAL NO.98/L OF 2009.

Muhammad Imran son of Miraj Din,

R/o Chishtia Park Gali No.5,

Faisalabad.

..... Appellant.

Versus.

The State.

..... Respondent.

Counsel for the Appellant.

.... Ch. Muhammad Arshad Ramay,
Advocate.

Counsel for the State.

.... Mr. Zahid Younas, Deputy
Public Prosecutor, Punjab.

Case FIR No. date & Police Station.

FIR No.647, dated 16.09.2006
P.S. Batala Colony, District
Faisalabad.

Date of judgment of trial Court.

.... 27.04.2009

Date of receipt of Appeal

.... 23.11.2009.

Date of hearing

.... 11.06.2013.

Date of decision.

.... 11.06.2013.

JUDGMENT

JUSTICE AGHA RAFIQ AHMED KHAN, C.J.— Muhammad Imran, appellant through the instant appeal has challenged the judgment dated 27.4.2009 delivered by the learned Additional Sessions Judge, Faisalabad, whereby he has convicted the appellant under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the Ordinance) and sentenced to undergo five years rigorous imprisonment with payment of Rs.50,000/- as fine or in default thereof to further undergo three months simple imprisonment. He has further convicted the appellant under section 377 PPC and sentenced to undergo five years rigorous imprisonment with fine of Rs.50,000/-, or in default thereof to further undergo three months simple imprisonment. Both the sentences were ordered to run concurrently with benefit of section 382-B Cr.P.C, extended to the appellant.

2. The prosecution case in brief is that complainant Muhammad Akram (PW.6) submitted complaint Ex.PC before the SHO Police Station Batala Colony, wherein he alleged that on 15.9.2006 at about 9.00 p.m. his son Muhammad Ijaz victim (PW.7) aged about 12 years went to his work in the house of Abid accused where Abid and an unknown person committed sodomy with him and threatened him not to disclose the occurrence to any one. He returned to the complainant and narrated the occurrence in the presence of Muhammad Ashraf brother of the complainant. They went to the shop of the accused and tried to catch hold of him but after closing his shop, he fled away from the place of incident. Thereafter he submitted the complaint (Ex.PC), on the basis of which the present case, vide FIR (Ex.PC/1) was registered against him.

3. Police investigation ensued as a consequence of registration of crime report. Muhammad Hussain Sub-Inspector PW.9 undertook the investigation. He inspected the place of incident, prepared site plan (Ex.PE), recorded statements of the PWs under section 161 Cr.P.C and got the victim medically examined. He arrested accused Muhammad Imran on 21.9.2006, got him medically examined and sent him to judicial lock up. During investigation he found accused Abid Ali innocent and his investigation was verified by Incharge Investigation and DIG Investigation as well. After completion of the investigation, the SHO submitted report under section 173 Cr.P.C before the court on 25.9.2009 requiring the accused to face trial.

4. The learned trial Court framed charge against both the accused on 15.1.2007 under section 12 of the Ordinance and under section 377 PPC. The accused pleaded not guilty and claimed trial.

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

- (i) PW.1 Dr.Sirajuddin had medically examined Ejaz victim and observed as under:-

“Young boy was brought by the police for sodomy examination. The history of act of sodomy on 15.9.2006 at 9.00 p.m. boy was well oriented time and space. Boy was examined in knee elbow position. No staining on cloths. No history of washing of clothes. Anus sphincter was normal. No abrasion or laceration at anal canal. No pain on walking. Three swabs were taken, sealed and handed over to police for communication to Chemical Examiner Lahore for detection of semen”.

The doctor after perusing the report of Chemical Examiner opined that sodomy was committed with the victim.

- (ii). PW.2 Dr. Muhammad Anwar Solahri had medically examined Muhammad Imran, appellant/accused and found him sexually potent.
- (iii) PW.3 Nazir Ahmad is retired Sub-Inspector. He registered the case vide FIR (Ex.PC/1) on the receipt of complaint Ex.PC.
- (iv) PW.4 Muhammad Hanif Moharrer/Head Constable stated that on 16.9.2006 Muhammad Hussain, Sub-Inspector/ Investigation Officer handed over to him a sealed phial containing swabs alongwith sealed envelope which he kept in Malkhana for safe custody and he handed over the same to Muhammad Hussain SI/IO on 28.9.2006 for delivery to the office of Chemical Examiner, Lahore.
- (v) PW.5 Allah Ditta Head Constable had taken Muhammad Ijaz to DHQ Hospital Faisalabad for medical examination. After medical examination the doctor handed over to him one sealed phial and one sealed envelope, which he produced before the Investigation Officer who took the same into possession through recovery memo Ex.PD.
- (vi) Muhammad Akram complainant appeared as PW.6 and endorsed the contents of his complaint Ex.PC.
- (vii) PW.7 Ijaz victim stated that after completing his work he was returning to his home, when he was returning to his home after completing his work, when at about 9.00 p.m. he was intercepted by Muhammad Imran, appellant/accused in front of house of Abid who took him inside the house and after removing his pent committed sodomy with him. On his hue and cry two persons attracted to the place of incident and on seeing them, the accused fled away.
- (viii) PW.8 Liaqat Ali stated that at about 9.00/9.30 p.m. he alongwith Muhammad Saleem was passing through street No.11. They heard hue and cry from the Baitak of Abid. Meanwhile they saw one boy running away whose name

was disclosed as Imran accused after one day in the police station. Another boy whose pent was removed informed them that the boy, who had run away, had committed sodomy with him.

- (ix) PW.9 Muhammad Hussain, Sub-Inspector had undertaken investigation whose detail has already been mentioned in paragraph No.3 of this judgment.
- (x) PW.10 Shahid Anwar Sub-Inspector stated that on 16.9.2006 he was on patrolling duty at Goal Waris Pura where Muhammad Akram complainant met him and submitted complaint (Ex.PC) before him, which he sent to Police Station Batala Colony through Muhammad Munir Constable for registration of the case.

6. The prosecution closed its case on 29.1.2008. Thereafter on 16.9.2008 the learned trial Court recorded statement of the accused under section 342 Cr.P.C. The appellant/accused denied the allegations leveled against him. In reply to question “Why this case against you and why the PWs have deposed against you?” the appellant accused deposed as under:-

“This is an admitted fact that I am not nominated in this FIR. It is totally after thought story and even the PW.7 victim Ijaz stated in this honourable court that it was Friday on the day of occurrence, I have been falsely involved and implicated in this case with connivance of Abid accused, Ijaz victim and police I have made a goat escape in this case. No one has seen the occurrence, even the PW.6 Akram father of so-called aggrieved stated on oath in this court during cross-examination that what ever told by his son Ijaz he got recorded the statement as Ex.PC. Although that the opinion of police is not binding on this court but there is difference between opinion and conclusion. Furthermore the conclusion of DIG police that Imran accused is innocent in this case. This is also admitted fact that both the parties joined investigation before the DIG”.

7. The accused produced Rizwanul Haq Inspector as DW.1 who stated that on 21.12.2006 the investigation of this case was entrusted to him and he after examining both the parties and visiting the place of occurrence found Muhammad Imran accused innocent.

8. The learned trial court after observing the codal formalities of the trial recorded conviction of the appellant and awarded sentence under section 12 of the said Ordinance and under section 377 PPC, as indicated in the opening para of this judgment.

9. I have gone through the case file, perused the evidence of the prosecution witnesses and scanned the relevant portions of the impugned judgment.

10. In the FIR, which was lodged after about five and a half hour of the alleged incident, complainant Muhammad Akram stated that at about 9.00 p.m. his son Muhammad Ijaz had gone to accused Abid for work where Abid and one unknown person had committed sodomy with him. After few days, in his additional statement, he involved the present appellant also being the culprit who had committed sodomy upon his son. In the FIR, neither the name of the appellant is mentioned nor his features were given. According to victim Ijaz, he informed his father about the incident. In the FIR, accused Abid has been shown as the main culprit but he was exonerated afterwards and was acquitted from the case. Since the name of the present appellant did not appear in the FIR, therefore, it was legally necessary to have put him in identification parade before the victim and the two other witnesses namely Liaqat Ali and Muhammad Saleem who had seen him running in the street. But there is no explanation to this effect as to why identification parade was not held. Both the witnesses re related to the complainant and are chance witnesses as they are not resident of that area. No person from the vicinity has been made witness of the incident. According to doctor Siraj-ud-din, anus sphincter of the victim was normal and no abrasion or laceration in the anal canal was present and there was no pain in walking.

11. Appellant in his defence examined Rizwanul Haq, Inspector, who was posted in Regional Investigation Branch, Faisalabad at the relevant time and had investigated the case. He has examined both the parties and had visited the place of occurrence and during investigation he found Muhammad Imran, accused as innocent.

12. In view of the above discussed medical and ocular evidence and to the above legal position, I have come to this conclusion that the prosecution had not proved the charge against the appellant beyond any reasonable doubt; therefore, he was wrongly convicted and sentenced by the learned trial Court. Accordingly this appeal is allowed. Conviction and sentences awarded to appellant Muhammad Imran by the learned trial judge, are set-aside and he is acquitted of the charge by giving him the benefit of doubt. He is on bail, his bail bond stands discharged and sureties absolved.

13. These are the reasons for our short of even date.

JUSTICE AGHA RAFIQ AHMED KHAN

Chief Justice

Lahore the June 11, 2013.

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

Present.

JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

CRIMINAL APPEAL NO.72/L OF 2010.

Muhammad Ramzan So Muhammad Hussain
R/o Kot Muhammad Hussain Hujra Shah Moqeem,
Tehsil Depalpur District Okara.

.....

Appellant.

Versus.

The State.

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Respondent.

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Counsel for the	Mr. Sikandar Zulqarnain Saleem,
Appellant.	Advocate

Counsel for the	Mr. Zahid Younas,
State.	....	Deputy Public Prosecutor,
		Punjab.

Case FIR No. date	....	FIR No.328, dated 30.05.2005
& Police Station.	....	P.S. Hujra Shah Muqeem,
		District Okara.

Date of judgment	....	06.04.2010.
of trial Court.		

Date of receipt of	05.06.2010.
Appeal.		

Date of hearing	11.06.2013.
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Date of decision.	11.06.2013.
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JUDGMENT

JUSTICE AGHA RAFIQ AHMED KHAN, C.J.— This appeal has been moved by Muhammad Ramzan alias Pappu to impugn judgment dated 6.4.2010 delivered by the learned Additional Sessions Judge, Depalpur, District Okara, whereby the appellant was convicted under section 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as ‘the Ordinance’) and sentenced to four years rigorous imprisonment with fine of Rs.10,000/-, or in default thereof to further undergo one month simple imprisonment with benefit of section of 382-B, Cr.P.C.

2. Brief facts of the case arisen out of FIR dated 30.5.2005 registered at police station Hujra Shah Muqem, District Okara are that, on 27.5.2005 accused Ramzan alias Pappu by scaling over the wall entered the room and caught hold of Mst. Shahnaz Bibi and thereafter Ramzan alias Pappu after breaking string of Mst. Shahnaz Bibi’s shalwar committed rape with her. On her resistance and alarm witnesses attracted to the place of incident and on the arrival of the PWs, appellant/accused Muhammad Ramzan alias Pappu fled away leaving Mst. Shahnaz Bibi who narrated the occurrence to Muhammad Yasin who moved application (Ex.PA) for registration of the case and on the basis of which the present case was registered against the appellant/accused.

3. The case was investigated by Muhammad Ashraf Sub-Inspector. He inspected the place of incident; recorded statements of the witnesses under section 161 Cr.P.C; prepared rough site plan Ex.PD and got the victim Mst. Shahnaz Bibi medically examined. He arrested the appellant/accused on 2.6.2005; got conducted the potency test of the accused and after completion of the investigation, he prepared incomplete challan and submitted the same against Muhammad Ramzan alias Pappu, appellant/accused.

4. The learned trial Court framed charge against the appellant/accused Muhammad Ramzan on 10.10.2005 under section 10 of the Ordinance, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined eight witnesses. The gist of their evidence is as under:-

- (i) PW.1 Muhammad Yasin is complainant of the case. He endorsed the contents of his complaint Ex.PA.
- (ii) PW.2 Mst. Shahnaz Bibi, who is the victim, has supported the prosecution case.
- (iii) PW.3 Muhammad Zahid being eye witness of the occurrence deposed regarding his presence at the time of occurrence, commission of rape with Mst. Shahnaz Bibi by the appellant/ accused and his fleeing away from the place of incident.
- (iv) PW.4 Muhammad Anwar Constable received a sealed parcel from the Moharrar, which he deposited in the office of Chemical Examiner, Lahore.

- (v) PW.5 Muhammad Amin constable received an information on the basis of which he recorded the FIR (Ex.PA/1).
- (vi) PW.6 Lady Doctor Talat Farzana medically examined the victim Mst. Shahnaz Bibi and observed that her vulva and vagina were normal and healthy; hymen scar was old and healed; no fresh scar; no bleeding and no discharge was coming from the introitus which admitted two fingers and there was no sign of violence.
- (vii) PW.7 Dr. Sagheer Ahmad conducted potency test of appellant/accused Muhammad Ramzan alias Pappu and found him fit to perform sexual intercourse.
- (viii) PW.8 Muhammad Ashraf Sub Inspector carried out the investigation. His role has been discussed in para No.3 supra.

Ghulam Mehdi Sub-Inspector was summoned as CW.1 on the application of the appellant/accused. He deposed that on 20.7.2005 an application submitted by the appellant/accused was marked to him for verification of the investigation, upon which he called the parties. He also stated that Ghulam Sarwar alias Muhammad Sarwar an eye witness of the incident, who is also brother of the complainant, besides other appeared before him and submitted his affidavit Ex.CW-1/2 to the effect that no such occurrence has taken place. According to this CW, the appellant/accused was innocent.

6. The learned trial Court thereafter examined the appellant/accused under section 342 Cr.P.C on 21.10.2009. He inter-alia, pleaded his innocence. In reply to the question “Why this case against you and why the PWs deposed against you?” the appellant/accused stated as follows:-

“Muhammad Yaseen complainant who is the husband of Mst. Shahnaz Bibi alleged victim is inimical to me due to a dispute over canal water and theft of my goats. Mst. Shahnaz Bibi wife of complainant is not a woman of good moral character, due to that grudge the complainant by fabricating a false story, had lodged the instant case against me. The PWs are closely related to the complainant. They have deposed against me falsely. I am innocent”.

The appellant/accused did not make his statement on oath as provided under section 340 (2) Cr.P.C, nor did he produce any evidence in his defence.

7. I have heard learned counsel for the appellant and learned DPP for the State, and have gone through the material available before me.

8. The prosecution story from the face of it appears to be improbable as there is inordinate delay of three days in lodging the FIR. According to the complainant, the incident had taken place on 27.5.2005 at about 11/12 hours noon time but the FIR was lodged 30.5.2005. The explanation given by the complainant is not convincing. Rape was allegedly committed by the appellant with the wife of the complainant but he kept mum

for three long days. The natural course would have been that he should have immediately proceeded to the police station for lodging the FIR.

9. According to victim Mst. Shahnaz Bibi, she was sleeping in the room at about 11 or 12 noon when accused tress passed and committed Zina-bil-Jabr with her and at that time two witnesses namely Muhammad Zahid and Muhammad Tufail came inside the room and saw the appellant committing rape with the victim but interestingly the appellant ran away from the place of incident by scaling over the wall in presence of three adult persons. The prosecution story is unbelievable and the witnesses are related to the complainant. No person from the Mohallah has either witnessed the incident or heard about it as nobody has come forward to give evidence. According to the victim, she had fallen on the cot and during scuffle with the appellant her clothes were torn and she had received abrasions and that she had shown those abrasions to the lady doctor at the time of medical examination. The victim has further stated that her clothes were stained with semen which she produced to the police. Lady doctor Talat Farzana (PW.6) had negated the story of the victim by stating that she had no fresh scar on her body and no sign of violence was present. Her clothes were clean and were neither torn nor stained with semen. According to court witness Ghulam Mehdi Sub-Inspector, who had investigated the crime, at first instance had deposed that he had summoned the parties at the police station and besides others Ghulam Sarwar, an eye witness who is brother of the complainant, appeared and submitted his affidavit that neither any such occurrence had taken place nor he had witnessed the same. According to him, 7/8 other persons had also submitted their affidavits to the effect that no such occurrence had taken place, therefore, he found the present appellant innocent.

10. Keeping in view the above discussed evidence and reasons, I am of the considered opinion that the prosecution had miserably failed to prove the charge against the appellant and he was wrongly convicted and sentenced by the learned trial court, therefore, this appeal is allowed. Conviction and sentences awarded to appellant Muhammad Ramzan by the learned Additional Sessions Judge, Depalpur, District Okara, vide judgment dated 6.4.2010, are set-aside and he is acquitted of the charge by giving him the benefit of doubt. He is on bail, his bail bond stands discharged and the sureties absolved.

11. These are the reasons for our short order of even date.

JUSTICE AGHA RAFIQ AHMED KHAN

CHIEF JUSTICE.

Approved for reporting.

Lahore the June, 11, 2013.

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SHAHZADO SHEIKH

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

MR. JUSTICE SHEIKH AHMAD FAROOQ

CRIMINAL APPEAL NO. 55/I OF 2011 Linked with

Muhammad Ramzan son of Darya Khan, R/o Village Mohra

Bakhtan Tehsil and District Rawalpindi.

.... Appellant

Versus

1. The State

2. Sajida Bibi widow of Naseeruddin resident of Mohra Bakhtan Tehsil
and District Rawalpindi

.... Respondents

CRIMINAL REFERENCE NO.05/I OF 2011

The State

... Petitioner

Versus

Muhammad Ramzan son of Darya Khan, R/o Village Mohra
Bakhtan Tehsil and District Rawalpindi.

Counsel for appellant	....	Mr. Qausain Faisal Mufti and Mr. Muhammad Sharif Janjua, Advocates
Counsel for complainant/ respondent	....	Raja M. Sattarullah, Advocate
Counsel for State	....	Dr. Muhammad Anwar Gondal, Additional Prosecutor General
Complaint case	....	Dated 5.5.2010
Date of judgment of trial court	....	08.10.2011
Date of Institution	....	22.11.2011
Date of hearing	....	17.10.2012
Date of decision	...	17.10.2012

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- This appeal filed by Muhammad Ramzan is directed against the judgment dated 08.10.2011 passed by learned Additional Sessions Judge, Rawalpindi, whereby he has convicted the appellant under section 7 of Offence of Qazf (Enforcement of of Hadd) Ordinance, 1979 (hereinafter referred to as the said Ordinance) and sentenced to suffer eighty stripes as Hadd.

2. The learned Additional Sessions Judge, Rawalpindi has sent Criminal Reference No.5/I of 2011 for confirmation of the sentence.

3. Since both the matters arise out of one and the same judgment, we would like to dispose of both the matters by this single Judgment.

4. Brief facts of the case are that Mst. Sajida Bibi filed private complaint under sections 5 and 7 of the said Ordinance before the District and Sessions Judge, Rawalpindi wherein she alleged, inter-alia, that her marriage was solemnized with Muhammad Javed son of Darya Khan and out of this wedlock, a female child was born on 04.10.1979. However, Muhammad Javed her husband died in the year 1981 and after his death, the mutation of inheritance of deceased Muhammad Javed was sanctioned and a share of property was transferred in the name of Fozia on account of her being the legal heir of deceased Muhammad Javed. Thereafter, the accused Muhammad Ramzan alongwith other co-accused (since P.O.) filed a suit for declaration and injunction before the Court of learned Civil Judge, Rawalpindi. In the plaint of aforesaid suit, the accused have mentioned in Para No.2 that Fozia is not legitimate child of deceased Muhammad Javed. Thus, they have committed an offence falling within the ambit of allegation of Zina/Qazaf against the complainant.

5. After recording the preliminary evidence, the learned trial court formally charged the accused Muhammad Ramzan under sections 5 and 7 of the said Ordinance. He denied the charge and claimed trial.

6. The prosecution produced four witnesses at the trial to prove its case. A gist of their evidence is mentioned hereinunder:-

- * PW.1 is Mst. Sajida Bibi, complainant. She reiterated the same facts as she had got recorded in her private complaint.
- * PW.2 Abdul Rasheed, who is father of Mst. Sajida Bibi and PW.3/Muhammad

Younas corroborated the statement of complainant.

- * PW.4 Imran Mehmood, who is Secretary, Union Council, Ghazan Abad, produced birth certificate of Mst. Fozia Parveen as (Ex.PB) and birth register as (Ex.PB/1).

7. The learned trial court, thereafter, recorded statement of the appellant/accused Muhammad Ramzan under section 342 Cr.P.C wherein he denied the prosecution allegation and pleaded innocence. In answer to the question, “why this case against you and why the PWs have deposed against you?”, he stated as under:-

“There are numerous civil and criminal cases pending between me and the complainant in different courts. Therefore, the complainant has filed a false complaint against me. Younas PW had falsely deposed against me as there is also litigation against the father of Younas PW with me.”

He also opted to make statement on oath under section 340(2) Cr.P.C. However, he did not make statement on oath and, instead, produced Farzan Ahmed Khan as DW.1. The learned trial Court on conclusion of the trial found the appellant/accused Muhammad Ramzan guilty of commission of offence under section 7 of the said Ordinance and, therefore, convicted and sentenced him as mentioned hereinabove.

8. We have heard the learned counsel for the appellant, learned counsel for the complainant and learned Additional Prosecutor General for State.

9. Mr. Qausain Faisal Mufti learned counsel for the appellant contended that:-

- * the appellant made statement under section 342 Cr.P.C. and merely on the basis of this statement, conviction cannot be recorded. He placed reliance on 2011 P.Cr.L.J.778 and PLD 2011 page 796;
- * the allegation leveled by the appellant does not fall within the definition of Qazaf as there was no mala-fide on his part and his intention was only for the purpose of property;

10. Raja M. Sattarullah learned counsel for the respondent/complainant submitted that:

- * The appellant/accused could not produce four eye witnesses to prove his allegation as prescribed in section 6 of the said Ordinance;
- * It is a case of confession made, firstly, in the declaration suit and, secondly, under section 342 Cr.P.C. and also by DW as well who was produced by the appellant/accused.

11. We have given anxious consideration to the points raised by the learned counsel for the parties and have thoroughly gone through the evidence on record. It transpires from the record that, admittedly, the complainant Mst. Sajida Bibi was validly married to Muhammad Javed on 12.08.1976. She has duly produced Nikahnama (Ex.PA) as well. From this wedlock she gave birth to one daughter Mst. Fozia on 04.10.1979. Her husband Muhammad Javed died in 1981 and his inheritance comprising of agricultural land devolved on Fozia as his legal heir and her due share was admittedly transferred to her vide mutation. The complainant thereafter got married with Naseer-ud-Din who also died later on. The appellant Muhammad Ramzan promised to purchase the share of Mst. Fozia in lieu of Rs.100,000/- per Kanal. However, he did not pay her any amount and instead, on 31.01.2005, he got transferred her land in his name as "Hiba". The complainant and her daughter made several applications to the concerned authorities and kept on informing them accordingly. However, in the meanwhile, Muhammad Ramzan in connivance with Mst. Zarina and Mst. Akhtar Nisa filed suit as well as petition for stay order. The said suit and petition is still pending adjudication. In addition to that Muhammad Ramzan, using his influence, deprived Mst. Fozia from her share and all the other dues as well.

12. The stand taken by the appellant Muhammad Ramzan was based on a false allegation against the complainant wherein he alleged in the said plaint that Muhammad Javed had divorced the complainant and had neither visited her house during leave nor had performed conjugal rights with her and the complainant had given illegal birth to Mst. Fozia which made basis for her divorce.

13. So far as the allegation is concerned that is available, on record, in written form in a plaint submitted by the appellant Muhammad Ramzan for the cancellation of mutation already executed in favour of Mst. Fozia on the basis of her being the legal heir of Muhammad Javed deceased who had died during a military operation, in Abbottabad Hospital. During the trial Muhammad Ramzan while making statement on oath admitted that he had filed a civil suit against the complainant for declaration and permanent injunctions. Regarding the allegation he maintained that it was not a false allegation and added that in fact Mst. Fozia is an illegitimate daughter of the complainant. He also stated that the Birth Certificate (Ex. PB) in respect of Mst. Fozia who was born in the year 1979 was fabricated and forged. Regarding the birth entry (Ex.PB/1) in the concerned birth register, he further stated that it

was forged and fictitious and the Secretary Union Council Ghazan Abad did not satisfy the Court as the page of the said register was cut with blade. Moreover, he added, there was also no Serial No. for the entry of birth of Mst. Fozia. While responding to Question No.8, he made the following statement:-

‘There are numerous civil and criminal cases pending between me and the complainant in different courts, therefore, the complainant has filed a false complaint against me. Younas PW had falsely deposed against me as there is also litigation against the father of Younas PW with me’.

He produced one Farzan Ahmed Khan as DW.1 who deposed in the following words:-

‘Mst. Sajida Bibi was previous wife of Muhammad Javed. Javed divorced his wife Mst. Sajida Bibi due to the reason that he claimed that Mst. Fozia Bibi is not his legitimate daughter. Javed was employed in Pakistan Army. Javed died about after one year after pronouncement of Talaq upon the complainant. Thereafter, the complainant contracted second marriage with Naseer-ud-Din, within a period of one year. After the death of Javed, his amount of pension, gratuity etc. was given to the mother of the deceased Javed. I requested Ramzan to give land to Mst. Fozia upon which he got mutation of inheritance recorded before the Revenue Authorities’.

14. In this connection we would like to refer to Sections 3, 5 and 6 of the said Ordinance. Section 3 reads as under:-

‘Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of zina concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, or hurt the feelings, of such person, is said, except in the cases hereinafter excepted, to commit qazf’.

.....

Second Exception (Accusation preferred in good faith to authorized person):-

Save in the cases hereinafter mentioned, it is not *qazf* to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

- (a) A complainant makes an accusation of zina against another person in a Court, but fails to produce four witnesses in support thereof before the Court.
- (b) According to the finding of the Court, a Witness has given false evidence of the commission of zina or *zina-bil-Jabr*.
- (c) According to the finding of the Court, complainant has made a false accusation of *zina-bil-Jabr*.

Section 5 reads as under:

“Qazf liable to hadd. Whoever, being an adult, intentionally and without ambiguity commits *qazf* of ‘zina’ liable to ‘*hadd*’ against a particular person who is a ‘*muhsan*’ and capable of performing sexual intercourse is, subject to the provisions of this Ordinance, said to commit *qazf* liable to ‘*hadd*’.

Explanation 1.- In this section, “*muhsan*” means a sane and adult Muslim who either has had no sexual inter-course or has had such inter-course only with his or her lawfully wedded spouse.

Explanation 2. If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognize such person to be a legitimate child, he shall be deemed to have committed *qazf* liable to *hadd* in respect of the mother of that person.”

Section 6 reads as under:

“Proof of qazf liable to hadd. (1) Proof of *qazf* liable to *hadd* shall be in one of the following forms, namely:

- (a) the accused makes before Court of competent jurisdiction a confession of the commission of the offence;
- (b) the accused commits *qazf* in the presence of the Court; and
- (c) at least two Muslim adult male witnesses, other than the victim of the *qazf*, about whom the Court is satisfied, having regard to the requirements of *tazkiyah al-shuhood*, that they are truthful persons and abstain from major sins *Kabair*), give direct evidence of the commission of *qazf*:

Provided that, if the accused is a non-Muslim, the witnesses may be non-Muslims:

Provided further that the statement of the complainant or the person authorized by him shall be recorded before the statements of the witnesses are recorded.”

15. A bare reading of the above sections make it quite clear that the appellant Muhammad Ramzan has leveled an allegation which is well covered within the definition of Qazaf as given in Sections 3 and 5 of the said Ordinance. However, in order to prove his allegation he has not been able to bring four witnesses to support his allegation, as envisaged under section 3 of the said Ordinance. Though the allegation was made by him in a suit filed by him for declaration and permanent injunctions against the complainant, he has reiterated and reaffirmed the same allegations in the instant case as well, as mentioned hereinabove, and has stuck to the position taken by him in the civil suit. He has repeated the same allegation again and again and has also tried to support it by DW.1 Farzan Ahmad Khan. However, it is note-worthy that as admitted by, DW.1, he is not a witness of the divorce deed. He even did not know who wrote that divorce deed. According to him, Mst. Fozia was born on 04.10.1979 when her mother Mst. Sajida Bibi was still the legally wedded wife of Javed who, according to him, divorced her on 09.06.1980 i.e. about 08 months after the birth of Mst.Fozia. He also admitted that the inheritance of the Estate of Javed had devolved upon his daughter Mst. Fozia according to her due share as being a legitimate daughter of deceased Muhammad Javed, who was legally wedded husband of complainant Mst. Sajida Bibi, against whom the false allegation of zina has been made by the appellant Muhammad Ramzan.

16. It is crystal clear from the above discussion that the appellant/accused is a liar who has fabricated an allegation of commission of zina against the complainant/illegitimacy

of her daughter Mst. Fozia, which is not at all supported by the four witnesses as required under section 3 of the Qazaf Ordinance. The said section is based on the following Verse of the Holy Qur'aan:-

“(24:4) Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not admit their testimony ever after. They are indeed transgressors.”

17. The appellant Muhammad Ramzan has made an allegation and has obviously failed to bring four witnesses in its support, thus he has been rightly found guilty of committing the offence of Qazaf by the trial court as envisaged by the Ordinance and has been properly convicted and sentenced.

18. We have perused the impugned judgment and found it well reasoned. It is neither perverse nor arbitrary and calls for no interference whatsoever by this Court.

19. Consequently for the reasons stated above, we maintain the conviction of appellant Muhammad Ramzan under section 7 of the said Ordinance and uphold the punishment of 80 stripes as Hadd as awarded by the learned Additional Sessions Judge, Rawalpindi vide judgment dated 08.10.2011, and dismiss the instant appeal. The appellant Muhammad Ramzan is present in Court, he shall be taken into custody and sent to Central Jail, Rawalpindi to undergo the punishment.

20. Consequently, the Criminal Reference No. 05/I of 2011 submitted by the learned trial court is **confirmed** and answered in **affirmative**.

21. These are the reasons of our short order dated 17.10.2012

JUSTICE DR. FIDA MUHAMMAD KHAN

JUSTICE SHAHZADO SHEIKH

JUSTICE SHAIKH AHMAD FAROOQ

Islamabad the 20th November, 2012

IN THE FEDERAL SHARIAT COURT**(Appellate Jurisdiction)****PRESENT****MR. JUSTICE SHAHZADO SHEIKH****MR. JUSTICE DR. FIDA MUHAMMAD KHAN****MR. JUSTICE RIZWAN ALI DODANI****CRIMINAL APPEAL NO. 7/P OF 2009**

Suleman son of Muhammad Tayyab,

R/o Mohallah Mayaganoo Cham, Saidu Sharif, Swat.

.... Appellant

Versus

The State

..... Respondent

CRIMINAL MURDER REFERENCE NO.01/P OF 2009

The State ... Appellant

Versus

Suleman Respondent

Counsel for appellant Mr. Shabbir Hussain Gigani.
Advocate

Counsel for State Mr. Aziz-ur-Rehman, Advocate

FIR, Date and Police Station 67, 24.02.2007 Saidu Sharif, Swat

Date of judgment of trial court	....	20.10.2009
Date of Institution	.....	31.10.2009
Date of hearing	.....	04.06.2012
Date of decision	....	04.06.2012

JUDGMENT

DR. FIDA MUHAMMAD KHAN, JUDGE.- This appeal preferred by Suleman is directed against the judgment dated 20.10.2009 passed by learned Additional Sessions Judge/Zila Qazi, Swat whereby he has convicted the appellant under section 302 PPC and sentenced him to death. He has also imposed on him a fine of Rs. 100,000/- to be paid as compensation to the legal heirs of deceased, under the provision of section 544-A Cr.P.C. The appellant has also been convicted under section 380 PPC and sentenced to 03 years R.I. with a fine of Rs. 10,000/- or, in default thereof, to further suffer 06 months S.I. The benefit of section 382-B, Cr.P.C. has been extended to him.

2. The learned Sessions Judge, Swat has submitted Criminal Murder Reference No. 01/P of 2009 for confirmation of the death sentence awarded to the appellant. Since the appeal and the Murder Reference both arise out of one and the same judgment, we propose to dispose of both the matters by this Single Judgment.

3. Brief facts of the case are that on 23.02.2007 the complainant Gul Muhammad reported to the local police that on the same day at 1400 hours he had gone to offer prayers. On return to his house, he received information that in his absence his grandson Suleman had come to his house and had taken a box containing gold ornaments and other valuables. Later on, the complainant came to know that Suleman had also taken away his grand daughter, namely Iqra aged, 6/7 years, alongwith him. He added that at that time other ladies were on the upper storey of the house. Accordingly, a Murasala (Ex.PA) was prepared and formal FIR (Ex.PA/1) was registered on its basis.

4. The investigation of the case was conducted by Mir Abdullah, SI. and the accused Suleman was arrested by Shams ud Din, ASI on 24.02.2007. During investigation the accused disclosed that he had put the stolen articles in Khodangay Jungle under a stone and he could point out the relevant place. Subsequently, the stolen articles as well as the dead body of deceased Iqra, concealed under grass and stones, were recovered on his pointation on 24.02.2007 and were taken into possession by the police vide memo (Ex.PW.8/1) and (Ex.PW.7/1) duly signed by I.O. He also prepared site plan (Ex.PW.8/2) of the said recovery place. The Investigating Officer took into possession the blood stained clothes i.e. Qameez and shalwar (pink colour) of deceased Iqra produced by complainant Gul Muhammad and the same were taken into possession vide recovery memo (Ex.PW.6/1). Confessional statement of the accused wherein he confessed his guilt was also duly recorded by PW 14 under section 164/364 Cr.P.C. on 26.02.2007. The I.O. also recorded statements of witnesses under section 161 Cr.P.C. He obtained medical report of the deceased from the hospital and sent all blood stained articles to Forensic Science Laboratory, Peshawar for analysis. After completion of investigation the I.O. handed over the file to SHO for submission of

challan to court.

5. The learned trial court after receipt of challan formally charged the appellant/accused under sections 5 Offence Against Property (Enforcement of Hudood) Ordinance, 1979 as well as 302 PPC. The accused did not plead guilty and claimed trial.

6. At the trial, the prosecution produced 14 PWs. A gist of their evidence is as mentioned herein under:-

- * PW.1 Gul Muhammad complainant reiterated the facts regarding the occurrence as he mentioned herein above;
- * PW.2 is Mst. Saima, daughter-in-law of the complainant. She fully corroborated statement of the complainant;
- * PW.3 is Noor Ullah. He made statement that on the day of occurrence i.e. 23.02.2007 at about 2.00.p.m. when he was going to see his under construction house, he saw accused Suleman near the house of Gul Muhammad, complainant carrying a box. He also deposed that the young girl Iqra deceased was also accompanying him;
- * PW.4 is Inayat Ullah Shah. He also deposed that he saw the accused near a pond carrying a box while the deceased Iqra was walking behind him;
- * PW.5 is Nazir Muhammad. He deposed that in his presence the I.O. recovered a box containing ornaments, papers of land, clothes and other articles and secured that vide memo (Ex.PW.5/1) duly signed by him;
- * PW.6 is Sher Zaman. He stated that in his presence Gul Muhammad complainant produced blood stained clothes of Iqra before the police which were taken by the police and sealed vide memo (Ex.PW.6/1) and he signed the said memo;
- * PW.7 is Hameed Iqbal, constable. He stated that on 24.02.2007 in his presence and Investigating Officer, accused Suleman led the police party to Paharr Almosuma Khodangay and got recovered the dead body of Iqra lying under a tree of Banj. When the dead body was found, grass and stones were put on it and the same was took into possession vide recovery memo

(Ex.PW.7/1) which was signed by this PW and Sikandar Hayat;

- * PW.8 is Mir Abdullah, SI who investigated the case. He gave details of the investigation conducted by him in the case;
- * Shah Bakht Rawan, Foot Constable appeared as PW.9 and stated that in his presence the Investigating Officer on the pointation of accused recovered a cloth like sock from Jungle Almosooma Khodangay, from which two golden necklace were took into possession vide memo (Ex.PW.8/2) which was signed by him;
- * PW.10 is Saleh Muhammad. He deposed that in his presence the accused got recovered golden ornaments which were taken into possession by the I.O. vide memo (Ex.PW.8/1) and the said memo was signed by him;
- * PW.11 is Lady Dr. Hameeda of Central Hospital Saidu Shareef. She conducted the postmortem examination of deceased Iqra and prepared report (Ex.PW.11/1). The details of post-mortem etc are given as follow:-

“**EXTERNAL EXAMINATION:-** Abrasion was present on right side neck region.

General Appearance:- Small girl wearing pink shalwar pink shirt two white colour vista swollen tange partially closed eyes, hand clinch, soared with mud grass and blood. Bleeding from right ear.

EXAMINATION INTERNAL:-On Dissection of neck no Heamatoma, No Echymosis. On opening cranium. There were Heamatoma under scalp. Congestion present. Brain Matter damaged. Right temporal and parietal bone damaged and crushed. Heamatoma Present under the scalp. Brain was damaged.

Two HVS took for chemical examination. Perineal soaked with stool.

Remarks by Medical Officer:- Dead Body with Head Injury Injured Bone on Right side Head crushed bleeding from right Ear hairs soaked with Blood. Both Hands clenched and stained with Blood, Holding grass in hand stand with Mud. Neck bruised and abrasion present but no fracture, no haematoma

on dissection.

CAUSE OF DEATH:- Head injury.

Time between death and post Mortem:- 10 to 12 hours. Post Mortem examination performed under supervision of Dr. Shafi ur Rehman Forensic Deptt.”

- * PW.12 is Shams-ud-Din, ASI. He stated that on the statement of Gul Muhammad complainant, he drafted Murasala and sent the same to the police station for registration of formal FIR;
- * PW.13 is Sanobar Khan, SHO. He stated that after completion of investigation he submitted complete challan to the court;
- * PW.14 is Lastly Asim Riaz, Judicial Magistrate. He stated that on 26.02.2007 he recorded confessional statement (Ex.PW.14/2) of accused Suleman which was read over to him and thereafter the accused fixed his thumb impression, accepting the same as correct. The accused was then sent to the judicial lock up through police.

7. After close of prosecution evidence the learned trial court recorded statement of accused Suleman under section 342 Cr.P.C. wherein he denied the allegations. In answer to two different questions, “Why the PWs have deposed against you and why the case has been made against you?” he replied that he was unaware as to why he was falsely involved in this case. However, he neither opted to make statement under section 340(2) Cr.P.C. nor produced any evidence in his defence. The learned trial court on coming to the conclusion found the accused guilty and convicted and sentenced him as mentioned hereinabove.

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

- * the FIR has been lodged after a delay of six hours and thirty minutes.
- * the occurrence is un-seen and un-witnessed;
- * the evidence of PW.3 and PW.4 is doubtful as there are contradictions in their statements;

- * no identification parade of the stolen box was conducted through PW.3 and PW.4;
- * the recoveries are doubtful as these have not been produced before the learned trial Court nor exhibited;
- * the Chemical Examiner's report is fake and is of no credence;
- * the big stone, allegedly shown as weapon of offence has not been sent to the Chemical Examiner;
- * the offence was not planned nor premeditated, there is close relation between the parties, and the sentence could be reduced to life imprisonment.

9. Learned counsel for the State vehemently supported the impugned judgment and stated that the innocent minor girl was brutally murdered with a stone just to eliminate the evidence against himself. He contended that the evidence brought on record by the prosecution has brought home the guilt of the accused to the hilt and he deserves no leniency.

10. We have given our anxious consideration to the points raised by learned counsel for the parties and have thoroughly perused the record with their assistance. It transpires that this unfortunate incident took place on 23.02.2007 at about 2.00.p.m. Though this was an unseen occurrence and there is no direct evidence about the theft from inside the house nor about the murder of deceased, however, the bits and pieces of circumstantial evidence produced by the prosecution in this case put together sufficiently establish guilt of the appellant/accused beyond any reasonable doubt. The circumstantial evidence is, in reality, a combination of basic facts which create a network wherefrom further conclusions according to logic and reason could be deduced and which ultimately leaves no escape for the accused because the facts taken as a whole do not admit of any inference but of his guilt. It is well said that men may lie but circumstances do not. However, since circumstances may mislead also, the courts are required to exercise great care and caution in considering each and every piece of such evidence and ensure that it leads to one single conclusion and exclude any other possibility except that of the guilt of the accused.

11. In the case before us, first of all there is a last seen evidence given by PW.3 Noor Ullah and PW.4 Inayat Ullah Shah who saw the deceased alive in the company of appellant/accused. PW.3 deposed that he saw the appellant/accused in the street of complainant while he was carrying a box on his shoulder and the deceased Iqra was also accompanying him. He observed that Mst. Iqra was initially reluctant to go with the appellant/accused but later on accompanied him when he told her that they would soon return. PW.4 also stated

on oath that he saw the appellant/accused with a box on his shoulder while the deceased was following him and on his asking the appellant/accused told him that he was taking the baggage. Both these PWs saw the appellant/accused at different timings but since they saw him at different places in the same vicinity, the slight difference in timing is not material at all as PW.4 had no watch with him. Even otherwise the concept of timing in rural areas is always only approximate. Their presence over there was natural and, admittedly they were not chance witnesses. Both of them are residents of the same village and were well-acquainted with the appellant/accused. One of them was going to see his under-construction house located just near the house of complainant, and the other one even had an opportunity to talk to the appellant/accused. No enmity, ill-will or grudge has been attributed to any one of these PWs. Their depositions ring true and inspire confidence. Except very minor immaterial discrepancies, their statements are fully consistent in material particulars. Being residents of the same village, they had no difficulty in identifying the appellant as well as the deceased. They have been subjected to lengthy cross-examination but nothing fruitful to the defence has been adduced from their evidence.

12. This last seen evidence provided a clue to the complainant who had initially charged the appellant/accused only for taking away the box and Mst. Iqra, in his Murasala (Ex.PA), dated 23.02.2007 at 2030 hours, later on nominated him in the FIR lodged on 24.02.2007 at 0900, and charged him for her murder also. He was, thereafter, immediately arrested on the same day. The delay of a few hours was natural as the complainant party remained busy in searching whereabouts of the deceased. After arrest, the appellant/accused, during investigation, led the police party on 24.2.2007 to recover the stolen box containing ornaments, identity card, purse and some other documents which were duly taken into possession vide recovery memo (Ex.PW.5/1). It is pertinent that the dead body of deceased Iqra which had been concealed under grass and stones was also recovered on his pointation on the same day and was duly taken into possession vide recovery memo (Ex.PW.7/1), as stated by PW.7. The blood stained clothes of the appellant/accused which he was wearing on the same day were duly taken into possession and secured vide recovery memo (Ex.PW.7/2). Similarly the blood- stained clothes of deceased Iqra were also taken into possession and duly secured. PW.5, PW.6 and PW.7 who are witnesses of these recovery memos have been cross-examined at great length but they have stood firm and their testimony has not been shaken even a bit. Despite some small negligible discrepancies, their testimony is fully consistent, rings true and leaves no doubt whatsoever about veracity of their depositions. The statement of PW.8 Mir Abdullah, SI confirms the same. The appellant/accused is the single accused nominated in the FIR by his real grand father. No motive of false implication or any other reason is available on record nor the appellant/accused has taken any such plea in defence.

13. His confessional statement under sections 164/364 Cr.P.C. was also recorded on 26.02.2007 by PW.14 Asim Riaz, Judicial Magistrate, Swat. That statement is inculpatory

in nature. PW.14, who recorded the same is a responsible officer and had nothing to do with the case of prosecution. He recorded the statement after observing and completing all legal formalities. The confessional statement was read over to the appellant/accused in Pashto language. Replies in the questionnaire Ex.PW.14/1 show that it was a voluntary confession and was not at all the result of any coercion. In this connection it may be mentioned that he was specifically asked whether he was subjected to torture, threat or force or any inducement for making the confession and he answered in negative. It is also pertinent to mention that at the time of recording the confession he was free and in full senses. At that time he had been duly told that he will not be handed over to the police and, as such, under no pressure or fear. Though thereafter he was sent to the judicial lock up through the same police but, as highlighted in the impugned judgment, it was necessitated by circumstances on account of the fact that he had to be shifted to a jail in another District. It is also very significant to point out that this statement is fully corroborated by the recoveries of box, dead body of deceased and blood stained stone, made on his pointation, and the matching report of chemical examiner about the blood on his clothes with that found on the last worn clothes of deceased. The MLR/PM report is also fully in line with the deposition of PWs.

14. To sum up, the case of prosecution against the appellant/accused mainly rests on the last seen evidence, recovery of the dead body of deceased Iqra, as well as recovery of stolen box, both on his pointation, judicial confessional statement and chemical examiner's report. We are conscious of the fact that last seen evidence in itself is a weak type of evidence and cannot alone form basis for conviction by itself. However, in the instant case the facts and circumstances brought on record show that the deceased Iqra was last seen alive in the company of appellant/accused by PW.3, Noor Ullah and PW.4, Inayat Ullah Shah. When she did not return, the complainant who is real grandfather of the appellant/accused, after getting convinced, nominated him initially for taking away Iqra deceased and the stolen box and, later on for her murder, as the single accused in the FIR. The dead body which was concealed under the grass and stones, was recovered on his pointation from a place which was neither a thoroughfare nor known earlier to any one. This fact reveals that it was in his exclusive knowledge. Likewise the stolen box he was carrying on his shoulder was also recovered on his pointation. Though it was not exhibited, it is significant to note that it had been duly handed over to the complainant on superdari on 03.03.2007. There was no other claimant of the same as well. It is also significant to note that he made judicial inculpatory confession about commission of the offence on the very next day. It was recorded by PW.14 Asim Riaz, Judicial Magistrate strictly in accordance with requirement of the law. The last and strong piece of evidence in this connection is report of Chemical Examiner Ex.PW.8/8 which reveals that the blood found on the clothes of deceased matched with that found on the clothes of accused he was wearing on the day of occurrence.

15. We may mention that when a man of sound mind and mature age makes a judicial confession in ordinary simple language, after he has been duly warned, and the Court

is satisfied that it was voluntary, true and trustworthy it could be made the foundation for conviction. The weight to be attached to a confession depends on the facts and circumstances of each case. However, regarding other circumstances, the indisputable rule being consistently followed by the Superior Courts for conviction is that the facts proved must be incompatible with innocence of the accused and must be incapable of any other hypothesis, other than that of his guilt.

16. We have also anxiously considered the quantum of sentence but have been unable to find any reason for reducing the same. The appellant/accused has been guilty of committing the murder of a minor girl in a very callous manner. Being her first cousin he should have been the first one to protect her from other people. Instead he betrayed her trust and brutally killed her just to get rid of her to cause the evidence disappear against him. Therefore, we find no mitigating circumstance to alter the death sentence awarded to him.

17. In view of the above, we find that the prosecution has successfully established its case against the appellant/accused beyond any reasonable doubt. Therefore, we maintain conviction and sentences of the appellant/accused Suleman son of Muhammad Tayyab, under sections 302 PPC and 380 PPC, as awarded by the learned Additional Sessions Judge/Izafi Zila Qazi, Swat in Sessions Case No. 41/2007 on 20.10.2009 and uphold the judgment of the trial court.

18. Criminal Murder Reference No. 01/P of 2009 for confirmation of death sentence is confirmed and answered in affirmative.

19. These are the reasons for our Short Order passed on 4th June, 2012.

JUSTICE DR. FIDA MUHAMMAD KHAN

JUSTICE SHAHZADO SHEIKH

JUSTICE RIZWAN ALI DODANI

Islamabad the 30th June, 2012

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

MR. JUSTICE RIZWAN ALI DODANI

MR. JUSTICE SHEIKH AHMAD FAROOQ

SHARIAT PETITION NO. 8/I OF 2004 Linked with

1. Professor Kazim Hussain son of Sattar Ali, Associate Professor,
Federal Government College, H/9, Islamabad
2. Shaukat Ali Awan son of Muhammad Khan, Associate Professor,
Federal Government College, H/9, Islamabad

.... Petitioners

Versus

Government of Pakistan through the Secretary, Ministry of Law, Justice and
Parliamentary Affairs, Islamabad

.... Respondent

SHARIAT PETITION NO. 6/I OF 1994 Linked with

Dr. Mehmood-ur-Rehman Faisal, Chairman Tehreek-e-Inqilab Islami, Tench Road,
Rawalpindi

.... Petitioner

Versus

1. Government of Pakistan through the Secretary, Ministry of Law, Justice and
Parliamentary Affairs, Islamabad
 2. Attorney General of Pakistan
 3. Secretary Ministry of Finance
- Respondents

SHARIAT PETITION NO. 8/I OF 1994 Linked with

Javed Iqbal, President, Federal Teachers Association, Islamabad Petitioner

Versus

Federation of Islamic Republic of Pakistan through Secretary Finance Division,
Islamabad. Respondent

SHARIAT PETITION NO. 12/I OF 1994 Linked with

Ch. Munir Sadiq son of Ch. Muhammad Sadiq resident of Maiken House ZB.349
Pirwadhai, Rawalpindi.

..... Petitioner

Versus

1. The Government of Pakistan through Secretary, Ministry of Law and Justice,
Islamabad
2. Government of Pakistan through Attorney General of Pakistan.
3. Government of Pakistan through Secretary Finance Division Islamabad.

..... Respondents

SHARIAT MISC. NO. 69/I OF 1994

Dr. Iftikhar Ahmed Punjab Medical College, Faisalabad

..... Petitioner

Versus

Secretary Finance Government of Pakistan, Islamabad.

.... Respondent

For the petitioners	...	Mr. Kowkab Iqbal, Advocate
For the Federal Government	...	Mr. Shabbir Mehmood Malik, Standing Counsel-II and Mr. Abdul Ghaffar, S.O. M/o Finance, Islamabad.
For Govt. of the Punjab	...	Ch. Saleem Murtaza

		Mughal, Assistant Advocate General, Mr. M. Javed Ali, District Accounts Officer, Finance Deptt: Punjab and Mr. Habib-ur-Rehman, S.O. Judicial- II, Home Deptt: Lahore.
For Govt. of Sindh	...	Mr. Muhammad Qasim Mirjat, Additional Advocate General
For Govt. of KPK	...	Mr. Aziz-ur-Rehman, Advocate and Mr. Amanat Ullah, SO, Finance Deptt: KPK
For Govt. of Balochistan	...	Mr. Azam Khan Khattak, Additional Advocate General
As Amicus Curiae	...	Barrister Feroze Jamal Shah Kakakhel
Dates of Institution	...	16.10.2004, 21.02.1994,
of all Shariat Petitions	...	03.03.1994, 23.12.1994 and 01.06.1994 respectively
Date of hearing	...	19.06.2012
Date of decision	...	12.12.2012

JUDGMENT

DR.FIDA MUHAMMAD KHAN, Judge: The petitioners Professor Kazim Hussain and Shaukat Ali Awan who have jointly filed Shariat Petition No.8/I of 2004, have challenged sub para (xiv) of O.M.No.F.2(3)/03 dated 31.7.2004 issued by Ministry of Housing and Works, Islamabad on the ground that it is repugnant to the Injunctions of Islam. The relevant portion of the impugned O.M. reads as under:-

“xiv) When both husband and wife are employed at the same station, only one of them shall be entitled to allotment of hired accommodation and house rent allowance shall not be paid to both of them and 5% rent charges shall be deducted from the pay of the allottee. In case they are serving at two different stations, one of them shall be allotted accommodation and the other one shall be allowed house rent allowance.”

The petitioners have prayed that the above mentioned para of the said O.M. may be declared repugnant to the Injunctions of Quran and Sunnah of the Holy Prophet (ﷺ).

2. We may mention that Dr. Mahmood-ur-Rehman Faisal, Javed Iqbal, Ch. Munir Sadiq and Dr. Iftikhar Ahmed, petitioners have also separately filed identical Shariat Petitions bearing Nos.06/I of 1994, 08/I of 1994, 12/I of 1994 and Shariat Misc. Application No.69/I of 1994, respectively, whereby they have challenged the sub paras (ii) and (iii) of O.M.No.F.5(17)/Gaz-Imp(i)/73 dated 20.11.1974 and O.M.No.F.2(1)-R.5/91 dated 25.8.1991 issued by Ministry of Finance Division. The same read as under:-

“O.M. dated 20.11.1974

- “(ii) If both husband and wife being Government servants are residing together at the same station in a Government residence allotted to one of them, house rent allowance shall not be admissible to the other even if the station is a specified one.
- (iii) In a case at (ii) above if none of them has been provided with Government residence and both are residing together in a private house at a specified station the house rent allowance shall be admissible to either the husband or wife who elects to receive the allowance.”

O.M dated 25.08.1991

“The undersigned is directed to say that the question of grant of house rent allowance to husband/wife serving in Government and posted at the same station, if accommodation is provided to one of them by Government, has

been duly considered. It has been decided that if both the husband and wife are living together in residential accommodation provided by the Government at the same station, no house rent allowance shall be allowed to either of them. If, however, the spouse is living separately from husband/wife, the house rent allowance shall be admissible to one of them who does not reside in Government accommodation”.

All these petitioners have prayed that para (ii) of O.M. dated 20.11.1974 and the first portion of O.M. dated 25.08.1991 may be declared as repugnant to the Holy Quran and Sunnah of Holy Prophet (ﷺ). They have also prayed that both husband and wife should be made entitled for house rent allowance.

3. In response to our Orders dated 09.04.1994, 05.12.1995 and 23.04.2007 in the above Shariat Petitions, the following written comments have been received:-

(a) Comments of Federal Government in Shariat Petition No.8/I of 2004. dated nil.

“1. That this petition is not maintainable as the petitioner has not indicated any provision of Holy Quran and Sunnah, against the violation of which it has been filed.

2. That the petitioner is seeking equality between male and female and is before wrong forum. The constitution provide remedy under article 25. (1) All citizens are equal before law and are entitled to equal protection of law.”

“(2) *There shall be no discrimination on the basis of sex alone.*”

“(3) Nothing in this article shall prevent the state from making any special provision for the protection of women and children.”

“On Merits

1. That the House Rent Allowance is a compensatory allowance

and is paid in lieu of the government accommodation. Admissibility of house rent allowance to both the husband and wife if none of them is provided with the Government residence enables them to hire a private house as rentals of the housing units in the open market are considerably high.

2. That the husband and wife unless legally separate, are a single family unit and reside together. When official accommodation is provided to one of them, the other is not required to hire/get a house, and hence house rent allowance or independent house for the other is not warranted.

3. Though all the Government employees are entitled to official accommodation

but Government provides accommodation to a small portion of the employees due to limited availability of housing units. The rentals levels in the open market being considerably high, the husband/wives who have been provided government accommodation are in an advantageous position compared to those who have not been provided the housing facility.

In view of the above facts it is submitted that the rule of the Government which bars admissibility of house rent allowance to husband/wife if the other spouse is in occupation of a Government residence, is based on rationale and the same does not conflict with the Islamic injunctions or any provision of the constitution. It is, therefore, prayed that the honourable Federal Shariat Court may kindly be reject the claim of the petitioner as the same is not covered by the rules/policy of the Government.”

(b). Comments of Finance Division, Federal Government in Shariat Petitions No.6/I of 1994, 8/I of 1994 and 12/I of 1994 dated 08.06.1994.

“The petitioner has challenged the provision of rules contained in clause (ii) of the Finance Division’s O.M.No.5(17)-Gaz.Imp(I)/73 dated 20.11.1974 and first part of the O.M. No.2(1)R.5/91 dated 25.8.1991 which bars admissibility of house rent allowance to husband/wife if the other spouse is in occupation of a Government residence. The petitioner has held that the said provision of rules is against the spirit of Quran and Sunnah. The petitioner has prayed that the rule in question may be declared as cancelled enabling the husband and wife to avail house rent allowance/ house even if the other spouse is provided with Government residence.

2. Finance Division is concerned with the element of house rent allowance. Position in this regard is explained below.

3. Under the existing orders/instructions, house rent allowance is admissible to a Government employee not provided with the Government accommodation. In case of husband and wife, when both are serving members and posted at the same station and Government accommodation is not provided to either of them, house rent allowance is admissible to both the spouses. However, if both are living together at the same station in the Government accommodation provided to one of them, house rent allowance is not admissible to the other spouse even if the station is a specified one. The rationale of the said rules is as follows:-

“i) House Rent Allowance is a compensatory Allowance and is paid in lieu of the government accommodation. Admissibility of house rent allowance to both the husband and wife if none of them is provided with the Government residence enables them to hire a private house as rentals of the housing units in the open market are considerably high.

-
- ii) Husband and wife unless legally separated form a single family unit and reside together. When official accommodation is provided to one of them, the other is not required to hire/get a house, and hence house rent allowance or independent house for the other is not warranted.
 - iii) Second part of Finance Division's O.M. dated 25.8.1991 a permits house rent allowance to a spouse in case of legal separation and not ordinary separation.
 - iv) Though all the Government employees are entitled to official accommodation but Government provides accommodation to a small portion of the employees due to limited availability of housing units. The rentals levels in the open market being considerably high, the husband/wives who have been provided government accommodation are in an advantageous position compared to those who have not been provided the housing facility.
4. It is submitted that the rule disputed by the petitioner was reviewed by Finance Division at various occasions but it was not found desirable to amend the rule for the reasons mentioned above. The issue was also raised with the Honourable Wafaqi Mohtasib by a few complainants. However, the Honourable Wafaqi Mohtasib in his findings on two complaints rejected the demand with the following observations:-
- “The complaint is for the grant of extra benefit which question relates to terms and conditions of a Government servant. I do not find any mal-administration in the matter on the part of the Agency and dispose of the complaint as not tenable.”
5. In 1989, Federal Service Tribunal Islamabad on similar two appeals of Mrs. Shamim Zafar Vaince and Mrs. Zehra Jafry versus Finance Division also upheld the stand taken by the Finance Division and rejected the appeals of the two ladies for grant of house rent allowance.
6. As for the demand for allotment of independent houses to both husband and wife or provision of a house to them on the basis of their joint entitlement, it is also not covered by the existing policy of the Ministry of Works. However, that Ministry may be impleaded as party to express their view point.
7. In view of the above facts it is submitted that the rule of the Government which bars admissibility of house rent allowance to husband/wife if the other spouse is in occupation of a Government residence, is based on rationale and the same does not conflict with the Islamic Injunctions or any

provision of the constitution. It is, therefore, prayed that the Honourable Federal Shariat Court may kindly reject the claim of the petitioner as the same is not covered by the rules/policy of the Government”.

- (c) Comments on behalf of Government of Punjab in Shariat Petitions No.6/I of 1994, 8/I of 1994 and 12/I of 1994 dated 23.04.1997

REPORT

“The Government of the Punjab does not allow House Rent Allowance to both the husband and wife if they are living together in a residential accommodation provided by the Government at the same station of posting. House Rent Allowance shall be admissible to any one of them who does not reside in the Government accommodation (Annex: ‘C’)

Parawise Comments:

1. No comments.
2. No comments.
3. That House Rent Allowance is a compensatory allowance and is paid in lieu of government accommodation. Admissibility of House Rent Allowance to both the husband and wife if none of them is provided with the government residence, is a facility which enables them to go for better accommodation.
4. That both husband and wife if not provided with Government accommodation, shall each be allowed House Rent Allowance on the same place of posting.
5. No comments.
6. As in para 4 above.
7. As admitted by the petitioners themselves that House Rent Allowance would be allowed to both husband and wife in case they are not provided government accommodation. They are at liberty to get accommodation of their choice out of the House Rent Allowance admissible to them under the Government policy or live in their own house.
8. As stated in preceding paragraphs government has been trying to accommodate civil servants to the maximum within the available resources and there is no intention to violate any article of Constitution of Islamic Republic of Pakistan.
9. No comments being legal.

In view of the above, it is prayed that the Shariat Petition has no merit because House Rent Allowance is a compensatory allowance in lieu of Government accommodation. If accommodation is not provided, both husband and wife are allowed House Rent Allowance”.

(d) Comments Of KPK Government (N.W.F.P) in Shariat Petition No. 6/I Of 1994 dated 13.09.2007.

- 1- محکمہ مالیات کی طرف سے رائے نہیں دی جاسکتی کیونکہ یہ دفتری یادداشت مرکزی حکومت کا جاری کردہ ہے
- ۲- ہاں
- ۳- ہاں - آفس میمرنڈم نمبر 1 F.2(1)R.5/9 مورخہ 1991/8/25 مرکزی حکومت کا جاری کردہ ہے۔ صوبائی حکومت نے اس ضمن میں مراسلہ نمبر FD(SR.II)8-2/78/Vol. IV مورخہ 1978/8/30 جاری کیا ہے۔ جس کے تحت میاں بیوی دونوں کا ایک سٹیشن پر ایک ساتھ سرکاری مکان میں رہنے کی صورت میں دونوں میں سے کسی کو بھی ہاؤس رینٹ نہیں ملے گی۔
- ۴- یہ صحیح نہیں ہے۔ محکمہ مالیات کے نوٹیفیکیشن نمبر-2(SOSR.II(FD)1/78/VOL. IV مورخہ 1978/8/30 کے مطابق جب دونوں میاں بیوی ایک سرکاری مکان میں رہائش پذیر ہوں تو ان میں سے کوئی بھی ہاؤس رینٹ کا حقدار نہیں۔ اس نوٹیفیکیشن میں تاحال کوئی ردوبدل نہیں کیا گیا ہے۔
- ۵- مرکزی حکومت کے مشورے سے صوبائی حکومت کا جاری کردہ مراسلوں نمبر FD/SR.II/8-1/78 مورخہ 1978/8/30 اور نمبر FD/SR.II/8-1/2001 مورخہ 2003/7/5 کے سارے مندرجات ہدایات بنوز برقرار ہیں۔
- ۶- میاں بیوی کی ازدواجی زندگی اور بچوں کے مستقبل کیلئے یہ بات لازم ہے کہ اکٹھے ایک ہی گھر میں رہیں۔
- ۷- میاں بیوی کا رشتہ اتنا کمزور نہیں ہو سکتا ہے کہ معمولی مالی فائدہ کیلئے علیحدگی پر متشرح ہو۔
- ۸- یہ بات مفروضے پر منحصر ہے جس کا کوئی قانونی حیثیت نہیں ہے۔
- ۹- کوئی رائے نہیں دی جا سکتی۔

(e) Comments of Finance Department Government of KPK (N.W.F.P) in Shariat Petition No.8/I of 1994 dated 03.01.2008

- “1. The para contains extracts from Federal Government letters dated 18/8/1973, 8/9/1972 and 20/11/1974 and Federal Government is in better position to confirm the same.

2. The said memorandum are in consonance with the spirit of Islam. Family is the most important social nucleus of Islamic society. Islam does not envisage separate residence for two inseparable components of this basic social nucleus.

Grounds.

- a) Entitlement to separate property does not entail separate accommodation for spouses. Separate accommodations for husband and wife is against the concept of unity of family life.
- b) Right payment of Zakat and Ushr by husband and wife does not imply subject to separate accommodations. Right to separate accommodation by husband and wife goes against the proper brought up and training of children which is the prime joint responsibility of family. Separate House Rent Allowance for husband and wife at the same working station may envisage separate living which may encourage physical separation and consequently may become a cause of permanent separation.
- c) Common accommodation at the same working station is not only in interest of public but also in the interest of husband, wife and their children.”

(f) Comments of Finance Department Government of KPK (NWFP) in Shariat Petition No.12/I of 1994 dated 08.01.2008

- “1. The para contained extracts from Federal Government letter dated 20.11.1974 and 25/8/1991 and this Department is of the view that it is in consonance with injunction of Islam.
2. The said memorandum are in consonance with spirit of Islam. Family is the most important social nucleus of Islamic society. Islam does not envisage separate residence for two inseparable components of this nucleus.
3. Government of NWFP (KPK) has issued policy instructions through letters strictly in line with Federal Government policy referred in the para.
4. Correct, the said Office Memorandum is operational and effective and Government of NWFP (KPK) holds that the same does not require amendment.
5. As per Rules of Business Finance Division’s issues all such instructions with

the approval of Competent Authority and it cannot be termed as violation of Presidential scheme referred to above.

6. It is correct to the extent that if a Muslim civil servant marries more than one woman, amendment in the said policy is required to be made to the extent that his 2nd, 3rd & 4th wife should be entitled to separate Government accommodation if she/they are in Government service.
7. Entitlement of single/same accommodation to husband/wife does not fall in the definition of "TATFEF" as Islam does not envisage segregation of husband & wife. It is rather obligatory for them to live together for proper brought a up of children and for discharge of mutual conjugal obligation.
8. The challenged part is strictly in consonance with the basic concept of unity of family.
9. Article 35 of Constitution does not envisage separate residence for spouses of a family.
10. Same as in para 8 above.

Pray has no solid grounds.

(g) Comments on behalf of Sindh Government in Shariat Petitions No.6/I of 1994, 8/I of 1994 and 12/I of 1994 dated 12.11.2007

- “1. That the petitioner has challenged the provision of rules contained in clause (ii) of the Finance Division’s O.M. No.5(170-Gaz.Imp(I)/73 dated 20.11.1974 and first part of the O.M.No.2(1)R.5/91 dated 25.08.1991, which bars admissibility of house rent allowance to husband/wife if the other spouse is in occupation of a Government Residence. The petitioner has held that the said provision of rules is against the spirit of Quran and Sunnah. The petitioner has prayed that the rule in question may be declared as cancelled enabling the husband/wife to avail house rent allowance/house even if the other spouse is provided with Government residence.
2. That the Finance Division is concerned with the element of house rent allowance. Position in this regard is explained below.
3. That under the existing orders/instructions house rent allowance is admissible to a Government employee not provided with the government accommodation. In case of husband and wife, when both are serving members and posted at the same station and Government accommodation is not provided to either of them, house rent allowance is admissible to both the spouses. However, if both are living together at the same station in the

Government accommodation provided to one of them, house rent allowance is not admissible to the other spouse even if the station is a specified one. The rationale of the said rules is as follows:-

- “i) House Rent Allowance is a compensatory Allowance and is paid in lieu of the government accommodation. Admissibility of house rent allowance to both the husband and wife if none of them is provided with the Government residence, enables them to hire a private house as rentals of the housing units in the open market are considerably high.
 - ii) Husband and wife unless legally separated form a single family unit and reside together. When official accommodation is provided to one of them, the other is not required to hire/get a house, and hence house rent allowance or independent house for the other is not warranted.
 - iii) Second part of Finance Division’s O.M. date 25.08.1991 permits house rent allowance to a spouse in case of legal separation and not ordinary separation.
 - iv) Though all the Government employees are entitled to official accommodation but Government provides accommodation to a small portion of the employees due to limited availability of housing units. The rentals levels in the open market being considerable high, the husbands/wives who have been provided government accommodation are in an advantageous position compared to those who have not been provided the housing facility.
4. That it is submitted that the rule disputed by the petitioner was reviewed by Finance Division at various occasions but it was not found desirable to amend the rule for the reasons mentioned above. The issue was also raised with the Honourable Wafaqi Mohtasib by a few complainants. However, the Honourable Wafaqi Mohtasib in his findings on two complaints rejected the demand with the following observations:
- “The complaint is for the grant of extra benefit which question relates to terms and conditions of a Government Servant. I do not find any mal-administration in the matter on the part of the Agency and dispose of the complaint as not tenable.”
5. That in 1989, Federal Service Tribunal Islamabad on similar two appeals of Mrs. Shamim Zafar Vaince and Mrs. Zehra Jafry versus Finance Division, also upheld the stand taken by the Finance Division and rejected the appeals

of the two ladies for grant of house rent allowance.

6. That as for the demand for allotment of independent houses to both husband and wife or provision of a house to them on the basis of their joint entitlement it is also not covered by the existing polity of the Ministry of Works. However, that Ministry may be impleaded as party to express their view point.

In view of the above facts, it is submitted that the rule of the Government which bars admissibility of house rent allowance to husband/wife if the other spouse is in occupation of a government residence, is based on rationale and the same does not conflict with the Islamic injunctions or any provision of the constitution .

It is, therefore, prayed that the Honourable Federal Shariat Court may kindly reject the claim of the petitioner as the same is not covered by the rules/ policy of the Government.”

- (h) Comments of Finance Division Government of Pakistan (Again Submitted) in All the Shariat Petitions on 15.10.2008.

“Preliminary Objections:

The appeals are not maintainable for the following reasons:-

- (i) This appeal is time barred by limitation.
- (ii) The appeal of the appellant is in sheer violation of the Federal Government’s instructions/rules/orders.
- (iii) The appellant was a civil servant of the Federal Government and was subject to rules making authority of Federal Government (Finance Division) under Civil Servants Act. Of 1973.

Comments on Appeals:

The Government employees are entitled to House Rent Allowance @ 45% of the minimum stage of the relevant Pay Scales at 14 big cities and @ 30% of the minimum stage of the relevant Pay Scales in small cities. However, in case of married Government servants posted at the same station and living together in a Government accommodation provided to either of the two i.e. husband/wife, no House Rent Allowance is admissible to either of them. However, in case the spouse is living separately from husband/wife, the House Rent Allowance is admissible to one of them who does not reside in Government accommodation. A copy of Finance Division’s O.M. No.F.2(1)-R.5/91 dated 25.08.1991 bearing these instructions is annexed.

It may be submitted that House Rent Allowance is a concession given to Government servants to enable them to hire an accommodation. In case neither of them is provided with a Government accommodation, there is justification for permitting them House Rent Allowance so that they may pool their respective House Rent Allowances to have a house. But in case of a situation where a Government house is provided to one of the spouses, there is no justification or logic to allow the other to draw House Rent Allowance. It may be added that grant of House Rent Allowance is in substitution of and not in supplementation of provision of accommodation.

Prayers

The allegations leveled against the Government of Pakistan in this appeal are baseless, unfounded and subjective. The claim of the appellant in the appeal is not valid and logical. Keeping in view the above submissions, it is prayed that the appeals of the petitioners may kindly be dismissed.”

- (i) The Government of Balochistan adopted arguments and comments submitted by the Federal Government.
- (j). In response to our order dated 19.06.2012, fresh/additional comments on behalf of Federal Government and Govt. of Punjab have been received which read as under:-

Comments of Federal Government

House Rent Allowance

House rent is allowed to all Government employees at the rate of 45 % of minimum basic pay scale 2008 in declared big cities and 30% of minimum basic pay scale 2008 in all other cities/stations (Annex-A). List of big cities is attached (Annex-B).

Reasons of difference between big cities and other cities regarding House Rent Allowance and Hiring facility. In big cities cost of living is higher and due to shortage of houses as compared to demand, rent of houses are higher than other cities.

Hiring Facility

Hiring Facility is allowed to Government Servants working in six big cities as per Ministry of Housing and Works O.M. No.F.2(3)/2003-Policy dated 31st July, 2004. These big cities are capitals of the four provinces and the twin cities of Islamabad/Rawalpindi being capital of the country (Annex-C). As per the Rules of Business, 1973 the subject matter relates to Ministry of

Housing and Works (Annex-D).

Conveyance Allowance

- i. Under the revision of pay scales/Allowance and Pension of Civil employees of Federal Government (2005) vide O.M. No.F.1(1) Imp/2005 dated 1st July 2005, same Conveyance Allowance at the same rate was allowed to all employees in big cities (Annex-E).
- ii. This Allowance is allowed to all government servants irrespective of Gender and marital status at all stations/cities, excluding those who are allowed monetized value of Transport facility, w.e.f. 1st July, 2011 (Annex-A).
- iii. Conveyance Allowance is not allowed during leave period of an employee vide Finance Division U.O. No.454-Imp/77 dated 09.07.1977 (Annex-F).

Comments of Govt. of Punjab

- “* House Rent Allowance is not admissible to both the husband and wife being government servants where either of the husband/wife has been provided with government accommodation.
- * There is no bar on admissibility of Conveyance Allowance to married government servants where his/her spouse has been provided with government conveyance.
- * In case of an official who is working in Punjab, but is not the employee of the Government of the Punjab, i.e. an official on deputation is also not eligible for the grant of House Rent Allowance as per Notification No.FD.SR.I.9-8/80 dated 9.10.1991.

It is further observed that:

- * Government policies, rules & regulations including the house rent policy are non-discriminatory in nature and do not carry any gender bias as these are equally applicable to all civil servants.
- * Official residential accommodation is in fact a subsidy provided to a civil servant and his/her spouse by the Government. Moreover, House Rent Allowance is a compensatory allowance, which is allowed in lieu of Government accommodation. If either of the husband and wife is provided a government accommodation and they are residing together, then both are compensated and there is no question of allowing compensatory allowance in the shape of House

Rent Allowance to either of them as per considered policy of the Government realizing both live in an official residence.

- * Furthermore, the notification regarding non-admissibility of House Rent Allowance to both the husband and wife in case of allotment of government accommodation to either of them, in case both are living together, was adopted by the Punjab Government following the instructions of Federal Government.”

8. The KPK Government has filed the following remarks on 25.09.2012, while adopting again the above comments mentioned at paras (d,e & f):-

- “i. That the Government of Khyber Pakhtunkhwa has already filed para-wise comments before the Hon’ble Federal Shariat Court, Islamabad in Shariat Petition No. 6/I of 1994, 8/I of 1994 and No. 12/I of 1994 wherein it has been categorically clarified that all the Notifications/orders of this Provincial Government in respect of grant of House Rent Allowance/Conveyance Allowance and deductions thereto from the spouses, serving the Provincial Government of Khyber Pakhtunkhwa at one and the same station of duty were issued strictly in line with Federal Government Policy on the issues in question. (Copies enclosed Annexure-I,II & III).
- ii. That all such Notifications/Orders issued by Federal Government as well as this Provincial Government still hold good and do not require any amendment as the same are in consonance with Injunctions of Islam, hence can not be termed repugnant to the Quraan and Sunnah for the simple reason that all Government employees who joint civil service are legally bound to abide by the rules/regulations issued by the Federal/Provincial Government from time to time with regard to Terms & Conditions of Civil Servants.
- iii. Copies of all relevant Notifications/orders of Federal/This Provincial Government which are still intact are again sent herewith vide Annexure IV, V & VI.

In view of the above it is humbly prayed that there is no role of this Province in issuance of the relevant letters/policies of the Federal Government. Hence the comments already filed by this Province (Annexure-I,II,III) may please be considered as Ist and last.”

9. We have heard learned counsel for the parties and have also perused the record containing the comments submitted by the Federal Government and Provincial Governments of Balochistan, KPK, Punjab and Sindh.

10. Learned counsel for the petitioner Professor Kazim Hussain vehemently contended

that the entitlement of house rent is not a bounty but it is a substantive right of the Government employees. He submitted that:

- * No one can be deprived of his basic right;
- * The married Government employees though husband and wife are two separate individuals, having their own personal rights;
- * The position emerging from the impugned memo is that double rent of one and the same house allotted by the Government is deducted and this is a grave injustice.
- * Since both the husband and wife are entitled to separate conveyance allowance, they should also be entitled to the house rent as well.

11. Learned counsel on behalf of the Federation supporting the impugned memo submitted that both husband and wife live in the same house provided by the Government and as such should not be entitled to the house rent. He added that the memo is applicable in only six specified cities while the cities other than those are not subject to this memo.

12. Learned Assistant Advocate General Punjab submitted that he has submitted comments which are self explanatory and comprehensive.

13. Learned counsel on behalf of Government of Balochistan also submitted that the husband and wife living together in the same house could not be entitled to a separate house rent.

14. Learned counsel appearing on behalf of Khyber Pakhtoon Khwa and Sindh shared the same view. The comments submitted by them are already reproduced hereinabove.

15. We have given our anxious consideration to the points raised by the learned counsel for the parties and have gone through the impugned memo.

16. Before dealing with the question raised by the petitioners, it is pertinent to point out that one of the functions of this Court, as specifically referred to in Article 203D(1), is to examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam as laid down in the Holy Quraan and the Sunnah of the Holy Prophet (ﷺ). In this connection it is obvious that the jurisdiction of this Court while dealing with the examination and subsequent decision about repugnancy or otherwise of any law or provision of law is different from the one exercised by Wafaqi Mohtasib or Federal Service Tribunal, whose decisions have been relied upon by the counsel representing the State. The jurisdiction conferred on this Court by the Constitution

is confined only to the Injunctions of Islam as contained in the Holy Quraan and Sunnah of the Holy Prophet (ﷺ) and no other consideration or extraneous circumstance could have any bearing on its judgments in Shariat Petitions. Therefore any reference to the decisions of Wafaqi Mohtasib or Federal Service Tribunal would not be relevant.

17. Keeping in view the above constitutional position, now we would like to refer to some Quranic Verses which clearly show that one of the principles which is the hallmark of Islamic injunctions is the principle of equality before law and equal protection of law for all people, irrespective of their gender, colour or creed. The guidelines provided by the Holy Quraan and Sunnah of the Holy Prophet (ﷺ) are replete with such Injunctions.

18. To quote, one verse mentioned in the Holy Quran is as follows:

“O mankind! We have created you from a male and a female” (4:1).

This clearly means that all human beings have only one common origin. They are descendents of one and the same grand parents and the differences in colour, race, tribe etc., which are only incidental, are designed by Almighty Allah just for mutual introduction and recognition. The only criteria laid down for determination of their interse superiority will be on the basis of their piety, nobility and quality of deeds. (49:13). That’s why, Islam has emphasized again and again that people must remain careful of their duty to their Lord who created them from a single soul. He created its mate therefrom and from both of them spread abroad multitude men and women throughout the whole world (4:1).

19. There are several traditions of the Holy Prophet (ﷺ) in support of this proposition. The Holy Prophet (ﷺ) on one occasion said:

الناس سواسية كأسنان المشط

“People are like the teeth of a comb”

(Address at the last Hajj i.e. Hijjatulwida)

This simile is very apt since it exemplifies complete unity and equality between the people. Continuing his address on the occasion of *Hijjat-ul-Widaa*, the Holy Prophet (ﷺ) further added:

لا فضل لعربي على أعجمي ولا لأحمر على أسود إلا بالتقوى – (مسند احمد، جلد 5، صفحہ 411)

“No Arab has any superiority or excellence over a non-Arab and no red-coloured man has any superiority or excellence over any black coloured man, save in respect of piety and fear of Allah.”

In Sahih Muslim this Hadees is reported in the following words:-

ألا لا فضل لعربي على أعجمي ولا لعجمي على عربي ولا لأحمر على أسود ولا لإسود على أحمر إلا بالتقوى - (مسند أحمد، جلد 5، صفحہ 411)

“No Arab has any superiority over a non-Arab, nor any non-Arab over an Arab nor any white man over a black man, nor a black man over a white man, save in respect of piety and fear of Allah.”

This fraternity and equality is all pervading and is not only a matter of form but is indeed a matter of substance. It emphasises equality before law and equal protection of law. In this respect, Sharia does not make any distinction between the citizens of an Islamic State. Here we find no concept of discrimination in the administration of justice between one person and another on any basis. In social and legal perspectives, no human being can be denied or deprived of any fundamental right, nor any juridical right can be reserved for any particular group on the external consideration of his wealth, status caste or colour or any other ground. It clearly shows that equality before law and equal protection of law is the cardinal principle which runs like a golden chord in all Injunctions of Islam.

20. While dealing with the public at large, therefore, the Holy Quraan has laid great emphasis on fair transparent administration of full justice, as is evident from the following Verses of the Holy Quran:-

وَأْمُرْتُ بِالْعَدْلِ بَيْنَكُمْ

* And I have been ordered to do justice among you. (42:15)

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

* God commands justice, and gracious dealings (to all people). (16:90)

وَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ -

* Give measure and weigh with full justice. (6:152)

فَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ

* Give just measure and weight. Do not withhold from the people the things that are their due. (7:85)

وَأَوْفُوا الْكَيْلَ إِذَا كِلْتُمْ وَزِنُوا بِالْقِسْطِ الْمُسْتَقِيمِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا -

* Give full measure when you measure and weigh with a balance that is straight. That is most fitting and most advantageous in the final determination. (17:35)

وَزِنُوا بِالْقِسْطِ الْمُسْتَقِيمِ- أَوْفُوا الْكَيْلَ وَلَا تَكُونُوا مِنَ الْمُخْسِرِينَ-

- * Give just measure and cause no loss to others by fraud. Weigh with scales true and upright. And withhold not things justly due to men. (26:181-182)

وَأَقِيمُوا الزُّن بِالْقِسْطِ وَلَا تُخْسِرُوا الْبَيْزَانَ-

- * Establish weight with justice and fall not short in the balance. (55:9)

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ-

- * We sent aforetime our apostles with Clear Signs and sent down with them The Book and the Balance (Of Right and Wrong), that men shall stand firm in justice.(57:25)

فَلِذَلِكَ فَادْعُ وَاسْتَقِمْ كَمَا أُمِرْتَ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَقُلْ آمَنْتُ بِمَا أَنْزَلَ اللَّهُ مِنْ كِتَابٍ وَأُمِرْتُ لِأَعْدِلَ بَيْنَكُمْ اللَّهُ رَبُّنَا وَرَبُّكُمْ لَنَا أَعْمَالُنَا وَلَكُمْ أَعْمَالُكُمْ لَا حُجَّةَ بَيْنَنَا وَبَيْنَكُمْ اللَّهُ يَجْمَعُ بَيْنَنَا وَإِلَيْهِ الْمَصِيرُ-

- * Call (them to the faith) and stand steadfast as you are commanded, nor follow their vain desires but say: "I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Lord and your Lord. For us (Is the responsibility for) Our deeds, and for you, for your deeds. There is no contention between us and you. Allah will bring us together, and to Him is (Our) final goal. (42: 15)

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوِّمِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أُولَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلَوْا أَوْ تَعْرِضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا-

- * O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor for Allah can best protect both. Follow not the lusts (Of your hearts), lest ye swerve, and if you distort (justice), or decline to do justice,

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوِّمِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا إِعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ-

- * O ye who believe! Stand out firmly for Allah, as witnesses 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: and fear Allah, for Allah is well-acquainted with all that you do.(5:8)

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا -

- * Allah certainly command you to render back your trust to those to whom they are due; and when you judge between man and man, that you judge with justice; verily how excellent is the teaching which He giveth you! for Allah is He Who hears And sees all things.(58:4).

These Verses ordain that the rulers must enjoin what is right and forbid what is wrong and, while deciding matters between people, remain absolutely just and fair. Even the Holy Prophet (ﷺ) was asked to judge between people with complete justice. These verses command all the believers to stand out firmly for justice. The administration and dispensation of justice according to these Verses is mandatory and absolute in terms and not tagged with any other consideration. More over these Verses reiterate again and again that justice is to be done for the sake of Allah. These verses explicitly show that giving just measure and weight is a mandatory duty incumbent upon all. Withholding from the people any thing which is their due right is strictly prohibited and the order is to be followed in letter and spirit otherwise, in case of its violation, it may lead to corruption in the land. This implies that justice is to be imparted in full and any dispute regarding the rights of the people is to be settled amicably and graciously.

21. Now coming to the issue under consideration the following Verses of the Holy Quraan are worth serious consideration:-

- a) لِلرِّجَالِ نَصِيبٌ مِّمَّا كَتَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا كَتَبْنَ -
 “The men are entitled to what they earn and the women to what they earn”
 (4:32).
- b) لَهُمَا مَا كَسَبَتْ وَلَكُمْ مِمَّا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ -
 “For them is what they earned, and for you is what you earned. (2:143).
- c) وَأَنَّ اللَّهَ لَا يُضِيعُ أَجْرَ الْمُؤْمِنِينَ -
 “Allah would not let the reward of the believers be lost”.(3:171).
- d) إِنَّا لَا نُضِيعُ أَجْرَ مَنْ أَحْسَنَ عَمَلًا -
 “Of course, we do not waste the reward of those who are good in deeds.
 (18:30).
- e) وَوُفِّيَتْ كُلُّ نَفْسٍ مِمَّا عَمِلَتْ -
 “And every one will be paid in full for what he did”.(39:70)

These Verses clearly confirm the right of earning, owning and possessing by male and female - all in the like manner – and emphasis again and again that no one can be deprived of his/her due share for any reason. Both are equally entitled to their own individual shares on the basis of their services, duties and functions performed by each one. Each one is at par with the other in this respect, without any discrimination. The rights of each one accrued thus in no manner could be infringed, curtailed or diminished.

22. In order to determine the question under dispute the following facts would be relevant for proper consideration. If both the spouses are civil servants:

- a) they perform their official duties separately and independently of each other;
- b) they are entitled to medical allowance, conveyance allowance and other service benefits without any discrimination;
- c) in case their sons/daughters who are also civil servants – whether dependent or independent – and reside with them in the same hired/government accommodation they are duly entitled in accordance to the NPS they hold, to all perks/privileges/benefits (including the house rent); and there is no bar that deprives them of this right.
- d) due to shortage of Government accommodation, most of the civil servants do not get appropriate accommodation, commensurate to their entitlement, and they have no option but to accept, on account of forced circumstances, any accommodation, however below their entitlement or which is only according to the entitlement of the one who is in lower scale (i.e. smaller accommodation).
- e) after getting married the civil servants, like all other people, have increased liabilities and responsibilities which keep on increasing multifold with passage of time, and there seems no reason that just on account of getting married, why should any one of them suffer financial loss or be subjected to a major change in their terms and conditions of service, of which they are not at all made aware at a time when they join the service;
- f) it is also worth consideration that the position emerging from the impugned OMs shows that house rent of one and the same house, allotted by the Government to one of the spouses, is deducted from both the spouses and,

more over, additional 5% as rent charge is also deducted from the allottee. Obviously, the deduction of double house rent for one and the same house appears to be a grave injustice.

23. We have minutely examined the provisions contained in the impugned OMs/ rules, reproduced herein above, and we are of the considered view that these are not in consonance with the injunctions of Islam as contained in the Holy Quran and Sunnah of the Holy Prophet (ﷺ). These are also in violation of the provisions contained in Article 25 of the Constitution. We must not lose sight of the fact that OMs/ Rules formulated under any Act could never be intended to over rule the specific provisions contained in the Constitution or the injunctions of Islam referred to above. It is also a well-entrenched legal proposition that the rules made in pursuance of a delegated authority must be consistent with the Statute under which they came to be made. The authority is delegated only to the end that the provisions of the Statute may be better carried into effect, and not with the view of neutralizing or contradicting those provisions. The purpose of framing the OMs/Rules is just to facilitate and provide for procedural matters which are subsidiary to the provisions of the Act itself. By now it is a well recognized principle of the interpretation of Statutes that if the rules framed under the statutes, or bye-laws framed under the rules, are in excess of the provisions of the Statute or are in contravention of or inconsistent with such provisions, then these provisions rules etc. must be regarded as ultra vires of the statute and cannot be given effect to.

24. We may also mention that all civil servants have equal rights and there must be no discrimination between any one of them serving in the same scale. The terms and conditions should be one and the same according to the seniority, status and grade they hold. Each one of them is entitled to what he or she earns. We agree that it is not possible to provide Government accommodation to all civil servants, however, each one in his own individual capacity has a right to get house rent according to his entitlement as defined in the terms and conditions of service. Marriage is not a disqualification nor an offence and, therefore, we see no reason why a civil servant after getting married should be penalized or deprived, of his/her due house rent. Both spouses are entitled to get conveyance allowance even if they are working at the same station and the same place. The same logic applies to the house rent as well. We may also mention that there is no bar in these OMs/Rules for the sons/daughters of both or any of the spouses, who are civil servants and reside with their parents in the same house as they are equally entitled to house rent in their own individual capacity. Moreover we see no reason why, in case Government accommodation is allotted to the married couple, both should lose 100% house rent and the allottee husband or wife, in addition to that, should also pay an additional 5% of his/her pay for the same accommodation while their other colleagues who are residing in the same type of accommodation pay only 5% of her/his pay, if the other spouse is not a civil servant. This means that the marriage inflicts severe blow to their financial position to which they are otherwise entitled. As observed above, at times, none of them get proper accommodation

according to his or her entitlement and in that case too it would be great miscarriage of justice to subject them to deprivation of the house rent to which he or she is duly entitled if not married, and especially so if one of them who is not the allottee is in a higher grade than the other life partner. Terms/conditions are usually not well known to the employees at the initial stage when they join the civil service and afterwards, at some stage, get married to each other. Both the spouses, therefore, being separate entities must remain entitled to the house rent as they are already considered individually entitled to conveyance allowance and medical allowance as well. It is also worth consideration that they pay income tax etc. individually and independently and get no extra convenience, concession or latitude on account of their marital status. Moreover, it may also be worth consideration that in case of non entitlement to their due house rent, the present system may encourage the married civil servants to resort to fake certificates or make false statement about their marital status. Since they perform their functions independently of each other, plain and simple logic also demands that they shall be entitled to the benefits of service in their individual capacity because, as stated above, they get no extra financial concession or latitude on account of their marital status. The following Hadith rather suggest that instead of depriving one of the spouses of his or her due right, the married couple be entitled to double concession as compared to that of a single one.

601- عوف بن مالک کہتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم کے پاس جب فنے (کامال) آتا تو آپ اسے اسی دن تقسیم فرما دیتے تھے۔ آپ شادی شدہ کو دو حصے اور کنوارے کو ایک حصہ دیتے تھے۔

602- سفیان بن وہب خولانی کہتے ہیں کہ حضرت عمر نے (ایک دفعہ فنے) لوگوں میں تقسیم کی، تو ہر تنہا فرد کو آدھا دینار ملا۔ اور جو اپنی بیوی کے ساتھ تھا اسے ایک دینار دیا۔ (کتاب الاموال، ابو عبید القاسم بن سلام، اردو ترجمہ صفحہ 362)

25. In view of the reasons stated above, we have come to the conclusion that the impugned OMs/Rules to the extent of depriving one of the spouses - who are civil servants and one of whom is allotted Government accommodation - of the house rent allowance are repugnant to the Injunctions of Islam and, therefore, in view of Article 203D(3) of the Constitution, the Federal Government as well as the Provincial Governments of Punjab, Sindh, Balochistan and KPK and the relevant autonomous bodies and Institutions including the Universities are directed to take necessary steps to amend impugned OMs/Rules so as to bring the same in conformity with the Injunctions of Islam. The necessary action shall be taken for this purpose by 30th June, 2013 where-after the said OMs/Rules will become void and shall be of no effect to the extent stated above.

26. The prayers of the petitioners for relief in personem, however, cannot be granted as it is beyond the scope of jurisdiction conferred upon this Court by the Constitution under the provisions of Article 203D. They may seek relief at the appropriate forum, if advised to do so.

27. These Shariat Petitions are allowed in the terms specified above.

JUSTICE DR.FIDA MUHAMMAD KHAN

JUSTICE RIZWAN ALI DODANI

JUSTICE SHEIKH AHMED FAROOQ

Announced in open Court at Islamabad on 12.12.2012

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

MR. JUSTICE RIZWAN ALI DODANI

MR. JUSTICE SHEIKH AHMAD FAROOQ

SHARIAT PETITION NO. 03/I OF 2013

Syed Maqsood Shah Bukhari

256-FF Phase-IV, DHA, Lahore

House No.6 Lain 5 Raing Road Westridge 3,

Rawalpindi Canntt:

.... Petitioner

Versus

Federal Government through Secretary M/o Law & Justice, Islamabad.

..... Respondent

Counsel for the petitioner ... In person

Counsel for the Federation ... Mr. Muhammad Nazir Abbasi, Advocate

For the Punjab Government ... Ch. Saleem Murtaza Mughal, Asstt: Advocate
General

For the KPK Government ... Mian Saadullah Jandoli, Asstt: Advocate General

For the Balochistan ... Mr. Muhammad Azam Khan Khattak Addll:
Advocate General

Date of Institution ... 02.04.2013

Date of hearing ... 02.05.2013

Date of decision ... 02.05.2013

JUDGMENT

DR. FIDA MUHAMMAD KHAN, JUDGE.- Petitioner Syed Maqsood Shah Bukhari has through this petition, challenged the following Laws/Acts:-

- “1. The Punjab Rented Premises Act, 2009;
2. The Punjab Rented Premises Ordinance, 2007;
3. The Punjab/NWFP/Baluchistan Rent Restriction Ordinance, 1959;
4. The Sindh Rented Premises Ordinance, 1979; and
5. The Cantonment Rent Restriction Act, 1963.”

According to the petitioner these laws are against the Injunctions of Islam as laid down in the Holy Quran and Sunnah of The Holy Prophet (S.A.W).

2. The petitioner, in support of his claim, has relied on the following verses of the Holy Quran. 3:85, 3:139, 22:78, 72:21, 4:119, 43:36,37, 31:33, 40:61, 4:80, 8: 13, 8:20, 2:30, 2:38, 2:39, 2:155, 42:20,16:40,4:40, 2:214, 2:155,6:42,3:145, 10:37, 15: 56, 16:89, 20:2,43:10, 92:12,13,14, 2:159, 42:38.

3. The petitioner was heard in person. He contended that on careful study of Verse No. 22:78. of the Holy Quran, it becomes clear that Allah Almighty has commanded human beings -male and female alike - to earn livelihood by doing work. Therefore, if any person does not work, he defies the Commandments of Allah. He cited a few examples from *Ibadat*, like prayer and fasting, which every Muslim person has to perform himself and no one else can perform the same on his behalf. He added that these examples prove and make incumbent on every person to keep on working and eat from only what he earns himself by his own hands. Accordingly as a rule, he concluded, Islamic Shariah does not allow any body to charge rent from his/her tenant. The petitioner also referred to early history of Islamic administration, claiming that no rent was ever charged by the Holy Prophet or the Rightly guided Caliphs. However, he did not give any authentic reference to support his contention.

4. It is pertinent to point out, at the outset, that the petitioner has not fulfilled, in his petition, requirements of the procedural rules of the Federal Shariat Court, as he has challenged more than one law in a single petition while under rule 7(2) of the FSC Procedure Rules, it has been specifically provided that: whenever a petitioner claims more than one law or provision thereof to be repugnant to the injunctions of Islam, he shall file a separate petition in respect of each law. The petitioner, therefore, by challenging more than one law in a single petition has failed to follow these rules, which having been made under the Constitution, have constitutional force.

5. Moreover, we may point out that this Court has already examined the following laws relating to rents as mentioned hereinunder:

The Punjab Urban Rent Restriction Ordinance 1959 in S.S.M.No.101/P/83.The NWFP Rent Restriction Ordinance 1959 in S.S.M.No.28/NWFP/84, Baluchistan Rent Restriction Ordinance, 1959 in S.S.M.No.22/B/94 , The Sind Rented Premises Ordinance 1979 in S.S.No.42/S/84and the Cantonments Rent Restriction Act 1963 in S.S.M No.117/87.The Sind rented premises Ordinance 1979 was also examined in, Shariat Petition 5/ I /1985 & 9/L,60/I/1990 reported in PLD 1992 FSC 286.

6. A Full Court has examined some of these laws (i.e. the Cantonment Rent Restriction Act. 1963 and the Sindh Rented Premises Ordinance 1979), in Shariat Petitions as well, vide its judgment which is reported as PLD 1992 page 286. However, appeal against the said judgment is still pending before the Hon'ble Shariat Appellate Bench of Supreme Court.

7. As for as the legality of contract of rent/lease/ ijarah according to Islamic Injunctions is concerned, the Muslim jurists are unanimous on the point that this is a valid legal contract which is duly authenticated by the Holy Qur'an, Sunnah of the Holy Prophet (ﷺ) and Ijma'. All Companions of the Holy Prophet (ﷺ) unanimously hold that "ijarah" is a lawful contract. They themselves practised all lawful forms of this contract.

8. The Federal Shariat Court while examining some of these laws in Ashfaq Ahmad vs. Government of Pakistan (PLD1992 FSC286), referred to above, has discussed the legality of the contract of Ijara and Muzarat and held:

“ملکیت کے معاملے میں زمین اور دوسری اشیاء کے درمیان کوئی فرق نہیں اور جب یہ بات ثابت ہو گئی کہ زمین شخصی ملکیت میں آسکتی ہے ، تو اس کا منطقی نتیجہ یہی ہے کہ کوئی دوسرا شخص اگر اسے استعمال کرے تو وہ مالک کے ساتھ کسی معاہدے کے تحت ہی ہونا چاہیئے ، چنانچہ مزارعت یا کرایہ دونوں وہ جائز عقود اور معاہدات (Contracts) ہیں ، جس کے تحت کوئی شخص کسی دوسرے کی زمین جائز طور پر استعمال کر سکتا ہے ، اور معاہدات کے بارے میں قرآن کریم کا واضح ارشاد ہے :

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ-

(اے ایمان والو ! معاہدات کو پورا کرو۔)(المائدہ: 1)

نیز ارشاد ہے :

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا -

عہد کو پورا کرو ، بلاشبہ عہد کے بارے میں (آخرت میں) سوال ہوگا ۔(بنی اسرائیل 34: 17)

کیونکہ مزاعت بھی ایک معاہدہ ہے لہذا ان آیات کی روشنی میں اس کا شرائط معاہدہ کے تابع ہونا ضروری ہوگا ، چنانچہ اگر مزارعت کے وقت اس معاہدہ کے جاری رہنے کے لئے فریقین کے درمیان کوئی مدت طے کر لی گئی ہو ، تو اس مدت کے ختم ہونے پر معاہدہ کا ختم ہو جانا مذکورہ آیتوں کا لازمی تقاضا ہے ، جب کہ زیر نظر قانون جس کے برخلاف یہ حکم دیتا ہے کہ فریقین کے درمیان خواہ کوئی مدت مقرر ہوئی ہو ، مزارعت کا معاہدہ مالک زمین کی طرف سے اس وقت تک ختم نہیں کیا جا سکتا جب تک ان پانچ حالتوں میں سے کوئی حالت نہ پائی جائے ، جو ریگولیشن کے پیرا گراف نمبر ۵۲ میں مذکور ہیں ۔“

”قرآن کریم کے بعد اگر احادیث کو دیکھا جائے تو ان سے بھی یہی ثابت ہوتا ہے کہ مزارعت ایک معاہدہ ہے ، اور اس کی مدت (period) معاہدہ کے شروع میں فریقین کی رضامندی سے طے کی جائے گی ، خود آنحضرت صلی علیہ وسلم نے خیر کے یہودیوں سے مزارعت کا جو معاملہ فرمایا تھا ، اس میں یہ صراحت موجود تھی کہ ان کو مزارعت پر اس وقت تک باقی رکھا جائے گا جب تک ہم چاہیں ، چنانچہ صحیح مسلم میں مذکور ہے کہ آنحضرت صلی اللہ علیہ وآلہ وسلم نے یہودیوں سے یہ معاملہ کرتے ہوئے یہ الفاظ ارشاد فرمائے :

نقر کم علی ذلک ماشئنا (صحیح مسلم، باب المساقات)

”ہم آپ لوگوں کو زمین پر اس وقت تک باقی رکھیں گے جب تک ہم چاہیں گے“ علامہ نووی رحمۃ اللہ علیہ اس حدیث کی شرح میں فرماتے ہیں کہ :

آنحضرت صلی اللہ علیہ وآلہ وسلم کے اس ارشاد کا خلاصہ یہ تھا کہ انکے ساتھ صرف ایک کامعاہدہ ہوا تھا اور ہر سال اس معاہدہ کی تجدید کی جاتی تھی ۔ (صحیح مسلم ، شرح نووی)

اسی معاہدے کے مطابق جب حضرت عمر رضی اللہ تعالیٰ عنہ کا زمانہ آیا تو انہوں نے یہودیوں سے وہ زمینیں واپس لی لیں ، اور اس موقع پر ایک خطبے میں تقریر کرتے ہوئے فرمایا ۔

أَيُّهَا النَّاسُ إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ عَامِلَ يَهُودَ خَيْبَرَ عَلَى أَتَا
نُخْرِ جُحُمٍ إِذَا شِئْنَا فَمَنْ كَانَ لَهُ مَالٌ فَلْيُلْحَقْ بِهِ فَإِنِّي مُخْرِجٌ يَهُودَ فَأُخْرِجُهُمْ-

(سنن ابوداؤد ، کتاب الخراج ، باب حکم ارض خیبر ، حدیث نمبر 3007)

سنن ابوداؤد کے مطبوعہ اردو ترجمہ میں یہ حدیث نمبر 2801 ہے، اور اس کا ترجمہ مندرجہ ذیل الفاظ میں کیا گیا ہے۔

"اے لوگو! رسول اللہ صلی علیہ وآلہ وسلم نے خیبر کے یہودیوں سے یہ معاملہ طے کیا تھا کہ جب چاہیں گے ہم ان کو نکال دیں گے ، لہذا جس شخص کو جو مال ان کے پاس ہو وہ ان سے اپنا مال لے لے ، کیونکہ میں یہودیوں کو نکالنے ہی والا ہوں ۔"

اس واقعہ سے یہ بات واضح ہے کہ مزارعت کا معاملہ جائز ہے اور معاہدے کی شرائط کے تابع ہوتا ہے ، اور معاملے کے وقت جو شرائط طے کر لی گئی ہوں فریقین پر اس کی پابندی لازم ہے ۔ عہد رسالت اور عہد صحابہ میں مزارعت کے معاملے کا عام رواج تھا ۔ یہاں تک کہ حضرت ابوجعفر محمد باقر رحمۃ اللہ فرماتے ہیں :

“مَا بِالْمَدِينَةِ أَهْلُ بَيْتِ هَجْرَةٍ إِلَّا يَعْطُونَ أَرْضَهُمْ بِالْثُلُثِ وَالرَّابِعِ”-

مدینہ میں مہاجرین کا کوئی گھرانہ ایسا نہیں تھا جو اپنی زمین تہائی یا چوتھائی کی بٹائی پر نہ دیتا ہو ۔ (مصنف عبدالرزاق ، ص 100، ج 8، حدیث نمبر 14476)

ان تمام معاملات میں یہ بات مشترک نظر آتی ہے کہ مزارعت کو معاہدہ کی شرائط کے تابع قرار دیا جاتا تھا اور یہ صورت کہیں نہیں تھی کہ کسی شخص کو زمین مزارعت پر دینے کے بعد مالک کو اس کے ساتھ مزارعت ختم کرنے کا حق باقی نہ رہے ۔

درحقیقت مزارعت کی مدت معاہدہ ختم ہونے کے بعد اگر کوئی شخص یکطرفہ طور پر زمینیں کاشت کرتا رہے تو اس کا مطلب یہ ہے کہ وہ مالک کی مرضی کے بغیر اس کی ملکیت کو استعمال کر رہا ہے اور اس کے بارے میں نبی کریم صلی اللہ علیہ وسلم کا یہ ارشاد موجود ہے :

من زرع فی أرض قوم بغیر اذنه فلیس له من الزرع شیئی، وله نفقته۔
 (جامع الترمذی، ابوب الاحکام، باب نمبر 29، حدیث نمبر 1378) "جو شخص دوسرے لوگوں کی
 زمین انکی اجرت کے بغیر کاشت کرے تو اس کے لئے کھیتی کا کوئی حصہ حلال نہیں البتہ اس کے
 لئے خرچ ہر (اور محنت) کے بقدر کھیتی حلال ہے۔"
 "انہی دلائل کی بناء پر فقہاء کرام نے مزارعت کی صحت کے لئے یہ شرط ضروری قرار دی ہے کہ
 مزارعت کا معاملہ کرتے وقت کسی معین مدت کا بیان ضروری ہے، البتہ اگر کسی علاقے میں کسی
 خاص مدت کا ایسا رواج ہو کہ تمام زمینیں اسی مدت کے لئے کرایہ یا مزارعت پر دی جاتی ہوں،
 تو اس صورت میں مزارعت کی مدت بیان کئے بغیر بھی معاملہ درست ہو جاتی ہے اور یہ سمجھا
 جاتا ہے کہ زمین مروجہ مدت کے مزارعت پر دی گئی۔"

9. On careful study of the verses relied upon by the Petitioner, we have found that these verses do not at all relate to or, in any way, support the claim vehemently argued by the petitioner.

10. The logical reasoning of petitioner that without personal involvement in labour and hard work no one is entitled to any remuneration is also absolutely without force. Islamic Injunctions regarding permissibility of gift, Zakat/Ushr, inheritance etc. which confers rights of ownership by the recipients without any physical labour or contribution on his/her part are a few examples in this connection, which have been duly approved by the Holy Quran and Sunnah of the Holy Prophet (صلی اللہ علیہ وآلہ وسلم).

11. Hence this petition besides having the procedural incurable flaw and being without any reference to a specific Verse/Hadith, is devoid of force and misconceived. Therefore, it is dismissed in limine.

JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN

JUSTICE RIZWAN ALI DODANI

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad the 2nd May, 2013

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE DR. FIDA MUHAMMAD KHAN**MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD****MR. JUSTICE SHEIKH AHMAD FAROOQ****CRIMINAL APPEAL NO.4/L OF 2012 L/W**

Nadeem son of Anwar, caste Muslim Sheikh

R/o Chak No.10/J.B, Police Station Saddar Tehsil & District Chiniot.

Appellant

Versus.

The State

Respondent

CRIMINAL APPEAL NO.5/L OF 2012 L/W

1. Anwar son of Nadir, caste Muslim Sheikh, resident of Chak No.10/J.B, Police Station Saddar, Chiniot.
2. Akbar son of Nadir, caste Muslim Sheikh, resident of Chak No.10/J.B, Police Station Saddar, Chiniot.
3. Sajid son of Ghulam Ali, caste Muslim Sheikh, resident of Chak No.10/J.B, Police Station Saddar, Chiniot.
4. Liaqat Ali son of Ahmed Yar, caste Muslim Sheikh, resident of Chak No.10/J.B, Police Station Saddar, Chiniot.
5. Muhammad Ali son of Ahmed Yar, caste Muslim Sheikh, resident of Muradwala, Chiniot.
6. Ghulam Ali son of Nadir, caste Muslim Sheikh, resident of Chak No.10/J.B, Police Station Saddar, Chiniot.

Appellants

Versus

1. The State
2. Inayat Ali son of Sultan, caste Kowra, resident of Khawaja Zari Farm, Dakhli Chak No.10, Lahore Road, Tehsil Chiniot.

....

Respondents

CRIMINAL REFERENCE NO.1/L OF 2012

The State

Versus

Anwar, Akbar, Muhammad Ali, Sajid, Liaqat and Tanveer

	
Counsel for appellants	....	Mr. Abid Saqi, Advocate
Counsel for complainant	....	Ch. Waseem A. Bhaddar, Advocate
Counsel for State	.....	Mr. Nasir Mehmood Sial, Deputy District Prosecutor General
FIR, Date & Police Station	.....	226/05,2.6.2005 Saddar, Chiniot
Date of Judgment of trial court	.....	08.02.2012
Date of Institutions	.....	29.03.2012 (appeals) and 19.07.2012 (Cr.Ref.)
Date of hearing and decision	.....	31.05.2013
Date of judgment	.....	02.07.2013

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- Criminal Appeal No.04/L of 2012 has been filed by appellant/accused Nadeem against the judgment dated 08.02.2012 passed by learned Additional Sessions Judge, Chiniot, whereby he has convicted him under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, (hereinafter to be referred as the “said Ordinance”) and, on account of being juvenile, sentenced him to imprisonment for life in view of section 12(a) of Juvenile Justice System Ordinance, 2000.

2. Criminal Appeal No. 05/L of 2012, jointly filed by six appellants/accused namely Anwar, Akbar, Sajid, Liaqat Ali, Muhammad Ali and Ghulam Ali, against a separate judgment of even date whereby all the appellants/accused, mentioned above, have been convicted under sections 10(4) and 11 of the said Ordinance, 337-L(ii), and 337-H(ii) and 458 PPC and sentenced as mentioned against each hereinunder:-

- | | |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Anwar | <ul style="list-style-type: none"> i. U/S.10(4) of the said Ordinance, death sentence ii. U/S. 11 of the said Ordinance, 25 years R.I.with a fine of Rs.25,000/- in default thereof to further suffer six months S.I. iii. U/S. 458 PPC, 14 years R.I. with fine of Rs.10,000/- and in default six months S.I. iv. U/S.337-L(ii) PPC, two years S.I. and U/S.337-H(ii) three months S.I. |
| Akbar | <ul style="list-style-type: none"> i. U/S.10(4) of the said Ordinance, death sentence ii. U/S. 11 of the said Ordinance, 25 years R.I.with a fine of Rs.25,000/- in default thereof to further suffer six months S.I. iii. U/S. 458 PPC, 14 years R.I. with fine of Rs.10,000/- and in default six months S.I. iv. U/S.337-L(ii) PPC, two years S.I. and U/S.337-H(ii) three months S.I. |
| Sajid | <ul style="list-style-type: none"> i. U/S.10(4) of the said Ordinance, death sentence ii. U/S. 11 of the said Ordinance, 25 years R.I.with a fine of Rs.25,000/- in default thereof to further suffer six months S.I. iii. U/S. 458 PPC, 14 years R.I. with fine of Rs.10,000/- and in default six months S.I. iv. U/S.337-L(ii) PPC, two years S.I. and U/S.337-H(ii) three |

months S.I.

- | | | |
|--------------|------|-----------------------------------------------------------------------------------------------------------------------------|
| Liaqat | i. | U/S.10(4) of the said Ordinance, death sentence |
| Muhammad Ali | i. | U/S.10(4) of the said Ordinance, death sentence |
| Ghulam Ali | i. | U/S. 11 of the said Ordinance, 25 years R.I.with a fine of Rs.25,000/- in default thereof to further suffer six months S.I. |
| | ii. | U/S. 458 PPC, 14 years R.I. with fine of Rs.10,000/- and in default six months S.I. |
| | iii. | U/S.337-L(ii) PPC, two years S.I. and U/S.337-H(ii) three months S.I. |

All the sentences of imprisonment awarded to the appellants/accused were ordered to run concurrently.

A co-accused namely Tanveer has also been convicted under section 10(4) and section 11 of the said Ordinance and also under sections 458, 337-L(ii) and 337-H(ii) PPC and sentenced accordingly through the same judgment dated 08.02.2012 but he has not preferred any appeal before this Court as he had slipped away at the time of pronouncement of impugned judgment as mentioned in its para 56.

3. The learned trial Court has also submitted Criminal Murder Reference which is registered as 1/L of 2012. Since all these matters have arisen out of judgments pronounced in respect of accused of a single crime report i.e. F.I.R.No.226/2005 police station Saddar, Chiniot hence, these are being decided by this single judgment.

4. Brief facts of the case, as narrated in the FIR (Ex.PV/1) are that complainant Inayat Ali, PW.1, submitted complaint (Ex.PV) before SHO, Police Station, Saddar Chiniot wherein, inter alia, he stated that in the night intervening between 30/31.05.2005, he was sleeping along with his family members, brother in law, Azhar and Noor in the courtyard of his house. At about 12.00 a.m. accused Anwar, Akbar, Ghulam Ali, Sajid and six unknown persons, armed with fire arms, entered his house and made *lalkara* that they had come to abduct daughter of complainant to take revenge of the abduction of Shabana daughter of Anwar accused. They threatened that if anyone raised alarm, they would kill him. The accused persons caught hold of his daughter, namely Fouzia, whereupon the complainant and PWs tried to rescue her. The accused persons inflicted butt blows on the complainant and other family members and also extended threats to kill them. Thereafter, while making aerial firing, they took along Mst. Fauzia outside his Haveli and thus succeeded in abducting her away. The motive behind this occurrence, as alleged by the complainant, is that Shabana, daughter of the accused Anwar, who had illicit relations with one Mumtaz had been abducted by him a few days before the occurrence and the appellants/accused persons had a suspicion that the complainant had some role in that abduction. Resultantly the appellants/accused abducted his daughter Mst. Fauzia. FIR No226, was accordingly registered on 2.6.2005 at police station Saddar Chiniot, District Jhang.

5. After completion of investigation, challan was submitted to Anti Terrorist Court, Faisalabad on 13.08.2005. However, later on Section 7 of Anti Terrorism Act, 1997 was deleted and the case was transferred to Additional Sessions Judge, Chiniot for trial.

6. The said trial Court, on 18.01.2012, framed charge under Sections 458 PPC, 337-L(ii) and 337-H(ii) PPC as well as under sections 10(4)/11 of the said Ordinance, against all the accused. However, the case of Nadeem accused, was separated for trial under Juvenile Justice System Ordinance, 2000, and charge was accordingly framed against him also.

7. All the accused did not plead guilty and claimed trial. At the trial, the prosecution produced 11 witnesses to prove its case. A gist of their depositions is mentioned hereinunder:-

- * PW.1 is Dr. Zaid Hussain Bukhari, MO RHC, Ahmad Nagar. He stated that on 13.6.2005 he medically examined accused Ghulam Ali. On 29.06.2005 he medically examined Muhammad Anwar and Tanveer Ahmed regarding potency. He opined that all were fit to perform sexual act;
- * Inayat, complainant is PW.2. He reiterated the same facts as he had got recorded in complaint (Ex.PV);
- * Mst. Fouzia, victim is PW.3. She made statement before the trial Court in the following words:

“At the time of occurrence I resided near Adda Burjian. On the intervening night of 30/31.5.2005 I was sleeping alongwith my children Noor, my father Inayat, Altaf my uncle Wallayat and Nawaz at my house. At about 12 of the night I heard noise and we all awoke up. I saw Anwar, Akbar, Ghulam Ali, Sajid, Tanveer and five unknown persons whom I can identify them on their appearance, entered into our house while making fire with fire arm weapons while mounting on the horses. The afore said persons namely Anwar, Akbar, Ghulam Ali, Sajid, Tanveer are now present in the court but unknown persons are not present today. They raised Lalkara that they had come to take revenge of abduction of Shabana and started to beat my maternal uncle Nawaz as well as ourselves. They forcibly dragged me towards the gate and got mounted me on a mare. At some distance, there was parked a car near Dera and they also put me in the car and the mare riders accused went towards river. The accused took me to a Dera situated near Bailla of river. Afterwards they took me out from the car and took me in a room. The accused Anwar, Muhammad Ali, Liaqat, Sajid and Akbar committed Zina with me turn by turn on the whole night. On the morning, they took me into maize crop and tied me with a chain on the cot. On the whole day Liaqat accused guarded me. On the next night they again took me in the same room of the Dera and

detained me there. All the said persons again committed Zina Bil Jabr with me. They also brought a VCR and naked English film and liquor. After drinking liquor, they forcibly put liquor into my mouth and also forced me to remove my clothes and dance there. Then I said that I do not know dance. They tortured me on my refusal. I gave them WASTA of God and the Holy Prophet and requested them that I was like your daughters and sisters. They arrogantly took milk, from my breast and stated that they had brought me here as buffalo. On the next morning they again took me into field crop of maize, again tied me on the cot with chain. Nadeem and Tanveer committed Zina with me. I asked them for water. They got milk from my breast and put it into my mouth. All the accused again gathered there. There was a small tank of water near maize crop. They removed my clothes and forced me to jump into the water. They also forced me to take both there. After that I came out from the said tank and wore my clothes. They asked me about the amount regarding sale of wheat. I said that we had not sold the wheat but only some quantity of what was available in our house for our use. I again made WASTA that my little girl was left behind me. They said that they would bring my maternal aunt Shahnaz and my daughter here. Akbar brought a car and they took me in the house of Ghulam Ali and made preparation to take me for some unknown destination. In the meanwhile the police launched a raid at the house of Ghulam Ali alongwith my father and also recovered me from there. I identify the driver of car who is now present in the court and also pointed the accused Mumtaz. The police also got recorded my statement. The police also produced me before the Magistrate. The Magistrate did not record my statement. I was medically examined through the police.”

- * Wallyat is PW.4. He is brother of complainant Inayat. He is an eye witness of the occurrence. He corroborated the statement made by the complainant;
- * Khan Muhammad, Constable is PW.5. On 22.6.2005 he received two sealed parcels containing envelope and sealed phial from the Moharrar of the Police Station. He deposited the same articles in the office of Chemical Examiner, Lahore on 30.6.2005;
- * Azhar (PW.6) made statement at the trial which by and large is in line with the statement made by Inayat complainant;
- * Muhammad Nawaz, who was injured during the occurrence is PW.7. He also made similar statement in support of the prosecution. He corroborated the statement of complainant;
- * Mushtaq Jillani, Constable is PW.8. He deposed that on 06.07.2005 he

alongwith Muhammad Sharif, SI, Muhammad Saeed, Constable and others police officials, was present at Adda Rao Abad when Muhammad Saeed, SI arrested Muhammad Ali accused and on his personal search recovered 12 bore gun. He secured that vide memo (Ex.PF);

* Dr. Mumtaz Hussain Sajid is PW.9. On 31.05.2005 he medically examined Muhammad Nawaz injured PW and observed as under:

“On 31.05.2005 Muhammad Nawaz son of Shera aged 35 years caste Kora, Labourer, resident of Dauluwala, PS Saddar Chiniot appeared himself at 12:45 p.m. for his medical examination. I conducted his medico legal examination and my observations are as under:-

1. A contusion 7 cm x 3 cm on lateral side of left upper arm.
2. An abrasion measuring 12 cm x ½ cm on back of left arm and forearm.
3. A contusion measuring 6 cm x 4 cm on back of left shoulder.
4. An abrasion measuring 4 cm x 2 cm on back of left lower chest.
5. A contusion measuring 4 cm x 2 cm on back right lower chest.
6. Multiple abrasions in area of 12 cm x 6 cm on front of left chest with swelling 18 cm x 8 cm (advised X-ray)
7. A swelling 6 cm x 3 cm on dorsal surface of left big toe (advised X-ray)
8. A swelling measuring 6 cm x 3 cm on front of right knee joint.
9. An abrasion 4 cm x 1 cm with swelling of 6 cm x 4 cm on front of right leg middle part.

Probable duration of injuries was within 12 to 24 hours and were caused by blunt weapon. EX.PM is the correct carbon copy of Medico Legal Examination which is in my hand and bears my signatures. Ex.PM/1 is the pictorial diagram of injuries which is also in my hand and bears my signature.”

He also medically examined accused Akbar, Muhammad Ali, Sajid and Nadeem qua their potency and opined that all of them were fit to perform sexual act.

* P.W.10 is Lady Dr. Miftah Shaukat who on 4.6.2005 medically examined Mst. Fauzia Bibi, victim and made statement in the following words:

“On 4.6.2005, I was posted as WMO THQ Hospital Chiniot. On the same day, Mst. Fauzia Bibi wife of Altaf aged 20 years, caste Mochi household lady resident of chak No.10 GB was produced before me by Bibi Rani lady Constable No.1041 for her medical examination. On the same day at 5:30 P.M. I conducted medical examination of Mst. Fauzia Bibi and my

observations were as under:-

History kidnapping on Monday.

On external examination the following injuries were found on her person.

Contusion with abrasion measuring 1 cm x 1 cm on right knee joint.

Abrasion measuring 2.5cm x 1 cm on Right foot.

P/V Examination

On P/V examination hymen was old ruptured and hailed. Vagina admits two fingers easily. Six high vaginal swabs were taken and sent to the chemical examiner for detection of semen and grouping opinion.

OPINION

In my opinion, the examinee was used to regular sexual intercourse. Final opinion was kept pending till the receipt of report of Chemical Examiner and report of Serologist. Injury No.1 and 2 were declared as 337 L2 PPC caused by blunt weapon. Probable duration of injuries could not be determined. After completion of the examination carbon copy of medico-legal certificate, one sealed vial and one envelope were handed over to Bibi Rani, Constable. Ex.PS is the correct carbon copy of medico-legal examination which is in my hand and bears my signature. I also endorsed application for medical examination of Mst. Fauzia (Ex.PT) under my signatures and seal. I have seen (Ex.PV) report of Chemical Examiner, according to which the swabs procured by me, were found stained with semen. In view of the report of chemical examiner (Ex.PV) I am, of the opinion that sexual intercourse was committed with the victim.”

- * PW.11 Mazhar Hussain, ASI who on 02.06.2005, drafted formal FIR (Ex. PV/1) without addition or omission as per complaint (Ex.PV) submitted by Inayat Ali, Complainant. On 04.06.2005 he was handed over one sealed enveloped and one sealed phial by Muhammad Sharif, SI/IO for keeping in safe custody in the malkhana and later on delivered the said articles by him to Khan Muhammad, Constable for depositing the same in the office of Chemical Examiner.

8. After closure of prospection evidence, the learned trial Court recorded statements of all the accused under section 342 Cr.P.C. The appellants/accused Anwar, in answer to question, “why this case against you and why the PWs have deposed against you?” made statement in the following words:-

“It is a false case, I have been involved in this case due to previous enmity as I and my brother purchased 14 Acres land adjacent to the land of one Arif Badrana who wants to dispossesses me and my family

members from our agricultural land by all the means whether legal or illegal. In this respect he also requested to his friend Abdul Qayyum, one of the PW in this case. Complainant Muhammad Inayat and Mst. Fauzia have been residing at Agriculture Farm of Arif Badrana for the last so many years. Arif Badrana hired Mst. Fauzia to implicate all the accused in this case. She is of a bad character woman, greedy and mostly take illegal money from the people, so she resiled before this Court from her statement and made different statements at different stages during the course of trial. She is absolutely not reliable, so an application is pending against the false deposition made by her and other PWs before this Court. This case was highlighted by the electronic media and actually the local police was reluctant to register such like false case. She also contacted Mukhtaran Mai and dreamed for gold gardens but in vain. I am innocence.”

All the other appellants/accused relied upon the statement of Muhammad Anwar as mentioned above. Neither anyone of them made statement on oath nor produced any evidence in his defence. The learned trial Court, after examining the evidence brought on record and considering other incriminating material and completing all codal formalities, convicted and sentenced all the appellants/accused as mentioned hereinabove.

9. We have heard learned counsel for the appellants, complainant as well as the DDPP for the State and have also perused the record with their assistance. The learned counsel for appellants/convicted accused made the following submissions:-

- * There is an un-explained delay in the registration of FIR, lodged on a written application which after legal advice was submitted before the DPO who was under pressure because of the alarming intervention of the electronic and print media. Even the said application was referred to the SHO after three days of occurrence.
- * Accused Anwar, Akbar and Ghulam Ali are real brothers inter-se and Sajjid is the nephew of the said three accused. Thus implicating them with the charge of gang rape is not only unnatural but also improbable.
- * Liaqat Ali and Muhammad Ali/appellants are also real brothers.
- * The motive as indicated in the prosecution has not been proved by the prosecution through any reliable evidence and it is mere assertion.
- * The alleged supplementary statement pertaining to Nadeem accused is also not available on the record, therefore, the implication of the Nadeem as accused in the case is un-believable.
- * The PWs including the victim appeared in the ATA Court, alongwith their counsel as well as the prosecutor and made statements in favour of the appellants/accused to the effect that they did not recognize the accused

person because of their muffled faces. (Their statements are Ex.DA to Ex.DE).

- * For convicting a person on a capital charge the evidence must be of a high quality, coming from the mouth of PWs of unimpeachable character but in this case the conduct, character and the style of the PWs clearly indicate that they have taken somersault, and thus their evidence is not reliable.
- * The alleged fact of coercion while making the first statement was required to be proved. The PWs never made any application to the law - enforcing agencies complaining against the alleged threats extended to the complainant or any other PW.
- * The accused remained in custody, therefore, the allegation of threats allegedly extended is not conceivable.
- * PW Willayat has not been mentioned in the FIR as PW nor he appeared before the ATA Court as witness but, during the third trial, he appeared in the proceedings as PW.4. His testimony is absolutely un-reliable as he was previously given up by the prosecution.
- * Initially, the police was reluctant to register the case and, the learned Magistrate also refused to record the statement of abductee under section 164 Cr.P.C. This shows that the police and the local administration did not believe the veracity of the alleged occurrence.
- * The conviction and sentences awarded to the appellants are neither justified nor permissible under the law as the basis of evidence brought on record by the prosecution is not trustworthy.
- * The learned trial Court has failed to comprehend the true perspective of the case and has convicted the appellants on the basis of subjective and unreasonable analysis of the evidence.
- * The evidence of prosecutrix i.e. alleged victim has wrongly been relied upon for the purpose of conviction under a capital charge. Her inconsistent and contradictory versions are not worthy of reliance in view of the principle of safe administration of criminal justice.
- * The allegation of gang rape by the old, mid age and young members of one family is imaginary, fanciful and maliciously motivated, but unfortunately, this significant aspect of the case has not been taken into consideration while rendering the impugned judgment.
- * The version advanced by the prosecution against the appellant Nadeem is highly improbable and a wide net has been thrown to falsely implicate the entire family.
- * The appellant Nadeem has been convicted despite his juvenility and without evidence, therefore, the impugned judgment is not sustainable under the law

and is liable to be set aside.

- * Even, otherwise, he submitted that the sentences awarded to the appellants are very harsh, oppressive and disproportionate and, therefore, impugned judgment is liable to be set aside and the appellants are entitled to be acquitted of the charge.

10. Learned counsel for the complainant made the following submissions:-

- * The case of the prosecution is based on the ocular evidence, medical report, motive and recoveries.
- * The evidence of the complainant, eye witnesses and more particularly, the statement of the victim which is supported by the evidence of injured PW namely Nawaz are fully corroborated by the medical evidence and for all practical purposes, the prosecution case is fully established.
- * The motive part as explained in the prosecution case is fully established as the defence has miserably failed to put any solid question regarding the motive of the occurrence during the cross-examination.
- * The defence plea taken by the appellant/accused persons under section 342 Cr. P.C. is not supported by the defence evidence. Even as much the defence plea taken by the appellants were for the first time during the trial and they did not even took this plea at the time of the investigation of the case.
- * All the eye witnesses were inmates of that Haveli and their presence therein was natural. They have given most credible evidence which provides trustworthy ocular accounts of the occurrence which finds further corroboration by the medical evidence as well.
- * It is fully established that the appellants were actual assailants who abducted the victim and then subjected her to the gang rape.
- * The complainant, eye witnesses and victim had no motive against the appellants to falsely implicate them.
- * No suggestion or particular question has ever been put to the victim PW.3 as to the series of the events which starts from her abduction to her gangrape.
- * Recoveries from the accused persons fully corroborate the case of the prosecution.
- * There is no delay in recording the FIR and even if it was, it is fully explained at the time of occurrence.
- * The victim PW.3 in her statement had categorically unfolded this barbaric act of the accused persons.
- * The prosecution has established its case to the hilt and the learned trial

Court's reliance on the evidence is correct and he has awarded proper punishment which was deserved by all of them.

The learned DDPP also vehemently supported the impugned judgment.

11. Before discussing the evidence in the instant case, we would like to refer to the main principles, consistently followed in criminal cases by the Superior Judiciary for safe administration of justice. By now, it is well-settled that the prosecution is duty bound to prove its case on the strength of its own evidence and an accused is presumed to be innocent till he is proved guilty. Accused is considered a favourite child of law and he may take any plea, however absurd or false it may be, but he can not be punished for his flaws or falsity in his plea or his failure to prove the plea taken by him. Moreover, in case of any doubt, not being artificial, the accused shall be entitled to its benefit as a matter of right. The appreciation of evidence in a criminal case is, however, never governed by a mathematical formula and no hard and fast rule can be laid down for accepting or rejecting an evidence because in each case the circumstances vary and the Court has to consider the evidence upon its intrinsic value. Deposition made by a witness is always scrutinized in the light of attending circumstances. Moreover, it is not the quantity of the evidence that is necessary to establish the charge but the quality with which the Court is satisfied as regard to its truthfulness and reliability. The witnesses as a rule are weighed not counted, and in each case, the Court has to confirm the presence of the witnesses at the time of occurrence, and get satisfied that statement of a PW is consistent, the version of incident given by him is confidence inspiring, his character is above suspicion, he has stood the test of cross-examination and his testimony is unimpeachable. Thus if the testimony of even a single witness is unbiased, consistent, reliable, trustworthy and un-impeached, it can legitimately form basis for conviction of the accused. Moreover, such an evidence should not be considered in isolation but the whole of it should be considered together and its accumulative effect must be weighed and given effect.

12. It transpires that challan in the instant case was initially submitted in the Anti Terrorist Court and all the private PWs, including the complainant Inayat Ali, the victim Mst. Fauzia and the injured witness, who appeared on 27.09.2005, exonerated all the appellants/accused by stating that the appellants/accused, who were unknown, had muffled their faces and that the accused, present in Court, were not those who had assaulted the complainant party, abducted Mst. Fauzia Bibi and subjected her to zina-bil-jabr thereafter. Later on, however, an application was moved under section 540 Cr. P.C. seeking permission to re-examine the PWs on the ground that they had given their earlier statement under threat. The same was allowed by trial Court on 03.10.2005. However, it was challenged before High Court in a writ petition which was disposed of with the observation that the trial Court shall decide the case strictly on merits. It is really strange to observe that after making the first statement in the ATC, the victim Fauzia Bibi took a somersault and made an application to Anti Terrorist Court for making another statement. The reasons given by her for making that request was that after making that statement in the court, the accused had extended

threats to her.

13. It is unbelievable that, being inside a Terrorist Court, while she was also accompanied by a counsel and she had exonerated the accused already, how and why the accused party threatened her. Had the threats been given before making statement in favour of the accused, that could have been understandable. That statement was not only made inside the court room where high security is maintained but her counsel, who was accompanying her, also attested the same. For the sake of convenience, her statement is reproduced herein-under:-

“On the night between 30/31.5.2005 I alongwith my parents, sisters and brothers were sleeping at the house of my father. All of sudden, at about 12.00 mid night, some unknown persons who had muffled their faces while riding on the mares arrived at our house. They forcibly abducted me on gun point. On resistance my material uncle Anwar was injured by the above mentioned unknown persons. They took me to nearby Dera wherefrom I was made to sit in the car and then taken toward the bed of the river. I was kept confined at a Dera where I was subjected to rape by the various persons. I was humiliated and mal-treated by the accused persons. On the 3rd day I was released in the area of Chak No.10/JB by the said unknown persons. I could not identify them as they kept on putting scarf on their faces during the night and day time. However, after my arrival at my house I was produced before the police and my Medico-Legal examination was got conducted. The accused persons present in the court are not the same who had abducted me and committed rape with me. (At this stage the learned Public Prosecutor for the State states that the witness is suppressing the truth, she may be declared hostile and he be allowed to cross examine this witness. The request of the learned Public Prosecutor for the State seems to be genuine and the same is accordingly allowed.”

14. It is amazing that during her second statement recorded by the same court, she implicated the appellants/accused for abducting and subjecting her to zina-bil-jabr. Her father, the complainant himself also appeared for the second time on 05.10.2005 and he again exonerated the accused by making the following statement:-

“States that my previous statement recorded in this Court is correct. We were made afraid of by the people but now I feel no such apprehension of any threat at the hands of the accused persons are their families. I have entered into a compromise from the core of my heart. My stand is still now that the accused persons facing trial, present in the Court are not the real culprits. The culprits who had forcibly entered in my Haveli on 30/31.5.2005 were some other persons who could not be identified by me. At this stage, I have not to say anything else.”

15. It is also note-worthy that the injured PW.7 Muhammad Nawaz also made statement in the following words:-

“On the fateful night I was sleeping at the roof top of the Haveli of Inayat PW who is my brother-in-law. That at about 12.00 night I woke up on hearing the noise one person who was armed brought me in the compound of the Haveli and threatened me to remain quite. In the courtyard of the Haveli 10/11 unknown persons who were armed with firearms and had reached there on mares, were present there. They forcibly abducted Mst. Fouzia my niece on gun point and after raising *lalkara*. I tried to resist upon which I was belabored by the said unknown persons. They abducted away my niece toward the river bed. It was dark night. The accused persons had muffled their faces as a result thereof I was unable to identify them. My Medico-Legal examination was got conducted on the next morning. At this stage the learned Public Prosecutor for the State requests that the witness is suppressing the truth, he may be declared hostile and he be allowed to cross examine this witness. The request of the learned Public Prosecutor for the State seems to be genuine and the same is accordingly allowed.”

16. As stated above, the PWs Inayat and Mst. Fouzia were called for the third time and Muhammad Nawaz called for the second time. The case of one juvenile Nadeem was separated for trial. Then all, the prosecution witnesses supported the prosecution version in their statements recorded on 15.11.2005, 12.12.2005 and 15.5.2005 respectively. Statements of the accused were also recorded. Thereafter, on conclusion, the Anti Terrorist Court after carefully going through the prosecution evidence recorded on two/three occasions came to the conclusion that since the PWs had not stated anything about the insecurity and harassment having been created in the vicinity due to the occurrence, the offence under section 7 of Anti Terrorist Act was not attracted in the case and subsequently, deleting the said section, the Anti Terrorist Court transferred the case to District & Sessions Judge, Jhang for its entrustment to a court of competent jurisdiction. Accordingly, the case was decided by the learned Additional Sessions Judge, Chiniot, who convicted and sentenced the appellants/accused as mentioned in the first para of this Judgment.

17. It is evident from the above that initially, the appellants/accused faced trial before Anti Terrorist Court for charge framed under section 10(4)/11 of the said Ordinance as well as under sections 337-H(2)/337-A(2)/148-149 PPC and under section 7 of ATA 1997 on 12.9.2005. They did not plead guilty and claimed trial.

18. Therefore, the prosecution produced 12 PWs including Inayat complainant (PW.7), Mst. Fouzia Bibi, victim (PW.8) eye witness Abdul Qayyum (PW.9), Muhammad Nawaz (PW.10), Azhar (PW.11) and Noor (PW.12). However, all these PWs deposed in favour of the appellants, exonerated them and attributed the whole occurrence – from beginning to end – to some unknown accused who had muffled their faces and therefore, could not be

recognized. They were declared hostile. These statements were recorded on 27.09.2005.

19. The PWs were thereafter recalled and re-examined. PW.8 Fouzia Bibi and PW.11 Azhar resiled from their previous statements. However, PW.7 Inayat Ali and PW.9 Abdul Qayyum remained stuck to their earlier statement and did not support the prosecution.

20. For the third time, all the PWs were examined on the occasion of separation of the case of Juvenile accused Nadeem for trial, and all supported the prosecution version.

21. For the fourth time also, the PWs Inayat, complainant and Mst. Fouzia, victim supported the prosecution version wherein they implicated all the appellants/accused in the commission of offences for which they were charged.

22. Thus it is clear from the above that there are two versions made by the PWs themselves and both these versions are self-contradictory. Obviously two contradictory statements about the same occurrence cannot be considered truthful. Therefore, a genuine doubt has arisen about these PWs, who blew hot and cold in the same breath and showed least respect for telling the truth and, by being capable of changing their versions as and when it suited them, proved that they are worthy of no credence even if they are natural witnesses of the occurrence. If a witness deposes falsely under threat and that too on oath inside a court, on one occasion, how can he or she be relied upon and believed as truthful on another occasion. This mercurial behavior reflected from their conflicting depositions lends, in a way, support to the defence plea that Inayat complainant and Mst. Fouzia who had been residing at Agriculture Farm of Arif Badrana for the last so many years had implicated all the accused at his instance.

23. In the instant case, there is delay in lodging of FIR which is unexplained and improbable. The police post was at a distance of 4/5 furlongs but none was attracted to the spot. Even the Magistrate refused to record statement of victim under section 164 Cr. P.C. We agree with the learned counsel for the appellants that on account of alarming intervention of electronic and print media, the written application was submitted before the DPO who, being under pressure, referred that to SHO and after taking three days, he incorporated its contents into the FIR and the case was submitted for trial before the Anti Terrorist Court. All the PWs inspite of all support from electronic and print media deposed in favour of the accused and exonerated them. This is a very significant aspect of the case and cannot be ignored easily. All the PWs had not made statements before the police but had deposed before the Court of competent jurisdiction where they were not only represented by a counsel but were placed in a highly protected atmosphere. These statements are admitted by the complainant party with the explanation that after making the statements they were threatened by the accused party. However, there seems no reason why were they threatened when they had already favoured the accused in their statements. At the time of making statements also they were absolutely free and under no duress or coercion as the accused were behind the bar. The PWs have neither proved nor explained even about the alleged threat, extended by whom, when the accused had already been arrested and all the PWs had

also exonerated them and given them a clean chit.

24. It is well settled that the evidence of hostile witnesses cannot be brushed aside merely on the ground that they were declared hostile inasmuch as the portion of evidence advantageous to the parties may be taken into consideration but at the same time, the Court should be extremely cautious to consider veracity of the evidence on the basis of its intrinsic worth. It is not unusual that some time, few witnesses do turn hostile but it is not so in the instant case. Here, all PWs were declared hostile. They were allowed to reappear but again a conflicting conversion was advanced by the most important witnesses. Had they actually been under threat for the first time, why the complainant and one other PW adhered to their first version when they had all the protection and security provided by order of the High Court.

25. We deem it appropriate here to mention that law does not make any distinction in the matter of appreciation of evidence in a case under Anti Terrorist Act or under normal Criminal Law. It is always the credibility of witnesses which has to be measured with the same yardstick whether it is an ordinary crime or a crime striking terror in society. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and the same and that is, intrinsic worth of testimony and the fact, that it withstand the test of cross-examination. The contradictory versions of the PWs made before Anti Terrorist Court and then before Additional Sessions Judge shake the entire foundation of the prosecution case. By no stretch of imagination, it is possible to reconcile the conflicting statements of same PWs regarding the same event. These contradictions sufficiently furnish a clue to the veracity of the testimony of these witnesses and shake their trustworthiness. The variant ocular account furnished by them is also belied by the attending circumstances.

26. Even otherwise, the story of prosecution is improbable on the face of it. The three appellants namely Anwar, Akbar and Ghulam Ali are real brothers and Sajid is nephew of the remaining three accused. Implicating them all with the charge of gang-rape seems ridiculous and apparently seems a great exaggeration on the part of prosecution. By throwing a wider net to implicate all the elders, whose ages range between 50 to 54 years raises a very serious doubt about veracity of the prosecution version. Liaqat Ali and Muhammad Ali are also real brothers, and circumstances of the case as narrated by the victim Fouzia do not appeal to any prudent mind.

27. We may add that the probabilities of a case are a material test in judging of the credibility of a witness. The concept of probability and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such unit constitute proof beyond reasonable doubt. There is, however, an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. While uniformed legitimization of trivialities would make a mockery of administration of criminal justice, the protection given by the criminal process to the innocent persons is not to be eroded at the same time.

28. The motive mentioned by the prosecution has also not been established by any evidence worth the name. Otherwise also, the motive, even if proved, by the prosecution, was not sufficient as Mst. Asia and Mumtaz had no concern or relation with the complainant party. There is not a single word on record to show proceedings or ultimate result of the earlier occurrence which is alleged as motive for this occurrence. This shatters foundation of the case of prosecution. The alleged supplementary statement pertaining to Nadeem accused is also not available on record, therefore, his implication as an accused in this case is not believable. P.W.4 Walayat, who was produced by the prosecution was not mentioned in the FIR as PW nor did he appear before the Anti Terrorist Court as a witness. His testimony is absolutely unreliable as he had been previously given up by the prosecution.

29. Besides the above discussion, we have also observed that there are material discrepancies in the case of prosecution. For example, the complainant, who resides near a Police Check Post Burjia, never went there after the occurrence and the record is silent about anyone of the police official having been attracted to the spot inspite of the alleged aerial firing made by the accused. Though recoveries of empties from the spot and 12 bore shot gun from accused were effected but Klashnikov and rifle 7 mm have not been recovered despite recoveries of its empties from the spot. The medical examination report regarding the injured PW Nawaz is there but nothing on record to show as to who caused that injury. The prosecutrix Fauzia was also medically examined but the positive chemical report on swabs in her case is not conclusive as she was a married lady and had remained with her husband before her medical examination. No DNA test was conducted. The alleged places where zina was committed are also not specifically located in the site plan. The room in a Baila (hideout) and the maize crop are not explained in the site plan, as required, to determine the ownership or their distance from Haveli/road. Though TV and VCD were recovered from Liaqat Ali but there is no proof to show that electricity was available in the area or that any electric connection was provided therein so as to ascertain whether, as alleged, playing any film on a VCD in that room was possible. No bottle of liquor was recovered from that room. The proof that any threat was extended to the complainant party is also lacking on record as no report/complaint was lodged by them to this effect. Refusal of the Magistrate to record statement of Mst. Fauzia Bibi under section 164 and silence of the complainant party to challenge the same thereafter is worth consideration. Admission of the complainant that he had effected compromise and patched up the matter with accused is also worth noticing. The suggestion put to the PWs regarding Rs.12 Lacks may also be very relevant to be taken into consideration. All these material infirmities and discrepancies further weaken the case of prosecution and make it highly doubtful. When the evidence adduced against the appellants/accused is wholly unsatisfactory, the presumption of innocence which is the basis of criminal jurisprudence assists the appellants/accused persons and compels this Court to render the verdict that the charge is not proved against them, beyond any reasonable doubt and so, they are entitled to the benefit thereof. Consequently, we extend the benefit of doubt to all the appellants and acquit them of the charges.

30. Before parting with the judgment, we deem it necessary to place on record our deep appreciation for the learned counsel for appellants, the DDPP and learned counsel for the complainant for their able assistance in this very complicated case. We appreciate the conduct of Ch. Waseem A. Bhaddur, learned counsel for complainant, who after vehemently arguing the case at great length, gracefully conceded in the end and also got recorded the following statement on 31.05.2013:-

“During the course of arguments, I am convinced that sufficient incriminating evidence could not be brought on the record of the learned trial Court to prove the guilt of the accused/present appellants beyond reasonable shadow of doubt and as such, I am unable to oppose the instant appeals. However, the relatives of the convicted accused/present appellants have offered to pay Rs.15,00,000/- (Fifteen Lacs) as compensation to the complainant as well as the victim for the psychological damage, mental anguish and the agony of trial faced by them. The real brother of appellants No.1 namely Rehmat has paid Rs.6,00,000/- (Six Lacs) in hard cash to the complainant in the Court today. The remaining amount of Rs.900,000/- (Nine Lacs) would be paid by the learned counsel for the appellants to me today through a cheque which I hereby undertake to pass on the amount in hard cash to the complainant.

In view of above, I have got no objection, in case the appeals filed by the convicted accused/present appellants, are accepted and they are acquitted of the charges and ordered to be released.”

We would also like to recognize the sincere efforts made by Mr. Abid Saqi, learned counsel for the appellants, who very sensibly prevailed upon an elder of the appellants, who was present in the Court, and convinced him to offer an amount of Rs.15,00,000/- to the complainant party for amicable settlement of an old case.

31. Keeping in view the poverty stricken appearance of the shabbily dressed complainant, his daughter and family members, who were also in regular attendance on each date, and considering the story of starvation and deprivation apparently written on their faces, we considered the above offer as a very good humanitarian gesture made on behalf of the learned counsel for appellants and allowed him to pay the said amount to the complainant party, in the larger interest of the society, to enable the parties to bury their hatchet and set a good example of peace-loving citizens.

32. Consequently for the reasons stated above, these appeals are allowed. Conviction and sentences awarded to the appellants namely Nadeem, Anwar, Akbar, Sajid, Liaqat Ali, Muhammad Ali and Ghulam Ali vide impugned judgments dated 08.02.2012 are set aside and they are acquitted of the charges. They shall be released forthwith, if not, required in any other case.

33. Criminal Murder Reference No.1/L of 2012 is **not confirmed** and answered in **negative.**

34. However, as far as the case of Tanveer/convicted accused is concerned, he slipped away at the time of announcement of judgment by the learned trial court and he, being fugitive of law, who has not even filed any appeal, therefore, Murder Reference sent by the learned trial court to his extent shall remain pending and shall be resurrected and decided as and when he is arrested

35. These are the reasons for our short Order passed on 31.05.2013.

JUSTICE DR. FIDA MUHAMMAD KHAN

JUSTICE MUHAMMAD JEHangir ARSHAD

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad the 2nd July, 2013

Approved for Reporting

JUSTICE DR. FIDA MUHAMMAD KHAN

IN THE FEDERAL SHARIAT COURT
(Appellate / Jurisdiction)

PRESENT

MR.JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

MR.JUSTICE DR.FIDA MUHAMMAD KHAN

MR.JUSTICE RIZWAN ALI DODANI

JAIL CRIMINAL APPEAL No.26/I OF 2011.L.W.

Habibullah son of Muhammad Waris Appellant
Dakhan r/o village Hoat Khan Jalbani Taluka
Piryaloi District Khairpur.

Versus

The State Respondent

SUO MOTO NO.1/K OF 2011

The State Appellant

Versus

Habibullah Respondent

Counsel for the appellant Mr. M.Rifaqat Ali, Advocate

Counsel for the State Mr. Saleem Akhtar, Addl:
Prosecutor General for State

Case FIR No. date & No.67/1998, dated 4-6-1998
P.S. Police Station Faiz Ganj
District Khairpur

Date of judgment of trial Court. 22-04-2009

Date of Institution of Jail Appeal in FSC 26.04.2011

Date of hearing 21.05.2012

Date of decision 21.05.2012

JUDGMENT

RIZWAN ALI DODANI, J :- This judgment will dispose of Suo Moto Notice No.1/K of 2011 and the Jail Criminal Appeal preferred by appellant Habibullah son of Muhammad Waris Dakhan against the judgment dated 22.04.2009 passed by 2nd learned Additional Sessions Judge, Khairpur in Sessions case No.183 of 2000, arising out of FIR No.67 of 1998 P.S. Faiz Ganj whereby he was convicted and sentenced as under :-

- i. U/s 302 (c) PPC 20 years R.I with fine of Rs.50,000/- in default whereof to further undergo 6 months R.I. with benefit of section 382-B C.P.C.

2. Brief facts of the case as narrated in the FIR No.67 of 1998, dated 04.06.1998 registered at police station Faiz Ganj District Khairpur under section 17(4) Harraba and 13 of Arms Ordinance, 1965 are that complainant Imam Bakhsh Rajper lodged report that on 04.06.1998 his nephew Hamadullah was going on motorcycle to attend his duty at Zaffar Abad that he also accompanied Hamadullah as he had to look after his lands situated in Deh Hussain Pato, that at about 10.30 a.m. they reached the land where he got down from motorcycle and started walking to the lands and after covering the distance of 70/80 paces he heard the cries raised by Hamadullah on which he (complainant) turned around and saw that two persons fired shots at Hamadullah and then took away the motorcycle. The complainant saw faces of both the accused very well. The complainant recorded his complaint in daily dairy book of police post Akri at serial No.6 which was incorporated in FIR book at P.S. Faiz Ganj vide Crime No.67/1998.

3. The case was duly investigated, statements of the PWs were recorded under section 161 Cr.P.C. the accused/ appellant was arrested after two years of the occurrence. After completing investigation challan was submitted in the trial Court. The learned trial Court framed the charge against the accused on 11-4-2005 under section 17(4) Offences Against Property (Enforcement of Haddood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

4. The prosecution in order to prove its case produced 09 witnesses at the trial. The gist of the witnesses is as follows:-

- i) Muhammad Aslam, PW-1 who deposed that on 4.6.2000, he was posted as SHO P.S. Faiz Ganj, and on that day accused Habibullah Dakhan, was already under arrest at P.S. Mirwah, in some other case and he arrested him in this case in presence of mashirs who were his subordinate and prepared such mashirnama and read over contents to them they signed on it. He produced mashirnama of arrest at Exh.7 and stated that it is same, true and correct and bears his signature and also signatures of mashirs on 5.6.2000, he produced suspect Habibullah before Judicial Magistrate, Mirwah where complainant and two witnesses identified the suspect in identification parade

he gave such letter to Magistrate, and he produced copy of Exh.8, and stated it bears his signature. On 7.6.2000, accused Habibullah voluntarily produced country made pistol from sandy dunes just near to his village Hassan Pato, in presence of mashirs Farozedin and Zafaruddin, and disclosed that it is same pistol with which he alongwith his friend committed murder of deceased during robbery of motor cycle. He secured the pistol and sealed on the spot and prepared such mashirnama on the spot in presence of mashirs. He produced mashirnama at Ex.9, and stated that it is same, true and correct and bears his signatures and signature of two mashirs. He had left the P.S. for the purpose of recovery at about 1420 hours, he produced entry No.15 and 18, at Ex.10. After completing investigation of this crime, he handed the custody of accused to P.S. Mirwah.

- ii) Fateh Khan, PW-2 deposed that on 4.6.1998, he was posted as ASI at P.S. Faiz Ganj, and on that he was present as incharge duty officer and he received copy of roznamcha entry No.6 from incharge of PP Akri, through PC Bashir Ahmed and he in corroborated that entry in FIR book at serial No.67/98 and sent the copy of FIR to incharge PP Akri, through same constable. He produced FIR at Ex.12 and stated that it is same, true and correct and bears his signature.
- iii. Ali Gulab, PW-3 deposed that on 4.6.1998, he was posted as ASI and incharge PP Akri, of P.S. Faiz Ganj, and at about 12.30 noon, complainant Imam Bux, came at PP and he complained of commission of offence, that his nephew Hamadullah has been murdered by two unknown persons and he then recorded his complaint in daily diary book vide entry No.6, and read over contents to him and he signed on it. He then sent the roznamcha entry to P.S. Faiz Ganj, through constable where it was incoborated in FIR book vide crime No.67/1998, he received copy of FIR and he saw at Ex.12, and stated that it is same, the original copy of roznamcha entry is not available with him know. He then proceeded to place of wardat alongwith complainant and examined dead body of deceased Hamadullah in presence of mashirs Ferozuedin and Zafar Din, and prepared inquest report which he produced at Exh.14, and stated that it is same, true and correct and bears his signature and signatures of two mashirs. He prepared dead body examination form and referred dead body, through PC Abdul Majeed for post mortem, he produced dead body examination form at Ex.15, he secured blood stained earth in seal parcel and one empty cartridge of 12 bore from place of wardat and he prepared mashirnama of place of wardat in presence of same, mashirs and read over contents to them, and it signed. He produced mashirnama of place of wardat at Ex.16, and stated that it is same, true and correct and bears his signature and signatures of two mashirs. PC Abdul

Majeed handed over dead body to Imam Bux, the cloth of deceased from hospital which he secured under the mashirnama prepared in presence of same mashirs, he produced mashirnama of recovery of cloth of deceased at Ex.18, and stated that it is same, true and correct and bears his signature. He produced report of ballistic expert at Ex.19. Thereafter he handed over the case paper to SHO Illahi Bux Mithani, for further investigation.

- iv. Dr.Maqbool Hussain, PW-4 deposed that on 4.6.1998 he was posted as Medical Officer (R.H.C) at Faiz Ganj. On the same day he received a dead body of a person namely Hamadullah s/o Ghulam Muhammad Pato Rajper aged about 42 years referred by police station Faiz Ganj through P.C/242 Abdul Hameed for examination and post-Mortem report. He produced such letter at Ex.21. The dead body was identified by that's relative namely Haji Sharfuddin s/o Nawaz Ali and Javed Hussain s/o Sharfuddin by the deceased. He started postmortem examination at 2.00 .p.m. and completed at 4.00 p.m. The body of male, Muslim of this built aged about 42 years. On external examination he found following injuries on his person.

1. A lacerated wound round in shape measuring 6 cm x 5 cm x bone deep horizontal in direction at the right side of chest in front, below, and at lateral end of the right clavicle and shoulder joint. The wound extend medially causing laceration to all the visera of the chest i.e. right lung, pleura, trachea, esophagus, left lung and heart.

Note .

46 pallets which have been taken from the body of deceased are sent to SHO P.S. Faiz Ganj alongwith that postmortem report.

On the external as well as internal examination of the dead body of deceased Hamadullah s/o Ghulam Muhammad he is of the opinion that death has occurred due to hemorrhage shock caused by injury to vital organ, by all injuries are caused by the discharge of the fire arm. All the injuries of ante mortem. He issued such postmortem report which he produced at Ex.22.

- v. Imam Bux, PW-5 complainant deposed that deceased Hamadullah is his nephew being son of his cousin. He was posted as field Assistant in the Agricultural Department Zafarabad. This incident took place on 4.6.1998 , and on that day his nephew Hamadullah was going on motor cycle attend his duty at Zafarabad, on he also accompanied him on motorcycle driven by Hamadullah as he had to lookafter his land situated in the Hussain Pato, and at about 10.30 a.m, they reached at their land and he got down from motor cycle and started going to the land and when he reached at the distance for

about 70/80 paces from Hamadullah all of sudden he heard cries raised by Hamadullah on which he went back and he saw two persons who were on motor cycle standing near to Hamadullah and one of that two accused fired pistol shot at Hamadullah, which hit Hamadullah on the left side chest. He saw both accused and their faces were opened but he could not identify the accused by name, but he had seen the faces of accused very well. Hamadullah fell down and both accused escape and they took away their motor cycle and so also motorcycle of Hamadullah. He then informed police post Akri, and Akri police came at place of wardat and Dr. Maqbool Ahmed also came at place of wardat and there from dead body taken on police mobile to hospital some of their relative started tracking the foot prints as well as wheel marks of motor cycle. He had lodged first report at PP Akri, he then lodged FIR at P.S. Faiz Ganj, he saw FIR at Ex.12 police visited the place of wardat on the first day of incident. On 5.6.2000, he identified accused Habibullah before Judicial Magistrate Mirwah.

- vi. Moula Dad, PW-6 deposed that deceased Hamadullah was son of his maternal uncle. Complainant Imam Bux is also his relative. This incident took place on 4.6.1998, on the day of incident he and Rahim Bux were working in their land at about 10.30 a.m, deceased Hamadullah came on motor cycle alongwith complainant Imam Bux, all of sudden they heard cries raised by Hamadullah on which they saw two accused person who made attempt to commit robbery of motor cycle from him and when they rushed to Hamadullah one of the two accused who was later on identified accused Habibullah and now present in court, fired pistol shot at Hamadullah and then robbed motor cycle from deceased. Police came at place of Wardat at about 12.30 noon on same day of incident and recorded his statement. After this incident he saw accused in court of Magistrate at Mirwah on 5.6.2000, where he identified the accused present in court to be same. He is giving this statement voluntarily. Accused present in court is same who fired pistol shot at deceased Hamadullah and robbed motor cycle from him, and he had seen at place of wardat and then identified him before Magistrate.
- vii. Zaffaruddin appeared as PW-7 who deposed that this incident took place in the years, 1998, it was about 103 PPM and all of sudden he heard that Hamadullah Rajpur, has been murdered, then he rushed to the place of wardat, where many persons were present, police came on place of wardat, and he was already present there, police offered him and Ferozuddin if they are ready to act as Mashir and they agreed, police examined dead body of Hamadullah and prepared some paper police prepared mashirnama of place of wardat on the spot on which he and Ferozuddin signed, he saw mashirnama of place of wardat at Ex.16, and said that it is same, trace and

correct and bears his signature and signature of Ferozuddin, he saw inquest report of deceased Hamadullah at Ex.14, and stated that it is same, true and correct and bears his signature and signature of Ferozuddin, police secured blood stained earth, in seal parcel and two empty cartridges from place of wardat, the dead body was taken to Faiz Ganj hospital for post mortem, the cloth of deceased were brought by police at Faiz Ganj police station when mashirnama of cloth was prepared which he saw at Ex18; Later on police came in their village and called complainant Imam Bux, he himself and co-mashir Ferozuddin disclosed that accused Habibullah ready to produced country made pistol from under the sand in the bottom of sim bush of crier tree, and disclosed that it is same, pistol with which he committed murder of Hamadullah, the place of recovery is at the distance of about 1 and 1 upon four km, from village Hussain Pato on northern side, police prepared mashirnama of recovery of country made pistol on the spot, on which he and Ferozuddin signed after the contents were read over. He saw mashirnama of recovery of country made pistol at Ex.9 and stated that it is same, true and correct and bears his signature. After arrest of accused police called them at court at Mirwah, where complainant Imam Bux, two witnesses namely Moula Dad and Rahim Bux, and he himself alongwith Ferozuddin identified the accused Habibullah, complainant Imam Bux identified the accused Habibullah and thereafter witness Moula Dad identified him and then witness Rahim Bux came and identified the accused. He signed on the mashirnama of identification at the place of identification, he produced mashirnama of identification at Ex.28, Accused Habibullah present in court is same.

- viii. Atta Hussain appeared as PW-8 and deposed that he has posted as Tapedar of Tape and Deh Hussain Pato, place of wardat of this case is situated in Deh Hussain Pato, and he visited the same, on 21.2.2009, on the directions of the court received through Mukhtiakar Revenue Faiz Ganj, mashir Zafaruddin pointed out the relevant points to him and he conducted mearsument with standard top and such stretch/ in duplicate, which he produced at Ex.30, 30-A.
- xi. Muhammad Umar appeared as PW-9 who deposed that on 5.6.2000 he was posted as Judicial Magistrate Mirwah and on that day SHO P.S. Faiz Ganj produced suspect Habibullah for identification parade through complainant Imam Bux and PW Moula Dad and Rahim Bux and he submitted such letter, he saw copy of letter as Ex.8 and stated that it is same. First of all the complainant and PWs were directed to stand behind the Court building and in such way so that they could not see the accused. The hand cuffs of accused Habibullah were opened and he was asked to stand in the row

of total 10 persons of similar nature and accused stood at S.No.9 on his own wishes from eastern side and complainant Imam Bux Rajpar was called through peon of Court and complainant identified the suspect. Thereafter the accused stood at S.No.7 and P.W Moula Dad Rajpar was called through peon and PW identified the accused. Again the accused was asked to change his position and he stood at S.No.4 and PW Rahim Bux was called who identified the accused. After identification the accused was back to police custody. Such mashirnama of identification was prepared in presence of mashirs Ferozuddin and Zafaruddin. He saw mashirnama of identification at Ex.28 and stated it is same, true and correct and bears his signature and signatures of the mashirs. Accused present in court is same who was produced before him for identification.

5. The learned DDPP closed the prosecution side on 28.2.2009. The examination of the accused Habibullah as provided under section 342 Cr.P.C. has been recorded at Ex.33. He declined to examine himself on oath or any witness in his defence but stated that he is innocent.

6. Heard the learned counsel for the appellant and learned Additional Prosecutor General for the State and perused the record and relevant laws.

7. The learned counsel for the appellant candidly submitted that he would not argue the case on merits but would only address firstly an omission committed by the learned trial Court while awarding conviction and sentence to the appellant. He contended that the learned trial Court wrongly convicted and sentenced the appellant under section 302(c) PPC although the pre-requisites as laid down under section 306 PPC attached to it are not available per the facts and circumstances of the case and that it may have been under section 302(b) as Tazir as the evidence available on the record does not fulfill the condition enumerated under section 304 PPC. The learned counsel took us to the relevant law i.e. section 302(c) PPC and 306 PPC which read:-

“302. Punishment of qatl-i-amd. Whoever commits qatl-e-amd shall, subject to the provisions of this Chapter, be –

302 (c)PPC punished with imprisonment of either description for a term which may extended to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.”

306 PPC Qatl-i-amd not liable to qisas. Qatl-i-amd shall not be liable to qisas in the following cases, namely:-

(a) When an offender is a minor or insane;

Provided that, where a person liable to qisas associates himself in the commission of the offence with a person not

liable to qisas with the intention of saving himself from qisas, he shall not be exempted from qisas;

- (b) when an offender causes death of his child or grandchild, how lowsoever; and
- (c) when any wali of the victim is a direct descendant, how lowsoever, of the offender.”

That after going through sections 302 (c) and 306 of Pakistan Penal Code, seemingly none of the pre-conditions is available on the record of the case in hand that attracts the section 302(c) PPC. That it may be mentioned here that in impugned judgment the trial Court has awarded the sentence under section 302 (c) PPC as Tazir which is misconceived as punishment prescribed in the latter section may be awarded when Qisas could not be applicable due to the Injunctions of Islam such as contained under sections 306 and 307(c) PPC and not as a result of non adherence of section 304 PPC. Therefore, if the trial Court in the instant case was of the view that sentence be given as Tazir then section 302(b) PPC was the relevant provision of law.

8. As such we are of the view that the sentence to the appellant ought not to be awarded under section 302 (c) PPC and that the trial Court went erroneously to opt for the latter provision of law and it should have been under section 302(b) as Tazir.

9. Secondly, the learned counsel for the appellant, submitted with regard to the Suo-Moto Notice taken by this Court on the point that no reason was given by the trial Court while extending the concession of not awarding death penalty to the appellant inasmuch as is the mandatory requirement enshrined under section 376 Cr.P.C. The learned counsel for the appellant contended that there are sufficient reasonable mitigating circumstances available on the record which were not mentioned by the trial Court inadvertently, those are namely that though all the concerned prosecution witnesses have identified the appellant but the identification parade was not carried out as per the rule as envisaged under the police rules. i.e. the dummies were not similar and so on they were not similarly dressed as required under the rules. He further submitted that the appellant was arrested after two years of the occurrence and the identification parade was carried out after his arrest and as such the complainant party identified the appellant after the period of two years. He also contended that the alleged theft vehicle/motorcycle was not recovered at all. He lastly argued that it could also be mitigating circumstance that the appellant has been acquitted in criminal case challaned against him under section 13-D of Pakistan Arms Ordinance, 1965 and prayed that the Suo-Moto Notice taken by this Court against the appellant regarding enhancement of the sentence may be re-called in the interest of safe administration of justice.

10. On the other hand Mr. Saleem Akhtar, Additional Prosecutor General Sindh appearing on behalf of the State though does not object to the extent of wrong application

of provision of law i.e. section 302(c) PPC however, he has argued in respect of Suo-Moto Notice that it was rightly issued under the facts and circumstances inasmuch as there is sufficient evidence on the record to prove that the appellant committed the murder of Hamadullah in a bid to snatch his motorcycle.

11. That keeping in view the fact that the learned counsel for the appellant has not argued the case on the merits but only the legal points touching the quantum of sentence and the mitigating circumstances have been submitted by the learned counsel for the appellant which in our considered view are reasonable particularly that the appellant/accused was identified by the complainant party after the period of two years and moreover the appellant accused is in jail for about 12 years.

12. Consequently we alter the conviction and sentence awarded to the appellant under section 302(c) PPC to that under section 302 (b) PPC and sentence him to life imprisonment. The appellant shall also be liable to pay fine of Rs.50,000/-, or in default thereof to suffer six months rigorous imprisonment. The benefit of section 382-B Cr.P.C. extended to the appellant shall remain intact. The amount of fine if recovered shall be paid to the legal heirs of deceased Hamadullah. With the above modification in the sentences, both the Jail Criminal Appeal No.26/I of 2011 and the Suo-Moto Notice No.1/K of 2011 are disposed of accordingly.

JUSTICE RIZWAN ALI DODANI

JUSTICE AGHA RAFIQ AHMED KHAN

Chief Justice

JUSTICE DR.FIDA MUHAMMAD KHAN

Islamabad, the 21st May, 2012

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

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

JAIL CRIMINAL APPEAL NO. 23/K OF 2010

1.	Niaz Ali s/o Ali Nawaz Jamali	...	Appellants
2.	Asif Ali s/o Abdul Rauf Rajput resident of Waritar Sukkur		

Versus

The State	...	Respondent
Counsel for the appellants Advocate	...	Mr. Aftab Ahmad Khan,
Counsel for the State	...	Mrs. Rehana Akhar Additional Prosecutor General Sindh for State
FIR No. Date and Police Station	...	No.98/2004 dated 22.9.2004, P.S. A-Section Sukkur.
Date of Judgment of trial Court	...	07.10.2010
Date of Institution of J.Cr.Appeal in FSC	...	18.10.2010
Date of hearing	...	29.05.2012
Date of decision	...	29.05.2012

JUDGMENT

RIZWAN ALI DODANI, Judge: This appeal has been filed by Niaz Ali and Asif Ali against the judgment dated 07.10.2010 passed by learned Additional Sessions Judge (Hudood), Sukkar whereby both of them were convicted under section 302(b) 34 PPC read with section 20 of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (herein-after referred to as the said Ordinance) and sentenced to life imprisonment each and under section 544-A Cr.P.C. to pay Rs.50,000/- each to the legal heirs of deceased, in default of payment thereof to suffer S.I. for four months. They have further been convicted under section 392/34 PPC read with section 20 of the said Ordinance and sentenced to seven years R.I. each plus to pay a fine of Rs.10,000/- each or in default to further undergo S.I. for two months more. Benefit of under section 382-B Cr.P.C. extended to both the appellants.

2. Brief facts of the case are that on 22.09.2004 at about 10.25.a.m. complainant Mohammad Hassan lodged report at Police Station A-Section Sukkar stating that on the fateful day he alongwith his friend Abdul Fateh while boarding on motorcycle of Abdul Fateh from his village went to Sukkar. That near fish market where he alongwith Abdul Fateh met Abdul Sattar, at 10.00.a.m. when suddenly two persons emerged from Qasimabad market armed with T.T. pistols and they by show of pistol robbed motorcycle from them and one of the accused also robbed mobile phone and both the accused started running whereupon Abdul Fateh grappled with one of the accused, upon which that accused fired at Abdul Fateh which hit him on his abdomen and thereafter both the accused ran away on the motorcycle. Complainant then removed the injured Abdul Fateh to Police Station A-Section Sukkur where he lodged the report. The injured was then referred to Civil Hospital Sukkur where he succumbed to injuries on the same day at about 11.30.a.m.

3. Investigation of the case was conducted by Sajjad Ahmed, PW.6. He prepared injury statement and mashirnama of deceased on 22.09.2004 at Civil Hospital Sukkur in the presence of mashirs Khalil Ullah and Abdul Rahim. On the same day he visited the place of occurrence and secured two empties of 30 bore pistol and blood stained earth. He received the clothes of deceased after postmortem. He recorded statements of PWs Abdul Shakoor and Abdul Sattar under section 161 Cr.P.C. On 28.09.2004 SIP Khalid Ghaffar Khuja handed over to him accused namely Niaz Ali and Asif Rajput alongwith mashirnama of their arrest. On production of both the accused in the Court of Sessions Judge and after recording their statements the court directed him to conduct investigation at Jail. On 04.10.2004 identification parade of accused was got conducted in jail in the presence of Civil Judge and Judicial Magistrate-II Sukkur. On 05.10.2004 he dispatched blood stained earth through Constable Ali Akbar to the office of Chemical Examiner, Rohri. On 10.10.2004 SIP Sarfraz Mangi was posted as SIP at Police Station A-Section Sukkur where he handed over the case file to him. On 21.11.2004 the investigation of the case was again

entrusted to him for further investigation. On 22.11.2004 he recorded statements of both the accused under section 161 Cr.P.C. On 29.11.2004 he handed over the case file to SP (Investigation) for legal opinion and on 09.12.2004 he submitted challan to court requiring the accused to face trial. He produced report of Chemical Examiner Ex.15-E. He also identified the accused in the court as the same culprits whom he investigated.

4. The learned trial court after receipt of challan framed charge on 27.12.2005 against both the accused namely Niaz Ali and Asif Ali under sections 302, 392/34 PPC and under section 17(4) Offence Against Property (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

5. The prosecution in order to prove its case at the trial produced 12 PWs. The gist of their deposition is as under:-

- * PW.1 is Muhammad Hassan, complainant who reiterated the same facts as he got recorded in the FIR (Ex.9/A).
- * PW.2 is Abdul Sattar who stated on 22.09.2004 he alongwith Molvi Abdul Shakoor was present near Subhan Mosque at about 10.00.a.m. he saw that both the accused snatched one mobile and motorcycle from complainant Muhammad Hassan. When Abdul Fateh resisted to give motorcycle, one of the accused fired at Abdul Fateh and the accused ran away. He alongwith complainant Muhammad Hassan and Molvi Abdul Shakoor identified the accused persons before the Magistrate. He is an eye witness of the occurrence;
- * Molvi Abdul Shakoor appeared as PW.3 and made statement in line with the statement made by Abdul Sattar PW.2. He is also eye witness of the occurrence; He also deposed that two empties and blood stained mud were recovered from the vardat.
- * PW.4 is Khalil Ullah who signed the mashirnama (Ex.12-A) of place of wardat prepared by the I.O. at the place of occurrence;
- * Ali Hassan, ASI appeared as PW.5 and deposed that complainant Muhammad Hassan appeared before him at police station A-Section and disclosed the facts of the occurrence whereupon the PW. recorded formal FIR (Ex.P.9-A) and got signatures of the complainant on it and also read over to him the contents of FIR;

- * Sajjad Ahmad, SIP was examined as PW-6 who conducted investigation of the case and supported all the documents prepared by him and involved the present accused during this investigation. He also produced, mashirnama of inspection of dead body, inquest report, mashirnama of vardat and recovery of empties and blood stained mud from the place of vardat and securing blood stained clothes of the deceased as well as chemical examiner and supported all the documents prepared by him. The detail of his investigation is mentioned at para-3 of this judgment.
- * PW-7 Khalid Ghaffar, Inspector deposed that he arrested the accused and produced mashirnama Ex.16-A of arrest and supported the contents of the same.
- * Dr.Muhammad Yasin, Medical Officer appeared as PW-8 and corroborated the version of the complainant and eye witnesses by deposing that on 22.9.2004 he examined the dead body of Abdul Fateh who had sustained fire arm injuries. He also produced postmortem report as Ex.17-A and supported the same.

Opinion

From the external as well as internal examination of the dead body of Abdul Fateh son of Muhammad Sabir he is of the opinion that death has been occurred due to hemorrhage and shock as a result of vital organ injuries as mentioned in postmortem. The injuries were ante-mortem in nature and caused by due to discharge from fire arm weapon. The injury No.1 & 2 were sufficient to cause death in ordinary course of nature. The time between injuries and death was about 1 to 1 ½ hours while the time between the death and postmortem was about 30 minutes.

- * Ghulam Sarwar, Head constable appeared as PW-9 and stated that he is mashir of arrest and fully supported the contents of mashirnama of arrest Ex.16-A.He further stated that both the accused were arrested on 28.9.2004 by SIP Khalid Ghaffar in his presence.
- * Manzoor Ahmed, Tapedar appeared as PW-10 and stated that he produced sketch of vardat at Ex.19-A and fully supported the same.
- * Gulshan Iqbal, appeared as PW-11 and stated that he in his evidence fully supported the identification parade, which was held in his presence before

the Magistrate, deposed that accused were correctly identified by the complainant and witnesses and supported the contents of mashirnama at Ex.20-A of identification being an independent witness by caste Shaikh and not related to deceased or complainant.

- * Abdul Sattar Soomro, Magistrate appeared as PW-12 and stated that he fully supported the prosecution case by deposing that during identification parade at Ex.20-A accused Niaz Ali and Asif Ali were identified by the complainant and PWs Abdul Sattar and Abdul Shakoor correctly in presence of mashirs. Moreover incident has taken place in broad day time and defence has not challenged the identification of accused, even not pointed out any infirmity or illegality in the identification test.

6. The statements of the accused under section 342 Cr.P.C. were recorded on 3-5-2010 in which they totally denied the case of prosecution and claimed to be innocent.

7. The learned counsel for the appellants submitted that in the FIR descriptions of the culprits were not given by the complainant. That the name of Abdul Shakoor PW-3 was also not mentioned in the FIR and it was only introduced by the complainant in his statement before the Court. That all the PWs are interested being relating to each other. He further submitted that the identification parade has not been carried out as per prescribed rules and that the Magistrate in his report also did not mention the descriptions of dummies such as names and addresses. He also contended that during the statement of accused persons under section 342 Cr.P.C, the question regarding identification parade was not put to them and according to him this cannot be considered as piece of evidence and could not be based for conviction, and placed his reliance on 2012 P.Cr.L.J.page-500. He further contended that the instant case was foisted on the appellants inasmuch as the I.O. Sajjad Ahmad PW-6 has stated in his statement before the Court that “on 29.9.2004 the accused were produced before the District and Sessions Judge, Sukkur due to raid of Judicial Magistrate”. This fact depicts that the appellants were arrested earlier than that of the alleged date of arrest i.e. 28.9.2004 and only after filing of application of Habeas corpus an order of raid was passed by the District and Sessions Judge, Sukkur. That allegedly robbed articles were also not effected at all from the accused persons nor the pistol of 30 bore allegedly use in the crime was recovered. The identification parade was also doubtful as it was conducted after the several days of arrest of the accused persons without assigning reason. The evidence of PWs are not trust worthy being interested witnesses and tutored by the police and no one of them given the description of the accused persons in their respective statements recorded under section 161 Cr.P.C. He lastly argued that there are bundle of doubts in the prosecution story and the instant case is devoid of any substantial evidence.

8. On the other hand the learned Additional Prosecutor General appearing for the State submitted that the prosecution witnesses are trust-worthy and their evidence is based on probable facts. She further submitted that although descriptions were not given by the complainant and the PWs as to the culprits but they have identified the accused persons through identification parade and before the trial Court during the trial and as such it cannot be doubted. She candidly submitted that though the incriminating/robbed articles could not be recovered from the accused persons yet they were identified by the natural witnesses who had seen them closely at the time of occurrence. That in rebuttal to the argument raised by the learned counsel for the appellants that the question with regard to the identification parade was not put to the accused persons under the proceedings under section 342 Cr.P.C, she submitted that under Qanoon-e-Shahadat Order, 1984 prosecution is not obliged to conduct the identification parade as such non-asking of question in this regard would not damage the prosecution case in any manner. She lastly argued that the evidence against the appellants is so sufficient that the conviction and sentences rightly awarded by the trial Court as such, which do not warrant interference of this appellate Court.

9. Heard the learned counsel for the appellants as well as for the State. Perused the relevant record and the impugned judgment with able assistance of the learned counsel for the parties. It has been observed that the contents of FIR do not depict as to the descriptions of the accused persons as well as the name of prosecution witness namely Abdul Shakoor PW-3 was also not mentioned in the same. It is also on the record that according to the police, the appellants were arrested on 28.9.2004 and that in the same breath it was stated that the appellants were produced before the District and Sessions Judge, Sukkur on 29.9.2004 after raid was conducted by the judicial Magistrate on order of the District and Sessions Judge in a case of Habeas corpus filed by the accused persons. So it could safely be ascertained that the application from the accused side was obviously filed earlier than the date of alleged arrest of the accused i.e. 28.9.2004, therefore, an order had been passed for raid as to the illegal confinement of the appellants on or before 29.9.2004 and as such it goes to show that they were under custody much before than the said alleged date of arrest, therefore, the arrest of the accused as narrated by the prosecution has become doubtful. As regards to the identification parade, the contentions of the learned counsel for the appellants with reference to the statement recorded under section 342 Cr.P.C. find weight particularly when he is fortified by the case law namely 2012 P.Cr.L.J.pages-500 wherein it was held that non-asking of a question regarding identification parade which is an incriminating piece of evidence causes prejudice to the accused and as such could not be used as evidence against the accused and made basis for conviction. We are also convinced with this proposition of law that anything incriminating in nature when was not put to the accused persons in the proceedings under section 342 Cr.P.C. may cause prejudice to the accused, as such, following the principles of safe administration of justice and Audi alteram partem as well, it would not be safe to convict the accused on the basis of such evidence. Therefore, we are of the view that such evidence cannot be taken into

service. That the robbed article and the pistol allegedly used in the crime have also not been recovered from the accused persons. That in the absence of any description regarding the accused persons being unknown by the complainant and PWs makes the prosecution case highly doubtful as to the identification of the accused persons by the complainant and prosecution witnesses. That the alleged incident took place in the rush hours of the day in a fish market yet no witness from the locality was cited that also put heavy dent on the veracity of the prosecution case inasmuch as the prosecution witnesses are relatives to each other and moreso one of them Abdul Shakoor PW-3 is under shadow of doubt as was not mentioned at the first available opportunity i.e. in the FIR.

10. That the summary of above discussion shows that the identification parade lost its admissibility, the other available piece of evidence which could be helpful to the prosecution i.e. the recovery of incriminating articles is also absent. The evidence of PWs including complainant is also not devoid of doubts on two counts such as their statements do not mention any description of the accused persons and that they are relative inter-se. As regard the medical account is concerned in the absence of these material evidence the same is of no use.

11. That in this view of the matter we are of the considered view that the prosecution case is not free of doubts and that the conviction on the basis of such evidence shall go against the norms of safe administration of justice, therefore, we are constrained to interfere in the impugned judgment by setting aside the same.

12. Consequently, the conviction and sentences awarded to the appellants namely Niaz Ali son of Ali Nawaz Jamali and Asif Ali son of Abdul Rauf Rajput by learned Additional Sessions Judge (Hudood) Sukkur vide judgment dated 7-10-2010 are set aside and they are acquitted of the charges. They shall be released forthwith if not required to be detained in any other case.

These are the reasons of our short order dated 29-05-2012.

JUSTICE RIZWAN ALI DODANI

JUSTICE DR.FIDA MUHAMMAD KHAN

Islamabad the 29th May,2012

IN THE FEDERAL SHARIAT COURT
(Appellate /Revisional Jurisdiction)_

PRESENT

MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO. 9/I OF 2012 LW.

- | | | | |
|----|-------------------------------------------------------|-----|-------------|
| 1. | Noor Ullah s/o Ghulam Nabi r/o Gharib Abad | ... | Appellants |
| | Badaber Peshawar | | |
| 2. | Shamaz Gul s/o Baharuddin r/o Haider Colony, Peshawar | | |
| 3. | Amirzada s/o Ghulam Nabi r/o Gharib Abad Peshawar | | |
| | Versus | | |
| 1. | The State | ... | Respondents |
| 2. | Rahim Gul s/o Toor Gul r/o Javid Town House No.55, | | |
| | Gulbahar No.4 Peshawar | | |

CRIMINAL REVISION NO.1/I OF 2012

- | | | | |
|----|-------------------------------------------------------|-----|------------------------------|
| | Rahim Gul s/o Toor Gul r/o Javid Town | ... | Petitioner |
| | House No.55, Gulbahar No.4 Peshawar | | |
| | Versus | | |
| 1. | Noor Ullah s/o Ghulam Nabi | ... | Respondents |
| | r/o Gharib Abad Badaber Peshawar | | |
| 2. | Shamaz Gul s/o Baharuddin r/o Haider Colony, Peshawar | | |
| 3. | Amirzada s/o Ghulam Nabi r/o Gharib Abad Peshawar | | |
| 4. | The State | | |
| | Counsel for the appellants | ... | Mr. Hussain Ali,
Advocate |

Counsel for the complainant	...	Mr.Munir Hussain, Advocate
Counsel for the State	...	Mr.Azizi-ur-Rehman, Advocate on behalf of KPK
FIR No. Date and Police Station	...	No.875 dated 14.11.2010, P.S. Gulbahar Peshawar,
Date of Judgment of trial Court	...	27.02.2012
Date of Institution of Appeal & Revision in FSC	...	10.03.2012 and 26.4.2012 respectively
Date of hearing	...	11.07.2012
Date of decision	...	11.07.2012

JUDGMENT

RIZWAN ALI DODANI, J:- This Criminal Appeal preferred by Noorullah s/o Ghulam Nabi, Shamaz Gul son of Baharuddin and Amirzada son of Ghulam Nabi against the judgment dated 27.02.2012 passed by the learned Additional Sessions Judge-I/ Judge Special Court, Peshawar, whereby they were convicted under section 395-PPC and sentenced to 10 years R.I. each with fine of Rs.50,000/- each or in default thereof to further undergo 6 months S.I. Benefit of section 382-B Cr.P.C. has been extended to the appellants.

Rahim Gul, complainant also filed Cr.Rev.No.1/I of 2012 for enhancement of conviction and sentences of the above said appellants. Farooq accused convicted Under section 411 PPC and sentenced to 2 years R.I. with fine of Rs.20,000/- or further undergo to 2 months S.I. but he has not filed any appeal.

2. Brief facts of the case as per FIR Ex.PA registered on the basis of Murasila Ex.PA/1 are that, on 14.11.2010 at 1.40 hours, complainant Rahim Gul son of Toor Gul reported to the local police that, he alongwith his family members were sleeping in his home, when five persons, whose faces were muffled, and duly armed with firearms weapons entered into his home. This woke him up and on seeking them, one of the accused hit him with iron rod causing injuries on his head, nose and other parts of his person. Later-on, they tied him up with telephone wire, and searched his house, where after, the culprits took away 22 Tolas of golden ornaments, cash amount of Rs.200,000/- two lac, 30 bore pistols and two mobile sets (one Nokia and the second China made), and thereafter, they decamped from the spot.

3. Investigation of this case was assigned to Arab Nawaz, CIO PW-7; Police Station Gulbahar, District Peshawar after registration of the FIR. He went to the spot where he prepared the site plan Ex.PW.7/1 at the instance of the complainant. During such visit, he took into possession blood from the spot through tissue paper vide recovery memo Ex.PW.1/1. Similarly, he also took into possession vide recovery memo Ex.PW.1/2 blood stained shalwar half white, Banyan white colour, one telephone wire white colour measuring 5 foot 7 inches, one empty mobile box regarding mobile phone set China made double SIM bearing IMEL numbers 354446030219262 and 354446030229469, one photocopy of license already Ex.P6 regarding the snatched pistol 30 bore number 31038950, and license copy No.7400DCPR dated 6.6.1995 produced by the complainant. He also recorded statement of the only eye-witness Mst. Musarat Bibi wife of the complainant. He had received medico-legal report of the injured complainant. During the course of investigation, the informer informed him that, accused Amir Zada etc had committed the offence. It also came to his knowledge that, at the time of arrest of the accused Noorullah, the SHO had recovered from his possession mobile set China made dual SIM. On dialing the IMEI number as existing on the mobile box; the same appeared on the screen of the set. After detection of IMEI number on the recovered mobile set, the accused was confirmed to had

been involved in the present case. During further interrogation, accused Noorullah, Ameer Zada and Shamaz Gul led him in police custody to the shop of accused Farooq, where accused Noorullah pointed to the said Farooq Jeweler present there. The accused Farooq produced, from a drawer two gold earrings (Jhumkay), one gold necklace, one gold Chain locket in the name of Rahim Khan inscribed thereon, one gold locket without chain, two gold earrings (Kantay), two gold finger rings and after weighment the gold ornaments were found to be 7 Tolas 1-1/2 Masha, which were taken into possession vide recovery memo Ex.PW.1/4. He arrested accused Farooq Under section 412 PPC, and prepared his card of arrest which is Ex.PW.7/3. He prepared the sketch of shop of the accused Farooq which is Ex.PW.7/4.

Accused Noorullah led the police to his residential room in house and wherefrom a box, lying under his bed, produced two gold bangles (Kangan) which were taken into possession vide recovery memo Ex.PW.3/2. He also prepared house sketch of accused Noorullah Ex.PW.7/5.

Accused Amir Zada also led the police to his house and as a result, the accused from room in his house delivered two gold bangles (Kangan), one mobile set Nokia and 30 bore pistol bearing No.31038950, which were taken into possession vide recovery memo Ex.PW.5/1. Since he was in possession of the photocopy of the license of 30 bore pistol produced by the complainant, he tallied the pistol's number with the number mentioned in the license, and found them same.

Accused Shamaz Gul also took the police to his house for the recovery of snatched articles. There from he produced two gold bangles (Kangan), a small gold finger ring, one 30 bore pistol with a number erased/cut, and cash amount of Rs.40,000/- of different denominations. He took into possession above articles and amount vide recovery memo Ex.PW.7/7. The witness further told that he had sent to the FSL through application Ex.PW.7/9 the blood stained Banyan and shalwar of the complainant for opinion which was received with positive result, and the same is Ex.PW.7/10. The complainant on 06.12.2010 identified all the recovered articles as his and snatched property and which for the identification memo was prepared as Ex.PW.7/13. He then recorded supplementary statement of the complainant, wherein, he nominated the accused facing trial as culprits. He also produced the complainant on 07.12.2010 before the learned Judicial Magistrate Ist Class for recording his statement under section 164 Cr.P.C. Ex.PW.6/1 vide his application Ex.PW.7/14. After completion of the investigation, he handed over the file to the SHO for submission of challan.

4. The accused were formally charge under section 17(2) and 3 Haraba, 412 and 411 PPC on 11.3.2011 to which they pleaded not guilty and claimed trial.

5. The prosecution has produced 09 witnesses at the trial to prove its case. The gist of these witnesses is as under:-

PW-1 Muhammad Riaz Khan, SI stated that on 14.11.2010 he visited the spot alongwith CIO/Investigation Officer and in his present, the I.O had recovered blood through tissue paper Ex.P1 from the place of occurrence and sealed the same into a parcel affixing 3/3 seals in the name of NZ monogram vide recovery memo Ex.PW.1/1. Similarly, on the same day, the complainant of the present case handed over to the I.O. on the spot one Shalwar Ex.P2, one Banyan Ex.P3 blood stained, one telephone wire white colour Ex.P4, one empty packing box of China mobile set having IMEI number Ex.P5, one photocopy of license of 30 bore pistol Ex.P6. In this respect the I.O. prepared recovery memo which is Ex.PW.1/2 and sealed the Shalwar and Bunyan in parcel No.2 by affixing 3/3 monograms of NZ on it.

The witness further stated that appellants Noor

ullah, Amir Zada and Shamaz Gul and led the police party to the spot, and pointed out the place of occurrence. In this respect pointation memo was prepared which is Ex.PW.1/3. The I.O. had also taken into possession golden ornaments presented by Farooq gold smith which consisted of 02 earrings Ex.P7, one necklace Ex.p8, one locket bearing the name of Rahim Khan in English letter and one locket without chain Ex.P.10 two earrings (Kantay) E.P11, two finger rings Ex.p12 which were weighed and found 7 tolas and 1-1/2 Mashas vide recovery memo Ex.PW.1/4. The I.O. also recorded his statement u/s.161 Cr.P.C.

PW-2 Atiq Shah, SHO deposed that on 3.12.2010 he arrested accused Amir Zada, Noorullah and Shamaz Khan and recovered from personal possession of Amir Zada one pistol alongwith 8 rounds, from accused Shamaz one 30 bore pistol having magazine containing 8 rounds and similarly, from accused Noorullah he had recovered one mobile phone China double SIM. He prepared recovery memo Ex.PW.2/1 and prepared card of arrest which is Ex.PW.2/2. He prepared a Roznamcha report in the shape of Mad No.17 which is Ex.PW.2/3. After completion investigation, he submitted complete challan against the accused.

PW-3 Sartaj, SI appeared as PW-3 and stated that on 14.11.2010 the complainant reported the matter to him which is reduced into the shape of Murasila Ex.PA. He also prepared the injury sheet of complainant Rahim Gul which is Ex.PW.3/1 and sent the injured to Lady Reading Hospital, Peshawar for treatment.

- PW-4 Shabir Hussain Muharrir appeared as PW-4 and stated that he is a marginal witness to the identification memo Ex.PW.4/1;vide which, in his presence, the complainant identified the snatched but recovered property which consists of gold ornaments of different shapes, two mobile set and two .30 bore pistols as his ownership. The witness verified the document as well as his signature over it as correct.
- PW-5 Sahar Gul, constable appeared as PW-5 and stated that he is a marginal witness to the recovery memo Ex.PW.5/1 vide which, the I.O. had taken into possession two gold bangles Ex.P4, one mobile Nokia set and one .30 bore pistol Ex.P15, which were handed over by accused Amir Zada, when had led the police party to his house.
- PW-6 Rahim Gul, complainant appeared as PW-6 who stated that in his statement as such reiterated the said story involving the occurrence as reflects in the FIR Ex.PA. His statement u/s.164 Cr.P.C. has also been recorded by Judicial Magistrate.
- PW-7 Arab Nawab, Chief Investigation Officer (CIO) appeared as PW-7 and his role as investigation officer has also been mentioned in para No.3 of this judgment.
- PW-8 Dr. Ghulam Qadar, appeared as PW-8 and stated that on 14.11.2010 at 2.40 am he examined Rahim Gul s/o Toor Gul aged about 38 years r/o Gulbahar No.4 and found the following:-
- “On examination the patient was conscious. One small lacerated wound on nasal bridge 1cm, one lacerated wound on scalp 1.5 cm and bruises on back posteriorly on chest.
- Advised X-Ray, referred to CTW+Neuro Surgical Ward +ENT Ward+ Radiology Department.
- Time between injury and examination is 1 to 2 hours. Kind of weapon was blunt.
- Note: According to Radiologist/SR (Senior Registrar) opinion of LRH Radiology Unit, the nasal bone shows fracture in the X-Ray. Radiology opinion that the nature of injury is grievous. The injury sheet and medico-legal report is Ex.PW.8/1.”
- PW-9 Amir Siyaf Khan, SI appeared as PW-9 and stated that on receipt of Murasila Ex.PA/1, he correctly incorporated its contents in the shape of FIR Ex.PA.

6. After close of prosecution evidence, the statements of the accused were recorded. The accused neither opted to make their statements under section 340(2) Cr.P.C. nor produced any evidence in their defence. In reply to question “why this case against you and why PWs had deposed against you all the accused stated the same as follows:-

“All the PWs are police officials and they are interested in the success of prosecution case. They are innocent and falsely been charged in the instance case”.

7. Learned SPP for the State and learned counsel for complainant jointly close the prosecution evidence in the instant case on 10.5.2011.

8. APP for the state abandons PW Zalo Khan Constable and PW Amjad Ali Khan, ASI being un-necessary.

9. The learned counsel for all the appellants argued that the complainant Rahim Gul lodged the FIR wherein he stated that the offenders were muffled faces, however, he stated that he could identify them, but no descriptions were given by him nor the identification parade was conducted, so the accused/appellants were not identified by the complainant at any stage. He further argued that no one has seen the occurrence and the appellants were arrested by the police on alleged tip of their informer and that only after their arrest they called the complainant for alleged identification of the stolen articles and not for the identification of the culprits. The significant aspect of this case he argued, that the prosecution case solely hinges on the witnesses/Mushirs of recovery of stolen articles but strangely no pain or effort was bore by the prosecution to produce any independent witnesses and that all the Mushirs in this regard are police officials. He relied upon PLD 2008 Lahore 470 (Wallayat Vs. The State) with regard to his ground as to identification of stolen property and he also referred to volum No.3 of Chapter 11, part-C of Lahore High Court rules.

10. On the other hand the learned counsel for the complainant submitted that the stolen property was recovered from the appellants/accused on their pointation such as Rs.40000/- out of stolen amount of Rs.200,000/- was recovered and 15.5 tolas out of 22 tolas of stolen gold have also been recovered besides mobile phone and pistols from the accused persons.

11. It has also submitted by the counsel that all the recovered articles were returned to the complainant on superdari vide trial Court order dated 22-12-2010. He lastly argued that conviction was rightly awarded to the appellants by the trial Court, moreso, he emphasised that their sentences may be enhanced as under the facts and evidence the appellants deserve for maximum imprisonment as prescribed under the law.

12. The learned counsel for the State adopted the arguments of the counsel for the complainant and supported the impugned judgment.

13. We have gone through the relevant record and the portions of the impugned judgment with the assistance of the counsel of the parties and heard their arguments as

well. As regards the arguments of the counsel for the appellants/ accused that there is no eye witness of the occurrence in any manner whatsoever except the complainant who too while lodging the report stated that the accused were with muffled faces and as such the prosecution case solely hinges upon the alleged recovery of stolen property from the appellants on their pointation, we are convinced with it that per prosecution case this is the sole connection between the guilt and culprits. So the witnesses of the recovery of the stolen property are the key witnesses of the prosecution. Therefore, the credibility and worth of credence of these witnesses have to be seen and scrutinized from every reasonable aspect with great care. In this regard prosecution has produced Muhammad Riaz (PW-1), Sartaj (PW-3) Sahar Gul (PW-5) and the I.O. (PW-7) as well at the trial. That as per record all these three prosecution witnesses happened to be police officials, though there is no cavil to say that police officials are good witnesses, as also held by the August Supreme Court in its most of the judgments, however, looking at the nature and circumstances of each case where no other set of evidence is available, in the interest of safe administration of justice reliable corroboration is required to reach the just conclusion of the decisions. In the instant case also prosecution was required to meet the given circumstances and facts of the case by adhering to the demanding legal and evidentiary requirements in order to make out the prosecution case reasonable and presentable.

That under article 40 of Qanun-e- Shahadat Order, 1984 such facts or information as disclosed by accused during investigation in custody of the police which relates to incriminating material not known to the police earlier is admissible, therefore to have maximum benefit of this statutory exception prosecution is expected to put every efforts in order to make it transparent, reliable and fool proof. That as deposed by the I.O. (PW-7) that he has informed the local police before hand to be present at the time of pointation but strangely no police official was also cited as musher from that police station. So when the case according to its facts and circumstances depends only upon the witnesses of recovery then heavy duty was cast on the prosecution to make such evidence transparent and reliable, seemingly there appears no effort on part of the prosecution with regard to this aspect. In the given situation we are of the view that how so credible is the testimony of these three police officials as well as the I.O. are but without having found any independent or reliable corroborative nature of evidence it would not be safe to make such evidence a basis for the conviction especially when no reason in this regard was assigned by the prosecution. That in order to connect the appellants/accused with the crime or to connect them with the recovered stolen property we find so much difficulty inasmuch as the available record is unable to help us satisfactorily in connecting the appellants with the recovered stolen articles. No doubt the stolen articles of huge amount have been recovered and were identified by the complainant irrespective of the fact that due process was not adopted in this regard even then in the absence of any substantive piece of evidence it may be doubted that it could be foisted on any person without any difficulty by the police to save the actual culprits. So the hunger of this doubt could only be extinguished by a convincing independent or corroborative piece of evidence which is absent on the record.

14. Besides, after going through the record we are also convinced with the submissions of counsel for the appellants with regard to the material discrepancies in the case such as the complainant has even not given the description of the stolen articles and amount at any stage nor he has produced the receipts of the golden ornaments before the trial Court. That the alleged identification of recovered stolen property, which were allegedly recovered from the appellants on their pointation, were not properly conducted such as it should have been undertaken before the competent Magistrate and that they were required to mix with other similar gold articles but in the instant case it was identified by the complainant before the police. That recovered property was not produced before the Court at the trial except the articles which were allegedly recovered from appellants/accused Amir Zada.

15. As discussed above we are not convinced with what has been brought on record by the prosecution for convicting the appellants in the offence they have been charged with. So we extend benefit of doubt to all the appellants and set aside the impugned judgment of the trial Court. Resultantly, the Criminal Appeal No.9/I of 2012 filed by Noorullah etc Vs. The State is allowed, conviction and sentences as awarded to the appellants namely Noorullah son of Ghulam Nabi, Shamaz Gul son of Baharuddin and Amir Zada son of Ghulam Nabi by the learned Additional Sessions Judge-I/Judge Special Court, Peshawar vide judgment dated 27.02.2012 are set aside and they are acquitted of the charge. They are confined in jail, they shall be released forthwith if not required in any other case.

16. Consequently Criminal Revision No.1/I of 2012 filed by Rahim Gul Vs. Noorullah etc is dismissed. However, the order dated 22.12.2010 of Judicial Magistrate-I, Peshawar in respect of grant on superdari of various articles shall remain intact.

These are reasons of our short order dated 11.07.2012.

JUSTICE RIZWAN ALI DODANI

JUSTICE DR.FIDA MUHAMMAD KHAN

Islamabad, the 11th July, 2012

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

MR.JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO. 03/P OF 2011

Bilal Ahmad son of Samand Khan Appellant

resident of Adeena, Tehsil and District Swabi

Versus

1. The State

2. Abid-ur-Rehman son of Jai Pur r/o Respondent

Mohallah Dhaki Yar Hussain, District Swabi

Counsel for the appellant	...	Mr. Shakil Khan Gillani, Advocate
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Counsel for the State	...	Mr. Alamgir Khan Durrani, Deputy Advocate General
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FIR No. Date and	...	No.711, dated 16.07.2009, Police Station Kalu Khan District Swabi
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Date of judgment of	...	01.03.2011 trial Court
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Date of Institution	...	05.04.2011 of appeal in FSC
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Date of hearing	...	29.05.2013
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Date of decision	...	29.05.2013
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JUDGMENT

JUSTICE RIZWAN ALI DODANI, J :- This criminal appeal is directed against the judgment dated 01.03.2011 delivered by the learned Additional Sessions Judge-IV/Judge Junevile Court, Swabi, whereby the appellant was convicted and sentenced as under :-

i. Under Section 392 PPC

Three years rigorous imprisonment with payment of Rs.2000/- as fine, or in default thereof to further undergo one month's simple imprisonment.

ii. Under Section 394 PPC

Four years rigorous imprisonment with a fine of Rs.15,000/- or in default thereof to further undergo three months simple imprisonment, on two counts each.

iii. Under Section 302-B, PPC

Life imprisonment and also to pay Rs.50,000/- to the legal heirs of deceased as compensation under section 544-A, Cr.P.C. or in default thereof to further undergo six months simple imprisonment.

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

2. Briefly stated the facts of the case are that on 16.7.2009, complainant Abid-ur-Rehman reported to the local police that he was driving a Taxi, Suzuki pickup bearing Registration No.9946/STH. He left Shewa Adda for Yar Hussain and when he reached near graveyard village Adeena he picked two unknown passengers in his vehicle and after traveling some distance one of them aimed his pistol upon him while the other snatched Rs.945/- from him and both of them boarded from the vehicle and tried to flee away. He made hue and cry, on which Muhammad Ali son of Muhammad Qadar, Nizar Ali son of Gul Bahadar and Farhad Ali son of Nobat Khan attracted to the place of incident. They started chasing the accused, during which the accused started firing at them, as a result of which Muhammad Ali, Nizar Ali and Farhad Ali were got hit and injured, and other co-villagers apprehended appellant/accused Bilal Ahmad son of Samand Khan while co-accused succeeded to escape. In the meantime police arrived at the scene who took custody of accused Bilal. They searched the appellant/accused, who was found in possession of one 30 bore pistol without number loaded with three live rounds. On his further search, the snatched amount of Rs.945/- was also recovered from his possession. The injured Muhammad Ali later on succumbed to his injuries in the hospital.

3. After registration of the case and completion of the investigation, challan under section 173 Cr.P.C. was submitted against the appellant/accused for trial. The learned trial Judge formally charge sheeted the appellant/ accused under section 17(4) read with

section 17(2) of the said Ordinance, to which the appellant/accused pleaded not guilty and claimed trial.

4. During trial, the prosecution in order to prove its case examined Dr. Shad Ali (PW.1), Saddiq Akbar Khan, Inspector (PW.2), Noor Ali Khan, ASI (PW.3), Zahid Ali, ASI (PW.4), Abid-ur-Rehman (PW.5), Nizar Ali (PW.6), Farhad Ali (PW.7) Jehanzeb Khan (PW.8), Khalid Iqbal, ASI (PW.9), Hussan Badshah Khan, SI (PW.10), Naeem (PW.11), Mukhtiar Khan, SHO (PW.12), Maneer Khan, SI (PW.13) and Jehanzeb Khan, SI as PW.14. Thereafter, the prosecution closed its evidence.

5. After conclusion of the trial, the appellant/accused was examined under section 342 Cr.P.C. He denied all the charges of the prosecution leveled against him in the evidence, however, he neither opted to record his statement on oath as provided under section 340 (2) Cr.P.C. nor produced any evidence in his defence.

6. The learned trial Court after hearing the learned counsel for the parties and appraising the evidence on record convicted and sentenced the appellant/accused as mentioned in opening para of this judgment.

7. Learned counsel for the appellant submitted that the amount allegedly snatched in the occurrence does not fall under the value of Nisab, nor the appellant did have any intention to cause death (Qatl-e-amd) of deceased Muhammad Ali, therefore, neither section 302 PPC is attracted nor even section 17 (4) of the Ordinance and at the most, according to him, appellant could be charged under section 321 PPC. He further argued that allegedly the appellant and absconding accused Nasir have fired at complainant, Muhammad Ali since deceased and injured PWs Nizar Ali and Farhad Ali, therefore, it cannot be said that who fired at whom. He lastly argued that no person from the public allegedly gathered at the spot was cited as witness.

8. Conversely Mr. Alamgir Khan Durrani, Deputy Advocate General, argued that the impugned judgment is based on well founded reasons. He submitted that the injured PWs are eye witnesses of the occurrence who saw accused persons running away and being apprehended one of them i.e. the appellant Bilal Ahmad who fired at all of them who were chasing them and as a result they got injured and another succumbed to injuries, as such their testimony is more than credible and reliable, besides the PWs did not have any enmity against the appellants. That both these eye witnesses remained consistent in their version and corroborated each other and the complainant at the trial and even the defence side could not shake their statements in their respective cross examinations. He further submitted that the appellant/accused got arrested red-handed by the police at the spot. He lastly submitted that the impugned judgment does not suffer from any illegality or irregularity and as such is liable to be sustained.

9. We have heard learned counsel for the parties, perused the evidence and scanned the impugned judgment minutely. It has come on record that the complainant who was a taxi

driver in his testimony gave the same account of fact which was given in the FIR by him, which reflects that the complainant has given the true account of facts of the crime. The other star witnesses of the case are Nizar Ali (PW.6) and Farhad Ali (PW.7) inasmuch as they got injured in the incident alongwith Muhammad Ali, whereas latter got seriously injured and thereafter succumbed to those injuries. The PW.6 and PW.7 injured witnesses remained consistent in their testimonies in terms of the material particulars and corroborated the statement of the complainant Abid-ur-Rehman (PW.5), so also corroborated the statements of the police officials who reached at the scene and arrested the appellant red-handed at the spot with crime weapon and snatched amount of Rs.945/-. The empties recovered from the spot and the crime weapons have been matched vide FSL report. Therefore in such circumstances the question of deliberation and substitution of offender does not arise. The medical report too corroborates the version of complainant and injured PWs in terms of the manner they got injured alongwith the deceased. There appears no enmity on the record between the witnesses namely Abid-ur-Rehman (PW.5), Nizar Ali (PW.6), Farhad Ali (PW.7) and the appellant/accused and even the appellant/accused in his statement under section 342 Cr.P.C. did not claim it, as such the probability of false implication of the appellant/accused does not find any place in the case. So, ocular testimony is found natural, reliable, satisfactory and confidence inspiring. Statement of complainant was supported by two injured witnesses leaves no room to doubt on prosecution story and nexus of offender with the crime he has been charged with. As far the arguments of learned counsel for the appellant that the alleged offence could not said to be Qatl-e-amd under section 300 PPC, as, according to him, the appellant while firing did not have intention to cause death of deceased Muhammad Ali and at the most it is an offence under section 321 PPC, (Qatl-bis-Sabab). This argument has no legal force to sustain inasmuch as in the instant case the appellant/accused made effective firing with fire arm at persons chasing them as a result three were got injured grievously one of whom died in the hospital later on, such an act was without any reasonable doubt reflects their clear intention to cause death or bodily injury of persons in order to stop them from apprehending or chasing the accused persons. As such, the case in hand completely comes under the purview of Qatl-e-amd and not in Qatl-bis-Sabab and, therefore the conviction and sentence under section 302-B PPC was rightly inflicted by the trial Court upon the appellant/convict.

10. It has come in evidence inconsistently that the accused Bilal has fired gun shots, as such, question of joint firing and that who fired at whom as argued by counsel for appellant does not arise as it made abundantly clear by the PWs. Even otherwise in commission of offence of robbery every member shares vicarious liability for each and every act alone during the offence.

11. In view of what has been discussed, we are of the opinion that there is sufficient credible evidence on record which reasonably connect the appellant with the crime under section 302-B, 392 and 394 PPC beyond any doubt, therefore, the impugned judgment does not warrant any interference of this Appellate Court. Consequently, the Criminal

Appeal No.3/P of 2011 is dismissed and the impugned judgment dated 1.3.2011 delivered by the learned Additional Sessions Judge-IV/Judge Juvenile Court, Swabi is upheld, the conviction and sentences awarded under sections 302-B, 392 and 394 PPC are maintained. The benefit of section 382-B Cr.P.C. and the direction for the sentences of imprisonments to run concurrently as extended by the trial Court are also maintained.

12. These are the reasons for our short order of even date.

JUSTICE RIZWAN ALI DODANI

JUSTICE AGHA RAFIQ AHMED KHAN

CHIEF JUSTICE

Peshawar the 29th May, 2013

Approved for reporting.

JUSTICE RIZWAN ALI DODANI

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE RIZWAN ALI DODANI

MR.JUSTICE MUHAMMAD JEHANGIR ARSHAD

MR.JUSTICE SHEIKH AHMAD FAROOQ

CRIMINAL APPEAL NO.10/Q OF 2011 L.W.

Mullah Arif alias Aroo s/o Abdullah

alias Abdin r/o Bonistan, District Panjgoor. Appellant

Versus

The State Respondent

CRIMINAL MURDER REFERENCE NO.02/Q OF 2011

The State Appellant

Versus

Mullah Arif alias Aroo s/o Abdullah alias

Abdin r/o Boistan, District Panjgoor Respondent

Counsel for the appellant ... Mr. Shams-ur-Rehman, Advocate

Counsel for the State ... Syed Pervaiz Akhtar, Deputy Prosecutor General

FIR No. Date and ... No.135/2006, dated 16.10.2006, Police Station
Panjgoor

Date of judgment of trial Court ... 22-05-2009

Date of Institution of appeal in FSC ... 18-05-2011

Date of hearing ... 12-06-2013

Date of decision ... 12-06-2013

Date of Judgment ... 27-06-2013

JUDGMENT

RIZWAN ALI DODANI, J :- This Criminal appeal is directed against the judgment dated 22-5-2009 delivered by the learned Additional Sessions Judge, Panjgoor, whereby the appellant was convicted and sentenced as under :-

Under section 302-B PPC sentenced to death. The accused was further ordered to pay Rs.200,000/- to the legal heirs of deceased Karim Jan as compensation as provided under section 544-A of Cr.P.C.

2. The facts of the case as per FIR No.135/2006 are that on 16-10-2006, at about 7.30 a.m. after Fajar prayer, the complainant Nizam Jan alongwith his father namely Karim Jan, who was working at Airport Panjgoor, were going on their motorcycle driven by the later. When they reached in the area of Damb Irap, two accused persons with muffled faces riding on motorcycle armed with Kalashnikove and T.T. Pistol stopped them and asked to hand over the motorcycle. On refusal from his father the accused persons grabbed him upon which complainant intervened and one of the accused fired upon the complainant with pistol which hit him on both the feet and he fell down. Thereafter, the accused persons fired at the complainant's father with Kalashnikove and pistol, which hit on his head and leg and he also fell down. Later on, father of complainant succumbed to the injuries and died at the spot.

The occurrence was got registered by the complainant with Police Station Panjgoor as crime Report No.135/2007 under section 302, 324 read with section 34-PPC against unknown accused persons.

3. After registration of the case, arrest of the appellant/accused was made on 9-11-2008. Investigation was carried out and report under section 173 Cr. P. C was submitted against the accused/present appellant for trial.

4. The learned trial Judge formally charged the accused/present appellant under sections 17(4) of Offences Against Property (Enforcement of Hudood) Ordinance, 1979 to which the accused pleaded not guilty and claimed trial.

5. During the trial, the prosecution in order to prove its case, examined as many as nine (9) witnesses. It may be mentioned at the outset that all the witnesses had earlier also appeared before the trial Court during the trial of a co-accused namely Abdullah who was acquitted vide judgment dated 25-3-2008 while the case of present appellant/convict was ordered to be kept dormant as he was not arrested till then. The prosecution witnesses were recalled, when the trial of present appellant/convict was started by the trial Court, on his having been arrested. All the witnesses of the prosecution had reiterated and reaffirmed their respective statements, which they got recorded earlier during the trial of co-accused Abdullah and did not get recorded their Examination-in-chief afresh. However, PW-3/ Hazoor Bakhsh and PW-10/ Javed Ahmad, Investigation Officer further added some facts to their examination-in-chief regarding the role of present appellant in the occurrence.

6. PW-1/Nizam Jan, who is complainant of this case, reiterated the version given in his Fard-e-Beyan Ex. P/1-A on the basis whereof the FIR Ex. P/1-B was registered. PW-2/Haji Nawab, who reached at the spot immediately after hearing the noise of gun shot, had appeared as the witness of recovery memo Ex. P/2-A and P/2-B regarding empties and blood-stained earth. PW-3/Hazoor Bakhsh is the witness of Ex. P/3-A with regard to blood stained clothes of deceased which were taken into possession by S.I. Abdul Qadir. The second statement of this PW was about an extra-judicial confession made by the appellant Mullah Arif before Police Officer in the Police Station on 21.11.2008 when PW-3 went to Police Station alongwith Basheer Ahmad. According to PW-3 the present appellant stated that he had also sustained injury on his shoulder of gun shot fired by the complainant/PW-1 Nizam Jan from his gun. PW-4/Basheer Ahmad, who only appeared in the case of co-accused Abdullah, deposed that on 19.8.2007 he went to police station where the identification parade of co-accused Abdullah was conducted in his presence. The police prepared the identification parade memo Ex. P/4-A, whereupon he identified his signature. He was, in fact, not produced during the trial of present appellant as witness. PW-5/Attaullah, Constable, deposed that on 7.8.2007 he alongwith Fida Ahmad, constable and Javed Ahmad, I.O. were present in investigation room of police station, when co-accused Abdullah made a confession before them about the crime which he committed alongwith appellant/convict Mullah Arif on 16.10.2006. PW-6/Ali Jan, Constable, is the witness of pointation of place of occurrence by co-accused Abdullah. He did not say anything about appellant/convict. PW-7/Dr. Ehsan Ahmed, Medical Officer examined appellant Mulla Arif on 7.3.2009 and issued MLC Ex. P/7-A, with regard to his injury on shoulder. PW-8/Dr. Sadiq, Medical Officer deposed that on 16-10-2006 at about 8.00 a.m., he examined the dead body of Karim Jan son of Allah Bakhsh and issued MLC Ex. P/8-A. PW-9/Abdul Qadir, SI, stated that on 19.10.2008, the investigation of this case was entrusted to him and he is the first investigation officer, who had investigated this case. PW-10/Javed Ahmed, ASI, is the last investigation officer, as investigation was entrusted to him on 19.6.2007.

7. After conclusion of the trial, the accused was examined under section 342 Cr. P.C. He denied all the allegations of the prosecution leveled against him in the evidence. However, he neither opted to record his statement on oath as provided under section 340 (2) Cr. P.C. nor produced any evidence in his defence.

8. The learned trial Court, after hearing the learned counsel for the parties and assessing the evidence on record, convicted and sentenced the appellant/accused as mentioned in opening para of this judgment.

9. We have heard the learned counsel for both the sides, examined the evidence and scanned the impugned judgment with their able assistance.

10. Learned counsel for the appellant/Mr. Shams-ur-Rehman, Advocate has raised the following points:

- i). The FIR was not lodged by the complainant PW-1.
- ii). No identification parade was conducted.
- iii). Identification parade of co-accused Abdullah was conducted but he was acquitted of the charge by the learned trial Court in its judgment dated 25.3.2008.
- iv). No recovery was effected from the appellant or either himself on his pointation.
- v). Disclosure as well as pointation of the place of occurrence was made after two years of occurrence.
- vi). The place of occurrence was previously known to the police hence pointation had no legal effect.
- vii). Co-accused Abdullah was acquitted of the same charge as well as evidence.
- viii). Charge was not framed under section 302(b) PPC.
- ix). Evidence recorded in the case of co-accused Abdullah could not be used against the appellant but the same has been done by the learned trial Court while convicting him.
- x). Evidence of PWs contained contradictions and improvements
- xi). The signature of PW/4 Basheer Ahmad on recovery memo and pointation memo are different from each other.
- xii). There are many contradictions between the FIR as well as the alleged disclosures.
- xiii). According to the FIR the accused were muffled faces and the complainant could not identify them at the time of occurrence nor he identified the accused.
- xiv). This is a case of no evidence.

11. Learned counsel for the appellant relied upon the following case laws to substantiate his arguments, 2000 P. Cr. L.J page-2064, 2001 P. Cr. L.J. page-86, 1992 SCMR page- 2088 and PLD, 1985 FSC page-20.

12. Learned counsel for the State supported the impugned judgment. However, he candidly submitted that the impugned judgment did not equip with sound reasoning and as such, awarding sentence of Death was uncalled for.

13. The only eye witness of the incident was complainant/PW-1 Nizam Jan, who also got injured in the occurrence but according to him, the accused persons had muffled their faces, therefore, he could not see their faces. However, he had stated that he could identify them from their body structure but surprisingly, identification parade was not carried out for the reasons best known to the prosecution. Even otherwise, in the given circumstances, the margin of reliability of such identification would have been very doubtful. The statement of the complainant at the most is supportive of the fact that the alleged occurrence did take place. The other star witness of prosecution was Hazoor Bakhsh, who was produced as PW-3 at the trial. The perusal of his testimony depicts very peculiar aspect of the case as his whole statement is actually a narration of what he had heard from the mouth of the appellant/convict while the later was confessing his guilt before the police officials in the police station. In our view, the confession made by the appellant/convict before the police officials in their custody is inadmissible under the law i.e. Article 39 of Qanoon-e-Shahadat Order, 1984 accordingly to which the confession made by accused while in police custody not to be proved against him. However, it is strange to observe that the learned trial Court has relied upon this piece of evidence while awarding death penalty to the appellant, which is undoubtedly a weakest type of evidence, being a retracted extra-judicial confession. The perusal of whole evidence produced by the prosecution in this case shows that the nexus of the present appellant with the alleged crime has been made on two points, one as discussed above i.e. an extra-judicial confession and the other, existence of an old injury found on the shoulder of the appellant/convict. The significant aspect of the second point is that the same has also been derived from the first point i.e. extra-judicial confession of the appellant/convict wherein he had stated that during the commission of robbery, there was an exchange of firing between both the sides and the gun shot fired by the complainant had hit his shoulder. Therefore, when the appellant/convict was arrested after two years of the incident and found with the said injury on his shoulder, the prosecution got him examined by Dr. Ehsan Ahmad, Medical Officer PW-7 who opined that the injury was the result of gun shot and about 2 years old. The prosecution in this way purportedly identified the appellant/convict through this injury being involved in the crime. This piece of evidence has also been very much relied upon by the trial Court. It has been observed that this factum of exchange of firing between the culprits and the complainant has not been stated anywhere by the complainant in the FIR on his statement during the trial, therefore when this fact has only been stated by appellant/convict, it could not be considered and made basis for recording his conviction. In these circumstances, when no substantive evidence and probable proof is available on record with regard to the involvement of the appellant, in the commission of the crime, then the factor of mere pointation of place of occurrence by the appellant, has no worth. Even otherwise, as rightly argued by the counsel that the appellant was arrested after two years of the occurrence, till then, the place of occurrence was known to the police because it was already pointed out by the co-accused, as such, it lacks admissibility as it was not the disclosure of a new fact as required under Article 40 of Qanun-e-Shahadat. It may be mentioned here that the co-accused Abdullah has been acquitted by the trial Court relying on same set of evidence.

14. In the light of what has been discussed above, we are of the view that it was a case of no evidence. The prosecution has miserably failed to bring home guilt of the appellant/convicted accused beyond doubt. Needless to mention here, that benefit of doubt is always to be given to an accused. Hence, the impugned judgment is not sustainable under the law. Resultantly, the conviction recorded and sentence awarded to the present appellant by the learned trial Court vide judgment dated 22-5-2009 are set aside.

15. Consequently, Criminal Appeal No.10/Q of 2011 (Mullah Arif alias Arro Versus The State) is accepted. The appellant is acquitted of the charge. The appellant shall be released forthwith, if not required in any other case.

16. Criminal Murder Reference No.2/Q of 2011 (The State Versus Mullah Arif alias Arro) is answered in negative and not confirmed.

These are the reasons for our short order dated 12-06-2013.

JUSTICE RIZWAN ALI DODANI

JUSTICE MUHAMMAD JEHANGIR ARSHAD

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad, the 27th June, 2013

IN THE FEDERAL SHARIAT COURT**(Appellate/Revisional Jurisdiction)****PRESENT:****MR. JUSTICE DR. FIDA MUHAMMAD KHAN****MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD****CRIMINAL REVISION NO.09/I OF 2009**

Muhammad Islam son of Khub Janan Khan, Petitioner
resident of Village Chappri, Kamar Mashani,
Tehsil Isa-Khel, District Mianwali.

Versus

1. Aurangzeb son of Anar Hakeem, caste Cobler, Respondents
2. Anar Hakeem son of Muhammad Ali caste Cobler,
3. Muhammad Islam Noor son of Allah Noor Pathan,
4. Habib Khan son of Muhammad Noor caste Piracha,
5. Mst. Najma Bibi wife of Muhammad Islam Pathan,

All the respondents are residents of Village Chappri,

Police Station, Kamar Mashani, Tehsil Isa-Khel, District, Mianwali.

Counsel for the petitioner : In person.

Counsel for the respondents : Mr. Aftab Ahmed Khan, Advocate

Counsel for the State : Mr. Ahmed Raza Gillani, Additional Prosecutor
General Punjab for State.

CR. REVISION NO.9/I OF 2009

FIR No. and date : 139/2006, dated 17.06.2006, & Police Station P.S. Kamar
Mashani, District, Mianwali.

Date of impugned judgment : 09.05.2008

Date of Institution : 24.07.2009

Date of hearing : 14.06.2012

Date of Judgment : 14.06.2012

JUDGMENT:

MUHAMMAD JEHANGIR ARSHAD, J: This criminal revision is directed against the judgment dated 09.05.2008 handed down by learned Additional Sessions Judge, Mianwali camp at Isa-Khel whereby the learned Additional Sessions Judge while accepting the application filed by Mst. Najma Bibi respondent No.5 closed further proceedings of case FIR No.139/2006, dated 17.06.2006 under sections 10/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 registered with Police Station Kamar Mashani, District Mianwali, under law of Lian.

2. The facts briefly stated are that petitioner got registered the above noted FIR alleging abduction of his wife namely Mst. Najma Bibi, respondent No.5 as well as commission of zina with her by respondents No.1 to 4. As a result of the above noted registration of case Mst. Najma Bibi and Aurangzeb respondent were arrested on 26.06.2006 whereas the other respondents were arrested on 06.07.2007, however, subsequently all the respondents were bailed out by the learned trial Court.

3. After receipt of the challan in the above noted case, the learned trial Court proceeded with the trial and recorded the entire evidence including statements of the accused/respondents under section 342 Cr.P.C. and also evidence produced by them in their defence. However, before the decision of the said case Mst. Najma Bibi respondent No.5 filed application before the learned trial Court with the prayer that as in the meanwhile suit for dissolution of marriage filed by her was decreed by the learned Judge Family Court on 06.01.2007 and since no appeal was filed against the said decree, the same having attained finality, therefore, proceeding in terms of Lian be conducted and the final decision of the criminal case be made on the basis of Lian. The learned trial Court/Additional Sessions Judge on receipt of the said application conducted Lian proceedings on 06.05.2008 in which statement of Muhammad Islam petitioner on oath of Holy Quran was recorded as below:-

“Statement of Muhammad Islam complainant on Oath of Holy Quran.

States that I repeat four time allegation of adultery/Zina against Mst. Najma Bibi with Aurangzeb accused and I can repeat this allegation for thousand times and I assert that dissolution of marriage if conducted by any court has no value because assert Mst. Najma Bibi to be still my wife who is committing Zina with Aurangzeb accused continuously.

(Allah’s curse be upon me if I am a liar in my accusation of Zina against my wife Mst. Najma Bibi).”

4. After the statement of petitioner Muhammad Islam the statement of Mst. Najma Bibi was recorded as below:

“I take oath by holding Holy book of Quran in my hand that I have never

committed Zina with anybody and specifically not committed Zina with Aurgangzeb accused. On demand of complainant, I further take oath that he had taken Rs.30,000/- (Rupees thirty thousand only) from somebody to submit myself to sexual intercourse to some unknown person to which I refused and left his house on the said ground, but I have not committed Zina even on his asking with anybody and even not after desertion from his house. I have contracted second marriage with Aurangzeb accused after having dissolved my marriage with the complainant through decree of family court. I repeat this tatement four times in accordance with requirement of law.

5. After completion of proceedings of Lian, the learned trial Court/Additional Sessions Judge vide judgment dated 09.05.2008 accepted application filed by Mst. Najma Bibi respondent No.5 by closing further proceedings of the case under law of Lian and discharged all the accused/respondents of the charge, hence this appeal.

6. Today, petitioner as well as all the private respondents were present in Court. Petitioner opted to argue the case in person whereas the respondents were represented by their counsel namely Mr. Aftab Ahmed Khan. Petitioner present in Court repeatedly submitted that as there was no relation of wife and husband between the parties on account of decree by the learned Judge Family Court against which the petitioner never filed the appeal, therefore, proceedings in Lian could neither be commenced nor the proceedings of criminal case could be closed on the basis of such proceedings and the trial of the criminal case as it was complete in all respects and should have been decided on merits. Appellant throughout the hearing even before the Court stuck with his claim that all the respondents were guilty of offence of abduction as well as Zina and insisted that the order of the learned trial Court closing the proceedings be set aside and the matter be sent back to the learned trial Court for deciding the same on merits by ignoring the proceedings of Lian.

7. On the other hand, learned counsel for the respondents as well as learned Additional Prosecutor General Punjab for State fully supported the judgment of the learned trial Court as well as the proceedings taken by the learned trial Court on the grounds that the proceedings of Lian were correctly initiated and the further proceedings in the criminal case were rightly closed.

8. Arguments considered, record perused.

9. Admittedly, marriage between petitioner Muhammad Islam and Mst. Najma Bibi respondent No.5 was dissolved through a decree passed by learned Judge Family Court, Isa-Khel on 06.01.2007 on the basis of Khula against which no appeal was filed by the petitioner, hence the same became final.

10. In the case of *Muhammad Azam Versus Muhammad Iqbal and others in apex Court PLD 1984, S.C. P.95 (Shariat Bench)* held, “decree passed by Judge Family when attained penalty can neither be challenged nor set aside through collateral proceedings

and the same was binding even up to the Supreme Court of Pakistan”. It is observed that while deciding the suit for dissolution of marriage even the learned Judge Family Court could itself initiate proceedings of Lian under section 14 of the Qazf (Enforcement of Hadd) Ordinance, 1979, keeping in view the repeated allegations of petitioner about the abduction and commission of zina specially against respondent No.5 Mst. Najma Bibi in his written statement yet if the said proceedings were not commenced by the learned Judge Family Court, the same could validly be initiated and completed by Criminal Court/learned trial Court while deciding the criminal proceedings pending before it.

11. In this view of the matter, reference can be made to the judgment of Hon’ble Supreme Court of Pakistan in the case of *Maqbool Ahmed Versus Shaikh Muhammad Anwar and others 1999 SCMR P.935*. In this case apex Court after summoning both the husband and wife and after procedure of Lian was completed in Court dissolved the marriage while holding “that no further proceedings under section 10 (2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 were now called for, it was also held by the apex Court in the said judgment “both the parties undergo the procedure by swearing the prescribed oaths, the Court shall pass an order to dissolve the marriage between them which shall operate as a decree for dissolution of marriage and no appeal shall lie against it. Thereafter, all proceedings in connection with the allegation of Zina will come to an end”. Even we have observed that while joining Lian proceedings petitioner Muhammad Islam never raised any objection and voluntarily got recorded his statement four time on oath of Holy Quran.

12. We are, therefore, satisfied that the present appeal is nothing but a malafide attempt on the part of the petitioner Muhammad Islam to further keep on involving the respondents in litigations.

13. In fact, after dissolution of marriage by Court of competent jurisdiction, the matter should have come to end and the petitioner should have also avoided by further pursuing the criminal proceedings. However, after the proceedings of Lian completed by learned trial Court the question of commission of Zina or of Qazf became past and closed transactions and the matter of innocence or guilt of either party is left to the day of final judgment because taking of oath in Lian knowing it to be false is a very grave sin which incurs the Wrath of Allah. Despite repeated query by the Court as for what object this appeal has been filed after the proceedings of Lian, the petitioner failed to satisfy the Court and we are inclined to infer that the object of the petitioner was only to satisfy his ulterior motive against his wife namely Mst. Najma Bibi as well as other private respondents. We are also not impressed by the fact that in the FIR the petitioner made a sweeping allegation of commission of zina against respondents No.1 to 4, however, we did not propose any action against the petitioner for making such sweeping allegation, in view of the fact, the parties have already facing litigation since 2006.

14. So far the objection of petitioner that as at the time of Lian proceedings, there was

no relationship of husband and wife between the parties is concerned, the same is without merit as admittedly when appellant got registered FIR on 17.06.2006 leveling allegation of Zina, the marriage between them was still intact and further the petitioner also repeated the same allegation in written statement filed by him in the said suit on 28.11.2006, therefore, the learned trial Court rightly and lawfully resorted to the proceedings of Lian and the objection of the petitioner to this effect has no force and the same is rejected.

15. Resultantly, we find that the learned trial Court while passing the impugned order committed no illegality rather acted in line with law, therefore, we propose to dismiss this criminal revision finding no force.

JUSTICE MUHAMMAD JEHANGIR ARSHAD

JUSTICE DR. FIDA MUHAMMAD KHAN

Dated:- Islamabad the 14th June, 2012

IN THE FEDERAL SHARIAT COURT**(Appellate Jurisdiction)****PRESENT:**

**MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD**

**CRIMINAL APPEAL NO.07/Q of 2000 L/W
CRIMINAL SUO MOTU REVISION NO.02/I OF 2000**

The State Appellant

Versus

(1) Horan son of Sarwara Khan, Respondents

(2) Manzoor Hussain son of Sarwara Khan, both by caste Samit.

(3) Abdul Hameed alias Hameed, son of Abdul Majeed, caste Khosa, All residents of Goth Hameed Khan Khosa, District Dera Allah Yar.

Counsel for the State : Syed Pervaiz Akhtar Bukhari,
Deputy Prosecutor General
Baluchistan for State.

Counsel for the respondents : Shah Muhammad Jatoi, Advocate.

FIR No. and date : 205/1999, dated 26.08.1999,
Police Station, Dera Allah Yar,
District Jaffarabad.

Date of impugned Judgment of Trial Court : 30.11.1999

Date of Institution of Cr.A.No.102/I of 2010 : 26.01.2000

Date of Institution of Cr. Suo. Motu Rev. No. : 02/I of 2000

Date of hearing : 13.11.2012

Date of Judgment : 13.11.2012

JUDGMENT

MUHAMMAD JEHANGIR ARSHAD, JUDGE.- This appeal filed by the State is directed against the judgment dated 30.11.1999, handed down by the learned Sessions Judge, Jaffarabad at Dera Allah Yar, whereby the learned trial Court acquitted respondents Horan son of Sarwara Khan, Manzoor Hussain son of Sarwara Khan and Abdul Hameed alias Hameed son of Abdul Majeed in case FIR No.205/1999, dated 26.08.1999, P.S. Dera Allah Yar, District Jaffarabad from the charge under section 10/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 343 PPC.

The Criminal Suo Motu Revision No.02/I of 2000 has also been taken up in the light of reference forwarded by Registrar Hon'ble High Court of Balochistan to this Court for taking action in the instant case.

Both the above mentioned matters are being disposed of through this single judgment as the same arise out of the same crime report and judgment.

2. Brief facts of the case as set out in the FIR No.205/1999, dated 26.08.1999, P.S. Dera Allah Yar, District Jaffarabad, upon the complaint/report (Ex.P/1-A) of Mst. Waziran daughter of Dhani Bakhsh through the Superintendent, District Jail Dera Murad Jamali at 05.10 p.m. wherein she stated that she was residing at Goth Hameed Khan Khosa. Her father had since died and her mother performed her second marriage, she had a brother namely Yaseen aged about 7 years. She was residing with her maternal uncle Ramzan son of Abdul Hameed. About 06 months ago, she was married to Hussain Bakhsh son of Karim Bakhsh. She was abducted forcibly from her house by the Naib of Hameed Khan Khosa, namely Horan etc. respondents. There were two rooms, in one room Hameed Khan Khosa son of Abdul Majeed Khosa used to commit zina, forcibly with her in the night. Thereafter, the Naibs of Abdul Hameed Khosa also committed zina, forcibly with her during day hour whose names were Horan Khan and his brother Manzoor Ahmed for about 8 days. Thereafter, a woman came there, whom she told her that she had been subjected to commit zina and she may inform inmates of her house. Thereafter, respondents No.1-2 took her to the house of her maternal uncle Ramzan to whom she narrated the entire story. Her uncle went to Dera Allah Yar for lodging the FIR but the administration of Dera Allah Yar did not lodge the FIR. Rather, to the contrary a case was registered against her under section 342 PPC and under sections 10/11/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 with Police Station, Dera Allah Yar on 19.08.1999 vide FIR No.29/99, because the accused were influential person. The Dera Allah Yar police took her in custody and referred her to Civil Hospital, Dera Allah Yar, where her condition became aggravated and she remained unconscious for two days. Thereafter, she was shifted to District Jail, Dera Murad Jamali. At the time of lodging FIR, she was under treatment in Civil Hospital. In this connection, her maternal uncle had moved an application before the Hon'ble Chief Justice, High Court of Baluchistan that she was subjected to Zina-bil-Jabr but so far no FIR was registered against the accused persons. However, after hectic efforts of her maternal

uncle, present FIR No.205/1999 was registered with Police Station, Dera Allah Yar on 26.08.1999.

3. The case was duly investigated; the respondents were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After completion of investigation, challan was submitted in the trial Court against the accused/respondents, under section 173 of the Code of Criminal Procedure.

4. The learned trial Court on receipt of challan framed the following charge against all the accused on 23.10.1999:-

1. *Hooran son of Sarwara Khan,*
2. *Manzoor Hussain son of Sarwara Khan,*
3. *Abdul Hameed alias Hameed son of Abdul Majid.*

As follows:-

“That some time prior to 26.08.1999, you abducted Mst. Waziran from her house and detained her in the house of accused Hameed Khan Khosa and then repeatedly committed zina-bil-jabr with her for about 08 days and thereby committed an offence punishable under sections 10/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, read with section 343 PPC and within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge”.

The accused persons did not plead guilty and claimed trial.

5. The prosecution in order to prove its case produced 06 witnesses at the trial. The prosecution also produced the following documents, besides other connected documents:-

- i. Fard-e-Biyan of complainant Mst. Waziran daughter of Dhani Bakhsh, PW.1 Ex,P/1-A
- ii. FIR Ex.P/6-A.
- iii. Challan of accused persons Ex.P/6-C to Ex.P/6-F.
- iv. Medico Legal Report of complainant Mst. Waziran Ex.P/3-A.
- v. Inspection memo Ex.P/4-A.
- vi. Medico Legal Report of Horan Ex.P/5-A.
- vii. Medico Legal Report of Manzoor Hussain Ex.P/5-B.

viii. Medico Legal Report of Abdul Hameed alias Hameed Ex.P/5-C.

ix. Site Sketch Plan as Ex.P/6-B

x. Report of Chemical Examiner Ex.P/6-F.

As the oral evidence of the PWs has already been noted in detail by the learned trial Court in the impugned judgment, therefore, the same need not to be reproduced in this judgment, in order to avoid repetition.

6. After completion of prosecution evidence, the statement of the accused persons under section 342 of the Code of Criminal Procedure were recorded, wherein they denied the allegations leveled against them and claimed to be innocent.

7. The learned trial Court, after completing requirements of the trial, acquitted all the appellants as mentioned in opening paragraph of this judgment. Hence, this appeal by State.

8. Before proceeding further, it would not be out of place to mention here that when this State appeal was pending, a Reference was received from the Registrar of Hon'ble High Court of Baluchistan, Quetta alongwith the copy of Inspection Report of Hon'ble Mr. Justice Amanullah Khan, Inspection Judge, Nasirabad Division pointing out certain illegalities or irregularities committed by the learned Sessions Judge, Nasirabad at Dera Allah Yar, while acquitting the respondents. It was also requested by the Registrar of the Hon'ble High Court of Baluchistan, Quetta, in the light of the Inspection Report, the matter be placed before the Hon'ble Chief Justice of Federal Shariat Court for taking Suo Motu action. Accordingly, the matter was placed before, then the Hon'ble Chief Justice of Federal Shariat Court who on 21.02.2000 directed that the matter be treated as Suo Motu Revision under Article 203-DD of the Constitution and linked with the present appeal and fixed before the available Division Bench. Resultantly, the said reference was registered as Criminal Suo Motu Revision No.02/I of 2000 and was put up before the Court alongwith this appeal. On 06.03.2000, Division Bench of this Court formally admitted the said revision for regular hearing and directed that the Notice be issued and record be requisitioned. Today, the above noted Criminal Suo Motu Revision No.02/I of 2000 was also put up and heard alongwith the present appeal and same is also being disposed of through this single order.

9. Syed Pervaiz Akhtar, learned DPG appearing for the appellant/State has formulated the following points in support of this appeal:-

- i) The accused were nominated in the FIR.
- ii) Initially the police did not register the FIR and on the direction of Hon'ble High Court, the present case was registered against the accused.

- iii) PW.5 Dr. Muhammad Siddique, who conducted medical examination of the accused, confirmed that they had committed sexual intercourse.
- iv) The medical evidence proves that repeated sexual intercourse was committed with the victim.
- v) The negative report of Chemical Examiner is not important because the chemical analysis was done after about 17 days. However the physical examination of the victim and the statement of the victim fully implicated the accused.
- vi) The solitary statement of the victim is sufficient to connect the accused with the commission of offence of rape.
- vii) The prosecution has fully proved its case against the accused beyond any reasonable doubt.
- viii) The learned Counsel for the appellant/State has prayed that the appeal may be accepted and the case may be remanded back.

10. On the other hand, Mr. Shah Muhammad Jatoi, learned Counsel for respondents has raised the following submissions:-

- i) The victim was abducted by one Sabz Ali and FIR No.197/09 was registered and when she was recovered in that case she did not implicate the present accused but on the instigation of Dhani Bakhsh Lashari and Qasim Omrani she implicated the present accused.
- ii) The medical evidence did not show that gang rape was committed with the victim.
- iii) The accused were involved in this case due to political rivalry.
- iv) The prosecution has not been able to prove its case against the accused beyond reasonable shadow of doubt.
- v) The statement of I.O, medical evidence and statement of the victim clearly show that the accused were involved in the case on the political basis.
- vi) The learned Counsel for the respondents prayed that the appeal filed by the State against acquittal of the respondents may be dismissed.

11. We have considered the above noted arguments of the learned Counsel for the parties and have also perused the record as well as the impugned judgment.

12. Both these matters have been filed for challenging the judgment of acquittal, passed by the learned trial Court against respondents Horan and Manzoor Hussain. In series of

judgment Hon'ble Supreme Court of Pakistan has held that **"Superior Court while dealing with the appeal against acquittal can interfere only in such cases where the judgment and acquittal is based on misreading, non-appraisal of evidence or is speculative, artificial, arbitrary and foolish on its face"**.

13. We have examined the impugned judgment in the light of above noted criteria laid down by the Apex Court while deciding the appeal against acquittal. No doubt, the solitary statement of victim in the cases of zina is sufficient to convict the accused, but the question is whether the statement of victim is confidence inspiring to connect the accused with the commission of offence. It is observed that prior to the registration of the present FIR, Hussain Bakhsh son of Karim Bakhsh husband of victim Mst. Waziran also got registered FIR No.197/1999, dated 18.08.1999, Police Station Dera Allah Yar, District Jaffarabad alleging that one Sabaz Ali had developed illicit relations with his wife namely Mst. Waziran and in that case she was perhaps arrested by the police and produced before the Court. But at no stage of the said case the appellant raised any voice against any of the accused. It is further noted that according to the FIR the victim Mst. Waziran was abducted for the purpose of rape and she remained absent from her residence for more than eight days, but none of her relative during this period lodged any complaint about her absence from the house. It is further observed that though victim Mst. Waziran was got medically examined and her swabs were taken and sent to the Chemical Examiner, but according to the report of Chemical Examiner, Government of Sindh, Karachi semen was not detected in the swabs report Ex.P/6-F. The learned trial Court in the impugned judgment while acquitting the accused/respondent after thorough appraisal of evidence and taking into consideration, the entire evidence came to the conclusion that the charge against the accused/respondent was not established. Further the judgment is based on sound reasoning. We are of the view that while recording above noted finding, the learned trial Court neither committed any illegality nor irregularity and the impugned judgment also did not suffer from misreading or non-reading of evidence. Despite our repeated question, no satisfactory explanation has been forthcoming that the impugned judgment is either speculative, artificial, arbitrary or foolish on its face as held by the Apex Court in the cast of ***Mst. Zahida Saleem Vs. Muhammad Naseem and others (PLD 2006 Supreme Court 427)*** and ***The State and others Vs Abdul Khaliq and others (PLD 2011 Supreme Court 584)***, particularly when acquittal carries presumption of double innocence.

14. Resultantly, this appeal is dismissed having no force. In view of the above noted decision Criminal Suo Motu Revision No.02/I of 2010 is also disposed of having become infructuous.

15. Non-bailable warrants of arrest were ordered to issue against Horan son of Sarwara Khan vide Court's Order dated 29.06.2010 and in compliance with the same respondent Horan was arrested by local police and was sent to District Jail, Quetta. He was produced by jail authority before the Court on 13.11.2012. However, since the appeal against acquittal has been dismissed on merits, therefore, respondent Horan son of Sarwara Khan be released

forthwith if not required in any other case.

16. Above are the reasons of our short order of even date.

JUSTICE MUHAMMAD JEHANGIR ARSHAD

JUSTICE SHAHZADO SHAIKH

Announced at Quetta on 13.11.2012

IN THE FEDERAL SHARIAT COURT**(Appellate Jurisdiction)****PRESENT:****MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD****CRIMINAL APPEAL NO.89/L OF 2008**

Mumtaz Ali son of Muhammad Hussain, Appellant
caste Rajput, resident of Mahda Jadeed,
Police Station, Shahkot, District Nankana Sahib.

VERSUS

The State Respondent

FIR No. and date : 417/2004, dated 13.10.2004,
P.S. Manawala, District
Sheikhupura.

Date of impugned Judgment of learned trial Court : 30.07.2008

Date of Institution of appeal in FSC : 27.09.2008

Date of hearing : 11.01.2013

Date of judgment : 11.01.2013

JUDGMENT

MUHAMMAD JEHANGIR ARSHAD, J:- This appeal is directed against the judgment dated 30.07.2008 handed down by the learned Sessions Judge, Nankana Sahib whereby the learned trial Court in case FIR No.417/2004, dated 13.10.2004, registered with Police Station, Manawala, District Sheikhpura while convicting the appellant Mumtaz Ali son of Muhammad Hussain under section 377 PPC sentenced him to 7 years R.I. with fine of Rs.25,000/- or in default of payment of fine further undergo 4 months R.I. Appellant was also extended benefit of section 382-B Cr.P.C.

2. Brief facts of the case are that Muhammad Ramzan PW.3 got registered the above noted FIR against the appellant complaining that his son Muhammad Rizwan PW.5 who was mentally retarded and used to wander here and there was subjected to unnatural intercourse by the appellant.

3. The case was duly investigated and statement of prosecution witnesses were recorded under section 161 Cr.P.C. The accused was challaned by the police to face the trial before the learned trial Court. The learned trial Court framed charge against the appellant on 29.04.2006 under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and 377 PPC. Further, after recording the evidence and statement of the appellant under section 342 Cr.P.C, the learned trial Court finally through the impugned judgment concluded that as the offence under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was not made out against appellant, however, to the extent of offence under section 377 PPC, prosecution had failed its case against the appellant, therefore, convicted him under section 377 PPC and sentenced him to 7 years R.I. with fine of Rs.25,000/- or in default of payment of fine to further undergo 4 months R.I. The learned trial Court further directed, if fine recovered, half of the amount be given to Muhammad Rizwan PW.5 victim as compensation. Appellant was also extended benefit of section 382-B Cr.P.C.

4. Today, Muhammad Ramzan, complainant (PW.3) father of the victim appeared in person and submitted a written application stating therein that as he had compromised with the appellant, therefore, had no objection, if this appeal was allowed and the appellant acquitted of the charge. The original application alongwith photocopy of Identity Card of Muhammad Ramzan complainant PW.3 is available on the record.

5. Record reveals that out of 7 years R.I., the appellant had already served out more than half of the sentence awarded to him by including remissions and further, there is unexplained delay in lodging the FIR, despite the appellant's medical examination was conducted on 06.10.2004 yet the FIR was got lodged on 13.10.2004.

6. Though, offence under section 377 PPC is not compoundable yet the compromise affected between the parties can be considered as a ground for reduction of sentence. Even, otherwise as held by this Court in the case of **Kashif Nadeem alias Pappi Vs. The State**

1992 PSC (Crl.) 660 [Federal Shariat Court] “sodomy does not fall within the definition of zina” hence the sentence of accused in the said case under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was converted into section 377 PPC and the same was also reduced from 5 years R.I. to 2 years R.I. In the present case also this Court feels that keeping in view the delay in the FIR as well as compromise submitted by the complainant himself and further appellant having already served out more than half of sentence by including remissions as awarded by the learned trial Court, therefore ends of justice would be sufficiently met, if the sentence of appellant as awarded by the learned trial Court is reduced from 7 years R.I. to one already undergone. Similarly, the amount of fine of Rs.25,000/- is reduced to Rs.10,000/- which the appellant shall deposit with the learned trial Court because under section 377 PPC imposition of fine is mandatory requirement. The learned trial Court on receipt of this order shall immediately issue Notice to the appellant Mumtaz Ali son of Muhammad Hussain asking him to deposit the said fine in the Court within reasonable time and in case if the appellant fails to deposit the amount within time fixed by the learned trial Court, the appellant shall undergo 2 months R.I. The above noted direction is being issued as this aspect of the case escaped the attention of the Court at the time of announcing judgment.

7. Resultantly, this appeal is dismissed subject to above said modification in the sentence.

JUSTICE MUHAMMAD JEANGIR ARHSAD

Dated:- Lahore the 11.01.2013

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD
MR. JUSTICE SHEIKH AHMAD FAROOQ

CRIMINAL APPEAL NO.75/I OF 2008

Sayed Bashir Hussain son of Zawar Hussain
caste Sayed Bukhari, resident of Chah Kotwala,
Mauza Dhanote, District Lodhran.

Appellant

VERSUS

- | | | |
|----|----------------------------------------------------------------------------------------------------------|-------------|
| 1. | Abdul Waheed son of Abdul Rashid,
caste Rajput, resident of Mauza Dhanote, District Lodhran. | Respondents |
| 2. | Muhammad Bilal son of Elahi Bakhsh, caste Thaheem/Qsal, resident of
Mauza Dhanote, District Lodhran. | |
| 2. | Muhammad Imran son of Muhammad Iqbal, caste Rajput, resident of
Ward No.29, Kehrorpacca. | |
| 3. | Muhammad Akbar son of Muhammad Umar, caste Rajput, resident of
Chah Munshi Wala, Tehsil, Kehrorpacca. | |

Learned counsel for the appellant	:	Malik Abdul Haq Advocate
Learned counsel for the respondents	:	Mr. M. Shahid Kamal Khan Advocate
Learned counsel for the State	:	Dr. Muhammad Anwar Khan Gondal, learned APG
FIR No Date & PS	:	62 dated 25.04.2004, Police Station Dhanote, District Lodhran.
Date of impugned Judgment of learned trial Court	:	31.05.2008
Date of Institution of appeal	:	01.08.2008
Date of hearing	:	24.04.2013
Date of judgment	:	24.04.2013

JUDGMENT

JUSTICE MUHAMMAD JEHANGIR ARSHAD, JUDGE:- This appeal is directed against the judgment dated 31.05.2008 passed by Mr. Sana Khan Atiq, learned Additional Sessions Judge, Lodhran in Hudood Case No.29/H.C. of 2004 and in Hudood Trial No.07 of 2005 whereby the learned trial Court acquitted all the respondents in case FIR No.62/2004, dated 25.04.2004 under section 395/411 PPC read with section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 registered with Police Station, Dhanote, District Lodhran.

2. The facts briefly stated are that complainant Bashir Hussain got registered the above noted FIR through (Ex.PA) complaining therein that he alongwith his wife and daughter was sleeping on the night 24/25.04.2004, in his room at his house whereas his brother-in-law Ali Shah who came to see them and was sleeping in the courtyard of cattle-shed and at about 12/01.00 of night the complainant opened door at the knock/call of said Muhammad Ali, when five persons armed with pistols 30 bore entered in the room amongst whom both complainant and Muhammad Ali Shah identified in the bulb light, as Abdul Waheed son of Abdul Rashid, resident of Dhobi Wala Dhanote and Muhammad Bilal son of Elahi Bakhsh resident of Gali Santoo Wali Dhanote who tied the complainant and Muhammad Ali Shah with clothes whereas, three persons remained in the courtyard. Accused who had entered the room demanded keys of the iron-box from his wife and after opening the lock, picked Rs.50,000/- and golden ornaments 5 tolas, wrist watch and photocopy of the identity card of the complainant. Meanwhile, two accused took him and Muhammad Ali Shah outside and others accused maltreated his wife and committed zina-bil-jabr with her. Meanwhile, Muhammad Qasim resident of Bagh Shah came and the accused ran away after looking him. The description of the other 6 accused is the same as of middle height, middle body and young.

3. The case was properly investigated and on the completion of investigation challan was submitted against the private respondents. On receipt of the challan the present respondents were summoned by the learned trial Court. However, Muhammad Imran and Muhammad Akbar respondents were declared Juvenile by the learned trial Court vide order dated 01.03.2005 and separate challan as such was filed per Court direction, therefore, their trial was held separately by the learned trial Court under the Juvenile Justice System Ordinance, 2000 and they were also charged separately on 14.04.2005 which is reproduced below:-

***“I Abdul Mustafa Nadeem, Additional Sessions Judge, Special Court
Constituted under Juvenile Justice System Ordinance, 2000, Lodhran do hereby
charge you above named accused as under:***

***Firstly:- That you Muhammad Imran and Muhammad Akbar accused
along with co-accused Abdul Waheed, Muhammad Bilal and
Muhammad Usman alias Kala, Muhammad Siddique alias***

Rahim Dad, Muhammad Ajmal son of Noor Muhammad and Muhammad Bilal Pathan son of un-known since declared (POs) during the night between 23/24/2004 (at about 12-00 Mid night) within the area of Mauza Dahnot falling within the jurisdiction of P.S. Dahnot while armed with Lethal weapons in order to commit dacoity committed the house tress-pass of Bashir Hussain Shah son of Zewar Hussain Shah resident of said Mauza and thus committed an offence punishable under section 450 PPC which is within the cognizance of this Court.

Secondly:- That you Muhammad Imran and Muhammad Bilal accused persons alongwith your above mentioned accused persons on the same date, time, place and under the above mentioned circumstances committed dacoity and looted cash amount of Rs.50,000/- 10 tolas of Golden ornaments, wrist watch and a copy of National Identity Card belong to complainant Bashir Hussain on the point of lethal weapon and made assault on the person of his wife Mst. Shazia Batool and thus committed offence punishable under section 395 PPC which is within the cognizance of this Court.

Thirdly:- That you on the same date, time, place and under the above mentioned circumstances alongwith your co-accused namely Abdul Waheed and Muhammad Bilal committed zina-bil-jabbar turn by turn with Mst. Shazia Batool and also torn away her shirt. Thus, you being Juvenile committed an offence under section 10 (4) read with section 7 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 which is within the cognizance of this Court.

Fourthly:- That you accused person alongwith your co-accused named above after committing dacoity of the house of complainant dishonestly received the share of looted property and retained the same in your possession by knowing or having to believe that the said property was looted by your as well as your co-accused at the time of dacoity at the house of Bashir Hussain Shah and thus you committed an offence punishable under section 412 PPC which is within the cognizance of this Court.

And I hereby direct that you to be tried by this Court on the said charge.

4. Whereas Abdul Waheed and Muhammad Bilal respondents were tried by the learned trial Court separately as an adult accused and their charge was also framed by separately on 28.03.2005 which is reproduced below:-

“I Abdul Mustafa Nadeem, Additional Sessions Judge, Lodhran do hereby charge you above named accused are as under:-

Firstly:- That you Abdul Waheed and Muhammad Bilal son of Elahi Bakshsh accused persons alongwith co-accused Muhammad Akbar and Muhammad Imran (declared Juvenile as and tried separately), Muhammad Usman alias Kala, Muhammad Ajmal son of Noor Muhammad, Muhammad Siddique alias Rahim Dad and Muhammad Bilal Pathan son of un-known since declared (P.O) during the night between 23/24/04/2004 at about 12.00 Mid Night within the area of Mauza Dahnot fall within the jurisdiction of Police Station Dahnot while armed with lethal weapons in order to commit dacoity committed the house tress-pass of Bashir Hussain Shah son of Zewar Hussain Shah resident of Said Mauza and thus committed an offence punishable under section 450 PPC which is within the cognizance of this Court.

Secondly:- That you Abdul Waheed and Bilal accused persons alongwith your above mentioned accused persons on the same date, time, place and under the above mentioned circumstances committed dacoity and looted the amount of Rs.50,000/- 10 tolas of Golden ornaments, wrist watch and copy of National Identity Card belonging to complainant Bashir Hussain Shah on the pointation of lethal weapons and made assault on the person of his wife Mst. Shazia Batool and thus committed of offence punishable under section 395 PPC which is within the cognizance of this Court.

Thirdly: That you on the same date time, place and under the above mentioned circumstances alongwith your co-accused persons committed Zina-Bil-Jabbar turn by turn with said Mst. Shazia Batool and also torn away her shirt. Thus, you committed an offence punishable under section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 which is within the cognizance of this Court.

Fourthly:- That you accused persons alongwith your co-accused named above after committing dacoity at the house of complainant dishonestly received the share of looted property and retained the same in your possession by knowing or having to believe that the said property was looted by you as well as your co-accused at the time of dacoity

at the house of Bashir Hussain Shah and thus you committed an offence punishable under section 412 PPC which is within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge.

5. The learned trial Court after holding both the above noted trials separately and after recording of evidence as well as statement of the accused/respondents separately ultimately found them innocent and finally acquitted them through his consolidated/single judgment dated 31.05.2008. The above noted judgment of acquittal has now been impugned before this Court through this appeal.

6. In view of the proposed judgment, neither the facts of the case in detail nor the gist of evidence produced by the prosecution before the learned trial Court is reproduced here to avoid repetition.

7. On 06.12.2012, this Court after hearing the parties framed the following two preliminary points which are reproduced as under:-

“(i) *According to learned counsel for the respondents as the limitation for filing the appeal against acquittal under section 13 (2) of the Juvenile Justice System Ordinance, 2000 is 30 (thirty) days whereas the present appeal which has been filed after the expiry of said period, therefore, is not maintainable, whereas according to the learned counsel for the appellant as the forum for filing the appeal against judgment/order passed under the provisions of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 has been determined vide section 20 of the said ordinance as the present Court (Federal Shariat Court), therefore, per rule 18 of the Federal Shariat Court of Pakistan (Procedure) Rules 1981, the limitation for filing the appeal before this Court is 60 (sixty) days from the date of the order or decision of the appeal from, hence, this appeal was within time.*

(ii). *Whether the learned trial Court was competent to pass consolidated judgment of two different trials one under ordinary law and second under Juvenile Justice System Ordinance, 2000 and if consolidated judgment is passed, what is its legal effect qua the acquittal of juvenile who is not claiming any prejudice.*

8. It was also observed in the above order that as the prayer of the respondents was that after setting aside the impugned judgment, the accused/respondents be inter-alia convicted under section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 i.e. Gang Rape which entails punishment with life, therefore in the opinion of the Court, it would be appropriate if the matter be heard by a bench consisting of not less than

three judges one of whom be an Aalim Judge.

9. In the light of the above noted observations this appeal has been fixed before this full bench.

10. We have heard the learned counsel for the parties at great length on both the questions noted above. So far as the question of limitation is concerned the contention of the learned counsel for the respondents/accused is that as section 13 (2) of Juvenile Justice System Ordinance 2000 prescribed the period of 30 days for preferring the appeal against order of acquittal passed by a juvenile Court, therefore, this appeal having definitely been filed beyond the period of thirty days was barred by time and was liable to be dismissed because a valuable right had accrued to the respondent/accused to presume their acquittal as a past and close transaction, after the expiry of period of limitation prescribed for preferring the appeal, therefore, this appeal was liable to be dismissed.

11. On the other hand, learned counsel for the respondents submits that as this appeal has been filed under rule 17 and 18 of the Federal Shariat Court of Pakistan (Procedure) Rules, 1981 the limitation for filing the appeal before this Court under these rules is 60 days from the date of the order or decision appealed from, therefore, the appeal was within time.

12. We have examined the above noted contention of the learned counsel for the parties and find that this appeal is within time. The basis of our opinion is that in fact the period of limitation for filing the appeal under hudd or hudood laws is governed by the Federal Shariat Court of Pakistan (Procedure) Rules, 1981 which provides a limitation by filing such appeal within 60 days from the date of the order or decision appealed from. The said rules were framed by this Court in exercise of powers conferred by Article 203-J of the Constitution of Islamic Republic of Pakistan, 1973 and the same would have over riding effect qua limitation prescribed under Juvenile Justice System Ordinance, 2000. In this respect, we may also refer to a judgment of an another Full Bench of this Court passed in Criminal Appeal No.37/I of 2011 authored by one of us namely Mr. Justice Sheikh Ahmad Farooq. In the said case also similar question was raised which was answered by the learned Full Bench in the following words:-

“15. The Federal Shariat Court has made Rules for carrying out the purposes of chapter 3-A of the Constitution of Islamic Republic of Pakistan, which are called as Federal Shariat Court (Procedure) Rules, 1981. According to Rule-18(a) of Rules *ibid*, an appeal shall be presented to the Court within sixty days from the date of the order or decision appealed from.

Provided the Court may for sufficient cause extend the period. (Emphasis supplied)

16. It is worth consideration that the instant appeal was entertained by the office of the Federal Shariat Court of Pakistan under Rule 18(a) of the Federal Shariat Court (Procedure) Rules, 1981 which provides a period

of sixty days for filing an appeal. There is also no denying of the fact that according to the office of the Federal Shariat Court of Pakistan, the instant appeal was filed within the period of limitation i.e sixty days. Hence, it is held that the provision of section 417(2-A) Cr.P.C would not be applicable to the instant appeal which is being heard and decided in accordance with the jurisdiction vested in the Federal Shariat Court as provided under Article 203DD of the Constitution of Islamic Republic of Pakistan.

17. *Needless to mention here that the Federal Shariat Court (Procedure) Rules, 1981 which have been framed in exercise of the powers conferred by Article 203J of the Constitution of Islamic Republic of Pakistan would have precedence over any other procedural law including Cr.P.C. Consequently, the objection of the learned counsel for respondent No.2/ Muhammad Sharif regarding the filing of the instant appeal after the period of limitation is over ruled and the instant appeal is held to be within the period of limitation as provided under Rule 18(a) of the Federal Shariat Court (Procedure) Rules, 1981.”*

13. Similar view was also taken by an another Division Bench of this Court in the case of Azmat Hussain Vs. The State (PLD 1982 FSC P.4). So far as the factual aspect of the case is concerned, we may observe that the impugned judgment was passed by the learned trial Court on 31.05.2008 whereas the application for obtaining copy of the impugned judgment was made on 14.06.2008 and the copy was delivered on 17.06.2008, therefore, this appeal which was filed on 01.08.2008 was within period of 60 days and the above noted objection of the learned counsel for the respondents that the appeal was barred by time is over ruled and the appeal is held as within time.

14. After deciding the question of limitation in favour of the accused/respondents we are now left with the question about the legal validity of the impugned consolidated judgment passed by learned trial Court in two trials although held separately; one under ordinary law and other under the Juvenile Justice System Ordinance, 2000. The answer to the said question is very simple and involved no complication. Section 5 of the Juvenile Justice System Ordinance, 2000 is very much clear which is reproduced below:-

- “5. *No joint trial of a child and adult person.—Notwithstanding anything contained in section 239 of the code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.*
- (2) *If a child is charged with commission of an offence for which under section 239 of the code, or any other law for the time being in force such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court.”*

15. The bare reading of the above reproduced section make its abundantly clear that wherein accused is declared as child/juvenile after regular procedure he shall neither be charged with nor tried for an offence together with an adult and the Court taking cognizance of the offences shall direct separate charge as well as trial of the child in the juvenile Court. In the present case not only Muhammad Imran and Muhammad Bashir respondents were declared child but they were also separately charged and their trial was also held separately likewise, therefore, judgment in both the trials also should have been recorded separately, otherwise the object of framing separate charge and holding of separate trial would have become meaningless and by recording the consolidated judgment the learned trial Court rendered the entire exercise as futile. Even, otherwise recording of separate judgment of juvenile accused/respondents was the mandatory requirement under law i.e. section 6 (1) of Juvenile Justice System Ordinance, 2000 and section 367 Cr.P.C. We are also fortified in our view that requirements of separate judgments on both the cases were mandatory by a judgment of Karachi High Court in the case of Ghulam Hussain and others Vs. The State (1996 P.Cr.L.J. 514) wherein the learned Single Judge of Karachi High Court after going through the entire case law on the subject held There is no provision in the Code of Criminal Procedure, 1898 whereby the trial Courts are entitled to dispose of more than one case by one consolidated or by one common judgment. Perusal of section 366 and 367, Cr.P.C. suggests that each criminal case has to be disposed of by a separate judgment. It is pertinent to note that it is the mandatory requirement of the law that the judgment must be written by the Judge, Presiding Officer or Officer of the Court or from the dictation of such Presiding Officer. All such judgments should contain the point or points for determination, the decision thereon and the reasons for the decision. In the instant case, all these particulars are missing. I am fortified in my view by the case of Muhammad Younis v. The Crown. It was held in this case that the action of the learned Judge in writing one composite judgment without taking the precaution of discussing the evidence pertaining to each case separately have caused prejudice to the accused and, therefore, such judgment cannot stand. Therefore, it was not proper for the learned trial Judge to write only one composite judgment in all the six cases. He has not discussed evidence of each case separately. A trial Court has to separately assess evidence of each witness in relation to the charge and to the defence, if any, and particularly in reference to the point for determination. On this ground also, the impugned judgment is not sustainable in law". It is an established principle of law that when something none is required under law to be done in a particular manner, it must be done in that way and not otherwise as held by the Apex Case in the case of Hamayun Sarfraz Khan and others Vs. Noor Muhammad (2007 SCMR P.37) . It was also held in the same judgment "where a law provides for writing, announcing and signing a judgment all that must be done in a way to give validity to the judgment".

16. At this stage, we would like to attend the arguments of the learned counsel for the complainant who while supporting the impugned judgment contended that the writing a consolidated judgment instead of separate judgment may be a technical irregularity which

is curable under section 537 Cr.P.C. Learned counsel for the complainant further argued that as instead of writing a separate judgment, writing a consolidated judgment is an act of Court which could not prejudice the respondents who had already suffered agony of trial for more than nine years and at this stage sending of the case back to the learned trial Court would not only amount to throwing the accused/appellant at the mercy of trial Court for another indefinite period but would also add to their agonies which is against the principle of natural justice. However, we are not inclined to agree with both these contentions of the learned counsel for the complainant for the simple reasons that none writing of separate judgment is not a technical defect but in fact is a basic defect in the proceedings. It is an established principle of law that the Court should pass a final judgment through conscious application of mind and after referring to the facts, circumstances and evidence on the record. We are, further strengthen in our view that after incorporation of section 34-A in the General Clauses Act it has now become mandatory requirements that the Court should pass a speaking judgment after affording opportunity of hearing to the parties and also through conscious application of mind but in the instant case even no separate judgment was passed at all by the learned trial Court while exercising jurisdiction as a juvenile Judge. Similarly, as the learned trial Judge failed to pass a separate judgment, which was a necessary requirement of law as noted above, therefore, the same can neither be considered as a mere irregularity curable under section 537 Cr.P.C. or an act of a Court causing prejudice to the parties. Rather, none exercise of jurisdiction by the learned trial Court would render its proceedings as coram-non-judice. In the light of the above noted discussion the contention of the learned counsel for the respondents are repelled being non maintainable.

17. In the light of the above noted facts and circumstances of the case, we are satisfied that by not writing judgment separately in the case of juvenile and adult accused/respondents, the learned trial Court not only acted without jurisdiction, but the said judgment also suffers from jurisdictional defect. Resultantly, this appeal is allowed, the judgment of the learned trial Court is set aside and the matter is sent back to the learned trial Court in terms of section 423 Cr.P.C. with the direction to decided the same afresh strictly in accordance with law within two months of the receipt of this judgment.

18. Parties are directed to appear before the learned trial Court on 27.05.2013.

JUSTICE MUHAMMAD JEANGIR ARSHAD

JUSTICE ALLAMA DR. FIDA MUHAMAMD KHAN

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad, the 24.04.2013

Approved for Reporting.

JUSTICE MUHAMMAD JEANGIR ARSHAD

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE DR. FIDA MUHAMMAD KHAN**MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD****JAIL CRIMINAL APPEAL NO.145/I OF 2006**

Muhammad Hanif son of Muhammad Hussain, caste Gujar, resident
of Street No.3, Summon-Abad, Faisalabad.

.....Appellant

VERSUS

The State

Respondent

Learned counsel for the appellant : Sh. Asghar Ali, Advocate
Learned counsel for the State : Mr. Nasir Mehmood Sial, learned
DDPP
FIR No Date & PS : 418/2004 dated 26.11.2004,
Police Station Whando, District
Gujranwala.
Date of impugned Judgment : 19.05.2006
of learned trial Court
Date of Institution of appeal in FSC : 21.06.2006
Date of hearing : 30.05.2013
Date of judgment : 31.05.2013

JUDGMENT

MUHAMMAD JEHANGIR ARSHAD, J:- Appellant Muhammad Hanif son of Muhammad Hussain through this appeal has challenged the judgment dated 19.05.2006 delivered by Mr. Abid Hussain Qureshi, learned Additional Sessions Judge/Juvenile Court, Gujranwala whereby the appellant was convicted under sections 302 (b)/34 of the Pakistan Penal Code and sentenced to life imprisonment. He was also ordered to pay Rs.50,000/- as compensation to the legal heirs of the deceased in terms of section 544-A Cr.P.C. or in default thereof to further undergo six months simple imprisonment. The accused was granted benefit of section 382-B of the Code of Criminal Procedure. However, the accused/appellant was acquitted of the charges under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and under section 377 PPC through the impugned judgment.

2. Brief facts of the case arising out of F.I.R No.418/2004, dated 26.11.2004 (Ex. PL), registered under sections 302/34 PPC and under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 read with section 377 PPC at Police Station, Whando, District Gujranwala, as narrated in the written complaint (Ex.PK) made by Muhammad Aslam PW.10 are that the victim Abu Bakar son of the complainant aged 12 years who was getting religious education in a local Madrasa in village Nadha, victim went missing since 12.00 noon of 21.11.2004. The complainant searched for his son in the village and on the same night at about 09.00 p.m. PWs 7 and 8 Pervaiz Ahmad and Munir Ahmad disclosed to the complainant that they saw his son Abu Bakar at about 07.00 p.m., while going with the accused Muhammad Hanif appellant and co-accused Avil Masih and Mohsin Ali. The complainant alongwith said two PWs went to Abdul Ghafoor Whala father of accused Mohsin Ali and asked about his son and he told him that said three accused went to Rohi to fetch Tarpal and they had returned back but son of the complainant did not come back to his house for three days. The accused and said Abdul Ghafoor Whala used to change their versions and finally on 25.11.2004 one Bilal of the same village disclosed to the complainant that a dead body was lying in the heap of Parali in his fields and when they alongwith said PWs went there they found dead body of Abdu Bakar deceased who had been murdered through strangulation with some rope and it appeared that somebody had also committed sodomy with him prior to his murder and that Abdul Ghafoor Whala father of the accused Mohsin Ali had knowledge about this ugly episode but he did not disclose the same to the complainant.

3. The case was duly investigated; the accused were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After completion of investigation, report was submitted in the trial Court against all the above noted three accused including appellant under section 173 of the Code of Criminal Procedure.

4. Originally the prosecution submitted a combined challan against the three accused/appellants, however, keeping in view the fact that the accused Mohsin Ali and Avil (separately acting trial) were minors at the time of occurrence a supplementary challan was

submitted against them for their trial under the Juvenile Justice System Ordinance 2000 whereas a separate charge was framed against the appellant under section 302/34 PPC and under section 12 of Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 read with section 377 PPC which the accused/appellant pleaded not guilty and prosecution evidence was summoned.

5. The prosecution in order to prove its case produced 10 witnesses at the trial. The gist of the evidence of the prosecution need not to be reproduced as the same is already mentioned in detail in the impugned judgment. However, the prosecution evidence shall be examined, assessed and discussed in this judgment, wherever required.

6. After completion of prosecution evidence, the statement of the accused under section 342 of the Code of Criminal Procedure was recorded, wherein he denied the allegations leveled against him and claimed to be innocent. In reply to the question **“Why this case against you and why the PWs have deposed against you? accused/appellant Muhammad Hanif stated as under:-**

“I have been falsely implicated in this case by the complainant who had suspicion of theft of cattles of Muhammad Boota brother of the complainant against Abdul Ghafoor father of co-accused Mohsin Ali and being servant of said Abdul Ghafoor I have been falsely implicated. Moreover complainant is a political rival of said Abdul Ghafoor. The PWs are inter-se related to the deceased and the complainant.”

The accused person neither opt to appear under section 340 (2) of the Code of Criminal Procedure nor did he produce any evidence in his defence.

7. The learned trial Court, after completing requirements of the trial, convicted and sentenced the appellants as mentioned in opening paragraph of this judgment. Hence, this appeal.

8. Learned counsel for the appellant namely Sh. Asghar Ali, advocate submits that the FIR was lodged with an un-explained delay of more than five days and the complainant remained silent till recovery of dead body. According to the learned counsel it was the duty of the complainant that being father of the deceased he should have immediately reported the matter to the police but in the instant case even no effort was made by the complainant for finding out the whereabouts of the minor. Learned counsel for the appellant further submits that despite holding **“it is not clear who played what role in the actual commission of offence as there is no eye-witness of the occurrence and even the prosecution has not assigned any specific role to any of the accused”**, the learned trial Court convicted the appellant and held him guilty of the charge under section 302 (b) PPC read with section 34 PPC by merely placing reliance on the last seen evidence of PWs 7 and 8 who were interested witnesses whereas it has been held time and again by the superior courts that the **circumstantial/last seen evidence being weak type of evidence cannot be believed unless the same is supported by other cogent and convincing**

evidence. Learned counsel for the appellant further argued that even otherwise there was no justification for convicting the appellant after acquitting him from the charge under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 as well as under section 377 PPC. Learned counsel for the appellant further argued that the learned trial Court in the impugned judgment did not discuss the evidence recorded in the case but merely relied upon the evidence and the finding recorded in the case of juvenile co-accused namely Avil Masih and Mohsin Ali whereas it was mandatory for the learned trial Court to have decided the case of the appellant on the basis of evidence recorded in his case separately and independent of finding recorded in the case of juvenile accused and for this reason the judgment of the learned trial Court was not sustainable. Learned counsel for the appellant further argued that the learned trial Court was wrong in attributing the motive of commission of sodomy with the deceased after acquitting the appellants and co-accused from the said charge. Similarly, the learned trial Court erred in convicting the appellant under section 302 (b) PPC after exonerating him from the charge of abduction under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 as well as under section 377 PPC. Learned counsel for the appellant further argued that the prosecution never investigated Abdul Ghafoor Whala the father of one of the co-accused namely Mohsin Ali to whom complainant had been inquiring about his son for three days and in whose presence according to the complainant all the accused had admitted that Abu Bakar had accompanied them Rohi for purchasing Tarpal. According to the learned counsel for the appellant as the evidence of said Abdul Ghafoor Whala was very material and by not joining him in investigation or producing him in evidence, the prosecution has failed to discharge the onus of proving the charge against the appellant beyond any shadow of doubt. Learned counsel for the appellant further submitted that as the prosecution has not been able to bring the charge against the appellant beyond any shadow of doubt, therefore, the appellant was entitled to be acquitted after acceptance of his appeal.

9. According to the record, Muhammad Aslam complainant did appear before the Court on 13.03.2013 and submitted that being a poor person he was not in a position to engage a counsel therefore, would rely upon the arguments of learned DDPP, even today the complainant is not present despite notice.

10. On the other hand, learned DDPP Punjab for State has opposed this appeal by arguing that the prosecution has successfully established its case against the appellant, who was therefore, rightly convicted and sentenced by the learned trial Court and this appeal having no force be dismissed and the conviction as well as sentence recorded by the learned trial Court be maintained.

11. We have considered the above noted arguments of the learned counsel for the parties and have also examined the record with the assistance of learned counsel.

12. Admittedly, it was an unseen murder and the prosecution mainly relied on the last seen evidence of PWs 7 and 8. According to both these PWs they saw the deceased in the accompany of accused and also informed Muhammad Aslam father of the deceased on

the same night and further both these PWs and complainant went to the house of one co-accused Mohsin Ali and asked whereabouts of the deceased form Abdul Ghafoor Whala father of Mohsin Ali co-accused but the complainant made no report to the police for near about five days after missing of his son and only reported the matter on 26.01.2004 on the recovery of dead body of the deceased, this silence on the part of complainant is beyond one's comprehension. The question, why the matter was not reported to the police immediately is surrounded in mystery. We have also examined the evidence of PWs 7 and 8 who furnished last seen evidence but we are not satisfied that their evidence was either confidence inspiring or so strong so as to connect the appellant with the commission of offence. It has held by the Apex Court in the case of **Khuda Bukhsh Versus The State 2004 SCMR 331** where there is no ocular account of the incidence and the case of the prosecution entirely depends upon the circumstantial evidence, the requirement of proof in such case is **"that every link has to be proved by cogent and convincing evidence. In that context, the role of prosecution agency in collecting evidence against the accused is very important and it is to be seen that the same is board and free from any doubt and suspicion. The motive also plays an important role in a case depending entirely on circumstantial evidence. Above all it is to be established on record that every piece of circumstantial evidence fits in with another piece of such evidence in the chain and corroborates each other"**. Earlier, in the case of **Sarfraz Khan Verus The State and 2 others 1996 SCMR 188** it was held by the Apex Court **"circumstantial evidence should be so inter-connected as to form a continuous chain one end of which touches the dead body and the other touches the neck of the accused thereby excluding all hypothesis of this innocence"**.

13. In the light of above noted precedent law, when prosecution evidence is examined, the only conclusion one can draw is; the circumstantial evidence as disclosed by PWs 7 and 8 is not of so weightage that the same to be considered as sufficient for convicting the appellant and awarding such a harsh sentence too. Further, after acquitting the appellant from the charges under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 and under section 377 PPC and further after holding that it was not clear who among three co-accused played role in the actual commission of offence and further the prosecution has not assigned any specific role to any of the accused one cannot conclude definitely it was the appellant among three accused who was exclusively liable for the commission of offence of Qatl-e-Amd of Abu Bakar deceased. The case of prosecution also becomes doubtful when the complainant remained silent for about five days and did not report the matter to the police despite knowledge, on the very night of the day of occurrence that deceased was seen in the company of appellant and his co-accused. On getting such information, it was the duty of the complainant to have reported the matter to the police. We are, satisfied that the learned trial Court was wrong in convicting the appellant by placing reliance on the last seen evidence of PWs 7 and 8 which is full of discrepancies as well as doubts and the benefit of which must go to the appellant while reaching at such conclusion; we are fortified by the judgment of the Apex Court in the

case of *Tariq Pervez Versus The State 1995 SCMR 1345* wherein it was held that “*for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubt. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right*”.

14. Even otherwise, according to the learned trial Court the motive for abduction and murder was intention to commit sodomy with the deceased but in the last para of the judgment, the learned trial Court acquitted the appellant from the charge of abduction as well as commission of offence of sodomy for want of evidence which also weakens the story of the prosecution that the deceased was abducted for the purpose of commission of sodomy. Finally, the perusal of the judgment indicates that the learned trial Court except writing few lines about the evidence of PWs 7 and 8 said nothing while convicting the appellant by relying upon his finding and judgment recorded in the case of juvenile accused whereas it is a fact that evidence in both the case was recorded separately and there is no law which allows the Court to rely upon either the judgment or evidence of a case in which the person/accused was either a party nor tried, therefore, to this extent also the finding of the learned trial Court *holding that the case of the appellant was exactly at par with the co-accused*, therefore, was also liable to be convicted under section 302 (b) PPC; was not legally warranted.

15. Keeping in view the above noted facts, evidence, circumstances as well as the law declared by the Apex Court in the reported judgments; we are satisfied that the prosecution has miserably failed to prove the charge for the commission of murder of Abu Bakar deceased against the appellant beyond any shadow of doubt. Therefore, the impugned judgment is not sustainable which is set aside and the conviction and sentences recorded by the learned trial Court through the impugned judgment are also set aside and the appellant is acquitted of the charge. The appellant Muhammad Hanif son of Muhammad Hussain is behind bar. He be released forthwith if not required in any other case.

16. Above are the reasons for our short order dated 30.05.2013.

JUSTICE MUHAMMAD JEHANGIR ARSHAD

JUSTICE DR. FIDA MUHAMMAD KHAN

Lahore, the 31.05.2013

Approved for reporting.

JUSTICE MUHAMMAD JEHANGIR ARSHAD

IN THE FEDERAL SHARIAT COURT**(Appellate / Jurisdiction)****PRESENT****MR. JUSTICE SHAHZADO SHAIKH****MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD****MR. JUSTICE SHEIKH AHMAD FAROOQ****CRIMINAL APPEAL NO.33-Q-2009**

Himmat Ali son of Ghulam Nabi Appellant

Resident of Khudabadan, Panjgur

Versus

The State Respondent

CRIMINAL MURDER REFERENCE No.01-Q OF 2010

The State Appellant

Versus

Himmat Ali Respondent

Counsel for Appellant : Mr. Muhammad Qahir Shah, Advocate

Counsel for the State : Mr. Abdul Wasey Tareen, Prosecutor
General Baluchistan

For the complainant : Mr. Nadir Ali Chalgari, Advocate

No. & Date of FIR : No.62/2009, dt.29.04.2009 Police Station
P.S Panjgur

Date of judgment of the trial court	:	25.7.2009
Date of institution	:	31.7.2009
Date of hearing	:	21.5.2012
Date of decision	:	21.5.2012

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JUDGMENT:

SH. AHMAD FAROOQ, J:- Through the instant Criminal Appeal, the appellant/ Himmat Ali son of Ghulam Nabi has challenged the judgment dated 25.7.2009, whereby the learned Additional Sessions Judge, Panjgur, has convicted him under section 302(b) P.P.C and sentenced him to death alongwith an order for payment of Rs.100,000/- as compensation to the legal heirs of the deceased as provided in section 544-A, Cr.P.C and in default whereof, to further undergo six months S.I. However, benefit of section 382-B, Cr.P.C, was extended to the convict/accused.

2. The learned Additional Sessions Judge Panjgur has also sent Murder Reference No.1-Q of 2010 for confirmation or otherwise of the sentence of death imposed on the appellant/ Himmat Ali. Both the Criminal Appeal No.33-Q-2009 and the Murder Reference No.1-Q-2010 are being decided through this single judgment.

3. Succinctly, the prosecution story as narrated in the FIR (P/1-A) is that on 20.4.2009, the complainant alongwith his cousins Basit and Waleed was travelling from Panjgur to Khudabadan in a vehicle/cultus of silver colour which was being driven by Basit. At about 7.00 p.m the accused alongwith his absconding companions crossed the vehicle of complainant party while boarded on a vehicle Corolla of black colour and stopped them. The complainant identified two of accused persons as Fateh son of Ghulam Nabi and Amir son of Muhammad Anwar, who were armed with Kalashnikov, the third unknown accused was of middle height, who could be identified by the complainant on his appearance. The accused directed the complainant party to get down from the vehicle and hand over the same to them. The accused/Amir and third unknown accused pushed back the complainant and Waleed, while Basit was resisting the accused/Fateh. The complainant party tried to escape, whereupon the accused made two fires. In the meanwhile, accused/Fateh fired a bullet which hit Abdul Basit and he fell down and the accused took away the vehicle,(cultus) while the dead body of Basit was brought to Hospital in the vehicle of one Muhammad Sharif.

4. After completion of investigation, a report under section 173, Cr.P.C was submitted in the learned trial court for taking cognizance of the offences. Thereafter the accused/ present appellant was charged by the learned trial court, to which he did not plead guilty and claimed to be tried.

5. During the trial, the prosecution in order to substantiate its allegations and to prove the charge, produced nine witnesses, in addition to tendering documentary evidence.

6. Statements of P.Ws have been discussed in detail in the judgment of the learned trial court. However, the gist of the material evidence of the prosecution relevant for the decision of the present appeal is being reproduced below:

P.W.1/ Muhammad Younis is the complainant. He reiterated the version given in

the FIR. He is an eye-witness but he was not cross-examined by the learned counsel for the accused despite an opportunity to do so. In his deposition, the complainant has further stated that one Muhammad Shareef reached at the place of occurrence, and they transported the dead body of Abdul Basit to the hospital in his vehicle.

P.W.2/ Abdul Waheed, who is a chance witness, deposed that Abdul Basit who was on the driving seat was being beaten by Fatah, Himmat Ali/ present appellant and Mujahid with the butt of the Kalashnikov. He further stated that Fattah made firing upon Abdul Basit due to which he fell down and all the culprits fled away from the scene of crime along with the vehicle towards Khudabadan. Further deposed that meanwhile Muhammad Shareef reached at the place of occurrence who shifted the dead body of Abdul Basit to hospital.

P.W.3/ Asmatullah, who was accompanying P.W.2/ Abdul Waheed at the time of occurrence corroborated the statement of P.W.2 on all material points. He also identified the accused/ Himmat, who was present in the court at the time of recording of his statement.

P.W.4 / Najeebullah is a witness of identification memo of motor cycle, which was produced as Ex.P/4-A.

P.W.5 / Dr.Salahuddin had examined the dead body of Basit Ali son of Haji Muhammad Naeem aged about 29 years and found the following injuries on his person:

INJURIES

1. Bullet entrance from left side of chest on upper area of heart laterally and exit from back of left side below the upper angle of scapula posteriorly.
2. A bullet entrance laterally below the right cubital joint, on elbow joint and exit on same area.

Duration : Fresh

Weapon used : Fire Arm

Nature of injury : Grievous.

P.W.5 had also issued Medico legal certificate which was placed on record as Ex.P/5-A.

P.W.6/Siraj Ahmed, ASI is the witness of the recovery memo Ex.P/6-A whereby the last worn blood stained clothes of Basit Ali were taken into possession.

P.W.7/Muhammad Hashim is a witness of the recovery of five empties of Kalashnikov SMG from the scene of crime vide memo Ex.P/7-A.

P.W.8/Javed Karim, Constable No.374 is the witness of recovery memo Ex.P/8-A in respect of black colour motorcycle/CD-70.

PW.9/Muhammad Ismail, ASI is the Investigating Officer of this case. He stated that he took various steps during the investigation of the case including the recovery of empties of Kalashnikov from the scene of the crime and the arrest of the accused/Himmat Ali. He also recovered one revolver alongwithh four live bullets and a motorcycle 70 C D from the house of the accused. He produced the site plan of the place of occurrence Ex.P/9-A. He clarified that the post mortem of Basit Ali was not got conducted on the request of his legal heirs. He placed on record the report of Forensic Science Laboratory as Ex.P/9-H.

7. After closure of the evidence of the prosecution, statement of the accused/present appellant was recorded under 342 Cr.P.C. The present appellant denied the prosecution version and claimed innocence. In response to the crucial questions regarding his involvement in this case, he replied as follows:

Question: Why the complainant lodged FIR against you?

Answer: *“He did not lodge FIR against me”*

Question: Why the prosecution witnesses deposed against you?

Answer: *“Falsely deposed”*

Question: Do you want to say something else?

Answer: *“I am innocent. Wrongly implicated. At the time of occurrence, I was at Mawash Chowk in a wedding ceremony”*

The accused/Himmat Ali also got recorded his statement under section 340(2) Cr.P.C. and produced three defence witnesses in disproof of the charges/ allegations made against him.

D.W.1 and D.W.2 deposed that the accused/Himmat Ali was playing cards, with them on 20.4.2009 from 3.00 p.m to 8.00/9.00 p.m in the hotel of Ghulam Sarwar situated at Mawash chowk. They denied the involvement of accused/Himmat Ali in the murder of Abdul Basit.

D.W.3 stated that accused/Himmat Ali was arrested on 14.5.2009 at about 9.00 a.m while he was going back to his house after attending a marriage ceremony. He denied that the police conducted any raid at the house of the accused on 14.5.2009 and recovered any article.

8. Upon conclusion of the trial, the learned trial court found the present appellant guilty of committing the offence of the murder of Abdul Basit in furtherance of common intention, falling within the mischief of section 302(B) PPC and thus convicted and sentenced him as mentioned in paragraph No.1 of this judgment.

9. Being aggrieved by the impugned judgment, dated 25.7.2009, the appellant has

challenged the legality and validity of his conviction and sentence through the instant appeal before this Court whereas the learned Additional Sessions Judge Panjgur has sent murder reference for confirmation of the sentence of death awarded to the appellant.

10. Learned Counsel for the appellant contended that the prosecution has miserably failed to prove its case beyond any shadow of doubt. The complainant has not mentioned the name of the present appellant in the FIR, however after the registration, of case PW.2/ Abdul Waheed and PW.3/Asmatullah had nominated the appellant in their statements under section 161 Cr.P.C. before the I.O. He argued that it is a case of two versions, the first version was furnished by the complainant in the shape of FIR as well as in his statement as PW.1 before the learned trial Court, wherein he nominated two accused while the third accused was unknown, whereas the second version, brought on record by PW.2/Abdul Waheed and PW.3/Asmatullah, who are chance witnesses, is totally different from the version of the complainant. According to PW.2 and PW.3, the appellant had given Butt blows of Kalashnikov to the deceased but no recovery of Kalashnikov was effected by the police. Furthermore, only two injuries were shown in the MLC Ex.P/5-A, and except those injuries, no marks/signs of any injury or violence was mentioned by the doctor/PW.5 in his deposition. He contended that the features of unknown accused were not mentioned in the FIR, and after the arrest of the appellant, neither the identification parade was conducted nor there is anything on record that the appellant is of middle height. He further argued that according to the prosecution story the most important witness is Waleed but he was not produced as witness before the learned trial Court although he was mentioned as eye-witness in the FIR. No role was assigned to the appellant regarding firing upon the deceased. The only role attributed to the appellant by PW.2 and PW.3 was that he had given some Butt blows of the Kalashnikov to the deceased. He asserted that the principal accused namely Fateh Muhammad, who was assigned the role of firing, is real brother of the present appellant, therefore, the appellant has been falsely implicated in this case. He submitted that the evidence of the prosecution is full of contradictions/discrepancies regarding the number of accused persons as PW.1/Muhammad Younis/complainant nominated in the FIR three accused, namely Fateh Muhammad, Amir along with an unknown accused, whereas PW.2/ Abdul Waheed and PW.3/Asmatullah stated about five accused. PW.2 and PW.3 claimed that they came to the police station on the same day and got recorded their statements but the I.O. stated that he nominated the appellant as accused in police Zimni dated 11th May, 2009 whereas F.I.R. was recorded on 29.04.2009. He maintained that the statements of PW.2 and PW.3 are highly improbable. He claimed that the ocular evidence is not only self-contradictory but also did not inspire confidence. He asserted that the impugned judgment is the result of non-reading and misreading of evidence on record and the conviction recorded thereon cannot be maintained. He pleaded that the appellant may be acquitted.

11. The learned Counsel for the appellant in support of his arguments has relied upon the case law reported as:- (i) 2012 SCMR 440 (Muhammad Akram Vs. The State), (ii) 2002 P.Cr.L.J 270 (Quetta) Mir Hazar Vs. The State) (iii) 2005 SCMR 1906 (Mst. Dur Naz

and another Vs. Yousaf and another and (iv) 2012 SCMR-419 (Muhammad Sharif Vs. The State).

12. Conversely, the learned Counsel for the complainant submitted that two PWs namely Abdul Waheed/PW.2 and Asmatullah/PW.3 are independent witnesses and they nominated the accused in the instant case. There is no enmity between the complainant and the appellant, therefore, there is no question of false implication of the appellant. Motorcycle was present on the spot at the time of occurrence which was recovered from the house of the appellant. He maintained that the appellant along with his co-accused, with their common intention, committed murder of the deceased, therefore, they all are equally involved in the offence and section 34 PPC is attracted in the instant case. He further submitted that initially the appellant was not nominated in the FIR but soon after the occurrence, two witnesses namely Abdul Waheed/PW.2 and Asmatullah/PW.3 nominated the appellant in their statements recorded by the I.O.

13. The Prosecutor General, appearing for the State, has adopted the arguments advanced by the learned Counsel for the complainant and supported the impugned judgment.

14. We have heard the learned Counsel for the parties and evaluated the evidence as well as the documents available on the record minutely.

15. Admittedly the present appellant was neither specifically nominated by the complainant in the F.I.R Ex.P/1-A nor during the course of his statement which was recorded as P.W.1 during the trial. No doubt the complainant in addition to two accused namely Fatah son of Ghulam Nabi and Aamir son of Muhammad Anwar did implicate an un known person of middle height but the complainant in the FIR Ex.P/1-A categorically stated that he would identify the unknown accused as and when produced before him. However, it is an admitted fact that no identification parade was got conducted by the investigating officer after the arrest of the convicted accused/present appellant. Moreover, the present appellant is a real brother of a co-accused namely Fatah, who was identified by the complainant at the time of occurrence and as such, it is highly improbable that the complainant could not have identified the present appellant. Strangely the features of the present appellant, who was shown as an unknown accused in the FIR were not mentioned in the FIR, rather the complainant only alleged that unknown accused was of middle height. The prosecution has not produced any evidence to establish that the present appellant is of an average height. Secondly, Waleed, who was accompanying the complainant at the time of occurrence and had seen the whole incident, has not been produced by the prosecution as a witness during the trial. Similarly, Muhammad Sharif son of Amir Jan, who had transported the dead body of Abdul Basit from the scene of the crime to the hospital has also not been produced as a witness by the prosecution for reasons best known to them. The non-production of aforementioned two witnesses, who had witnessed the occurrence and had direct knowledge of the incident, had created a serious dent in the prosecution story. It has been held in the case of Khan Afsar and 2 others Vs. The State reported in 2011YLR

991 that withholding of best available evidence and suppression of material facts by the prosecution would lead to the conclusion that the case was one of no evidence.

16. According to FIR, the vehicle which was being driven by Abdul Basit deceased was over taken by a Corolla vehicle, out of which three persons alighted and there is no mention of a motorcycle being used by any accused or present at the time of occurrence. Similarly, out of the three accused mentioned in the FIR, only two were alleged to have been armed with Kalashnikov. There is no allegation in the FIR or in the statements of the prosecution witnesses that the present appellant was armed with a pistol/revolver at the time of occurrence. Even in the site plan Ex.P/9-A of the place of occurrence, no motorcycle has been shown. In these circumstances, the recovery of a pistol and motorcycle from the present appellant is immaterial and in no way connects him with the commission of the alleged offence.

17. The learned trial court has given lot of weightage to the statements of P.W.2 and P.W.3. However, it is significant that neither the complainant nor eye witness of the occurrence namely Waleed had nominated the present appellant in their statements recorded under section 161 Cr.P.C. P.W.2 and P.W.3 for the first time introduced a new version of the prosecution story during their statements which were recorded under section 161 Cr.P.C as well as during the trial. Hence, it is a case of two versions on behalf of the prosecution itself and the version which is favourable to the accused is to be accepted. In this regard reliance is placed on 2002 P.Cr.L.J page 270 Quetta and 2011 P.Cr.L.J page 925. In the present case, if we put the version of the complainant which he narrated while appearing as P.W.1 in juxta position with the statement of P.W.2 and P.W.3, who were chance witnesses, the version furnished by the complainant seems to be more plausible, convincing and near to truth. Even otherwise P.W.2 and P.W.3 are admittedly chance witnesses and their names have not been mentioned in the FIR as eye witnesses. Furthermore, P.W.2 and P.W.3 have stated that the present appellant alongwith absconding accused Fattah and Mujahid was beating Abdul Basit with the Butt of the Kalashnikov, whereas no Kalashnikov has been recovered from the present appellant and no injury or Butt blows of the Kalashnikov were found present at the dead body of Abdul Basit deceased either in the inquest report Ex.P 9/B or in the statement of Dr.Salahuddin, who had examined dead body of Basit and appeared in the court as P.W.5. The presence of P.W.2 and P.W.3 at the place of occurrence is also not proved beyond doubt as they were just passerby and their evidence is not corroborated by any independent witness. Surprisingly, the statements of P.W.2 and P.W.3 are also not supported or corroborated by the complainant himself who appeared as P.W.1.

18. Furthermore, there are many contradictions in the statements of the prosecution witnesses regarding the detail of occurrence as well as number of accused persons. The complainant nominated three accused in the FIR as well as in his statement as P.W.1 whereas P.W.2 and P.W.3 have implicated five accused persons. The ocular account of the occurrence given by prosecution witnesses is not corroborated by the medical evidence.

19. Finally, the impugned judgment of the learned trial court is also not sustainable as the present appellant has been found guilty of an offence which he committed in furtherance of common intention and he has been convicted under section 302(B) PPC and sentenced to death. In the instant case, the charge was framed under section 17(4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 whereas the accused/present appellant was convicted under section 302(B) PPC. No doubt according to first proviso of section 24 of Offences Against Property (Enforcement of Hudood) Ordinance, 1979, the court is competent to award punishment to an offender, if he had committed a different offence under any other law. But the fact remains that the common intention generally involves an element of common motive, pre-plan preparation, and actual commission pursuant to such plan. Main ingredient of Section 34 PPC are that a criminal act must be done by several persons, that criminal act must be done to further the common intention of all and that there must be participation of all persons in furtherance of the common intention. The aforementioned ingredients of section 34 PPC are totally lacking in this case as allegedly the co-accused namely Fattah who is a proclaimed offender, fired a bullet upon Abdul Basit, which caused his death. The present appellant is not even alleged to have caused any injury to Abdul Basit (deceased). In-fact, the presence of present appellant at the time of occurrence has not been established beyond reasonable doubt by the prosecution and as such he could not have been found guilty of causing the “qatl-e-amd” of Abdul Basit alongwith his co-accused in furtherance of their common intention.

20. For the foregoing reasons, we have arrived at an inescapable conclusion that the prosecution has failed to establish beyond reasonable doubt that the present appellant has committed “qatl-e-amd” of Abdul Basit in furtherance of the common intention of all the accused. Resultantly the instant appeal is allowed, the conviction under section 302(B) PPC and sentence of death recorded by the learned trial court against the present appellant vide judgment dated 25.7.2009 is set aside and he is acquitted of the charge. He shall be released forthwith, if not required in any other case. Murder Reference No.1-Q-2010 is answered in Negative and the sentence of death is Not Confirmed.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE SHAHZADO SHAIKH

JUSTICE MUHAMMAD JEANGIR ARSHAD

IN THE FEDERAL SHARIAT COURT**(Appellate Jurisdiction)****PRESENT****HON.MR. JUSTICE SHAHZADO SHAIKH, ACTING CHIEF JUSTICE****HON.MR.JUSTICE MUHAMMAD JEHANGIR ARSHAD****HON.MR.JUSTICE SHEIKH AHMAD FAROOQ****JAIL CRIMINAL APPEAL NO.150-I-2009**

- (1) Mumtaz Ahmad son of Noor Muhammad, Caste Lang
- (2) Nazeer Ahmad son of Allah Wasaya caste Lang
- (3) Muhammad Ishfaq son of Shamsuddin caste Khokhar, Now confined in New Central jail, Multan. Appellants

Versus

The State	.... Respondent
For the appellants	Barrister Salman Safdar and Malik Muhammad Saleem, Advocates.
For the State	Mr.Nisar Ahmad Virk, D.P.G
For the complainant	Mr.Nazir Khan, Advocate.
No.& Date of FIR	No.52/2002,dt.30.4.2002
Police Station	P.S Pak Gate, Multan
Date of judgment of trial court	26.10.2002
Date of institution	17.12.2002.
Date of hearing and decision	18.7.2012

CRIMINAL REFERENCE NO.5-L-2010

The State

....

Appellant

Versus

Mumtaz Ahmad etc.

....

Respondents.

JUDGMENT:

SHEIKH AHMAD FAROOQ, J. The appellants/ Muhammad Ishfaq, Nazeer Ahmed and Mumtaz Ahmed were tried in a case arising out of F.I.R No.52 of 2002 dated 30.4.2002 registered in Police Station Pak Gate Multan for offence, under section 10(4) /19 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with sections 377/384/148/149/292 PPC by the learned Additional Sessions Judge, Multan, who, by virtue of his judgment, dated 26.10.2009, after having found them guilty, convicted and sentenced them as under:

1) Appellants /Mumtaz Ahmed & Nazeer Ahmed:

<u>Offence:</u>	<u>Sentence:</u>
i. under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979	: death sentence as ta'zir each.
ii. under section 377 P.P.C	: life imprisonment each with fine of Rs.2,00,000/- each.

2) Appellant /Muhammad Ishfaq:

<u>Offence:</u>	<u>Sentence:</u>
i. under section 10(4)/19(i) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 109 PPC.	: death sentence.
ii. under section 377/109/34 PPC	: life imprisonment as ta'zir with fine of Rs.2,00,000/-.
iii. under section 292 P.P.C	: three months imprisonment with fine of Rs.25,000/-.

In default of payment of fine, all the convicts were ordered to further suffer one year simple imprisonment each. In case of recovery of fine, 1/2 of the same was ordered to be paid to the victim Mst. Sughran Mai. The sentences of imprisonment were ordered to run consecutively. However, the learned trial Court acquitted co-accused Muhammad Shafi and Muhammad Iqbal by extending benefit of doubt to them.

The appellants, by filing this appeal from jail, have called in question the conviction and sentences awarded to them vide the impugned judgment, whereas the learned trial court has sent Criminal Reference No. 5/L of 2010 for confirmation of sentence of death. We intend to decide both the above matters through this single judgment.

2. Succinctly, the prosecution story as narrated by complainant/Abid Hussain, (PW.1) in his complaint (Ex.PL), is that that he was married with Mst. Sughran Bibi (PW.2) about 16 years ago and five children were born out of the said wedlock. The complainant stated that he had to recover the labour charges regarding embroidery on *dopatta* from accused/ Nazir and his wife Mst.Memo. He contended that about one year and three months earlier, he and his wife were called for payment of labour charges by the accused at Multan in a *chobara* of one Hakeem Noor Muhammad situated in street Shaikhanwali, police station Pak Gate, where Muhammad Shafi (brother of Mst. Memo) was living. Mst. Memo and Muhammad Shafi were present in the said *chobara*. Muhammad Shafi accused took him to bazar for collecting money and they visited different shops. On their return, after about one hour, he found his wife Mst. Sughran Bibi standing at Chowk Haram Gate alongwith Khadim Hussain and Iqbal Hussain. He stopped the vehicle, whereupon Muhammad Shafi accused hurriedly alighted from the vehicle and slipped away. The complainant's wife informed him in the presence of said Khadim and Iqbal that when he alongwith Muhammad Shafi had gone to bazar, after a little while, accused Mumtaz armed with knife, Nazeer Ahmed, Muhammad Ishfaq having a camera and Allah Ditta armed with pistol and having a camera entered the room and closed the door. Mumtaz and Allah Ditta/accused pointed their respective weapons upon her, while Nazeer Ahmed accused forcibly removed her clothes. Accused Mumtaz committed zina-bil-jabr with her, followed by Nazeer Ahmed/accused who also committed zina-bil-jabr as well as carnal intercourse with her, while accused /Ishfaq and Allah Ditta took her nude snaps. She resisted and raised hue and cry. The witnesses told the complainant that on hearing alarm, they went to the *chobara* of Hakeem Noor Muhammad and had seen the occurrence from the broken window. They knocked the door, whereupon the accused fled away through the door of the adjoining room. Mst.Sughran also told the complainant that when accused removed her clothes then Mst. Memmon went in the adjoining room. The motive behind the occurrence is that the accused/Nazir Ahmad had suspicion that the complainant had illicit relation with his wife/ Mst.Memon and he had taken her naked pictures. The accused blackmailed the complainant and after extorting Rs.10,000/- from him burnt the said snaps of his wife. After some days, the accused again showed him more snaps and started to blackmail him. The complainant remained quiet for the sake of his honour. At last, he got registered a crime report at police station City Jalalpur which was cancelled due to lack of jurisdiction. The complainant alleged that the accused namely Nazir,Allah Ditta,Ishfaq and Mumtaz have committed the offences in connivance with Mst.memon and Muhammad Shafi. Hence, FIR No.52/2002 was registered at police station Pak Gate, Multan.

3. After completion of the investigation, report under section 173, Cr.P.C was submitted in the learned trial court for taking cognizance of the offences.

4. The learned trial court on 17.06.2003 framed the charges against the convicted accused/present appellants as well as the acquitted accused namely Muhammad Shafi and Muhammad Iqbal for the commission of offences falling under the mischief of Sections

10(4) and 19 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with section 109 PPC, Sections 377, 148 and 149 PPC and section 292 PPC. The accused did not plead guilty and claimed trial.

5. The prosecution in order to prove its case produced eight witnesses at the trial. Furrukh Hafeez, ASI and Attaullah Inspector were examined as C.W.1 and 2 respectively. The gist of the evidence of prosecution witnesses is as follows:-

P.W.1/Abid Hussain is the complainant of the case, who repeated the contents of his complaint and fully supported the version of the victim.

P.W.2/Mst.Sughra Mai who is the victim of the occurrence reiterated the allegations leveled by her husband namely Abid Hussain/complainant(P.W.1). She stated that the accused/Mumtaz and Nazir not only committed zina-bil-jabr but also sodomy with her. She further stated that the accused Iqbal and Ishfaq facilitated their co-accused in the commission of the offence and took her photographs while she was naked. She contended that on her hue and cry Nazir/ accused put his hand on her mouth, whereupon she made a bite on his finger. She also deposed that Khadim and Iqbal P.Ws were attracted to the scene of crime on hearing her hue and cry and witnessed the whole occurrence. She further deposed that Ex.PA to Ex.PK are the photographs which were prepared by the accused persons during the commission of sodomy, zina-bil-jabr and molestation.

P.W.3/Muhammad Iqbal who is real brother of the victim and an eye witness of the occurrence, stated that he saw the occurrence from the broken window of the room. He fully supported the version of the prosecution as narrated by P.W.2/Mst. Sughra Mai.

P.W.4/Riaz Hussain is witness of recovery memo Ex.PM wherein an amount of Rs.1000/- and one Camera were recovered from accused Ishfaq while in police custody.

P.W.5/Dr.Fayyaz Khan Durrani conducted the potency test of accused/ Mumtaz Ahmad and Nazir Ahmad and found them fit to perform the sexual act. In this regard he produced M.L.C Ex.PN and Ex.PO.

P.W.6/Saeed Ahmad, Sub Inspector who is investigating officer in this case narrated the various steps taken by him during the investigation of the case including the arrest of the accused/Nazir and Mumtaz Hussain and recovery of naked photographs of Mst.Sughra Mai vide recovery memos Ex.PJ and Ex.PK. He stated that Abid Hussain/complainant, Mst.Sughra Mai/victim, Khadim Hussain and Iqbal/P.Ws in their statements dated 11.5.2002 exonerated accused Allah Ditta from the commission of the offence. The said P.Ws clarified that they have nominated Allah Ditta due to mis-understanding whereas the name of the original

accused was Muhammad Iqbal son of Allah Qadir. P.W.6 found that Allah Ditta was not involved in this case. However, he specifically stated that in his investigation accused/Iqbal,Mumtaz,Nazir,Shafi and Mst.Memon Mai were found to be fully involved in this case.

P.W.7/Mukhtar Ahmed Inspector had also undertaken the investigation. On 16.10.2002 he recovered Rs.1000/- and one naked photograph of Mst. Sughran on the pointation of Shafi accused and took the same into possession through recovery memo Ex.PT and Ex.PU respectively which were attested by Khadim Hussin and Din Muhammad PWs.

PW.8/Muhammad Ramzan Sub Inspector had arrested Ishfaq/ accused on 28.11.2002 when his petition for pre arrest bail was dismissed. During investigation, Ishfaq accused got recovered a camera and cash Rs.1000/- from the residential *chobara* of Hakeem Noor Muhammad and the same were taken into possession through recovery memo Ex.PM which was attested by Riaz Hussain and Mulzam Hussain He also prepared site plan of the place of recovery Ex.PV. During investigation, Ishfaq accused disclosed that he had destroyed the 'negative' of the photographs of Sughran Bibi.

The learned trial court summoned Farrukh Aziz, ASI, Atta Muhammad, Inspector and Mumtaz Hussain, DSP as court witnesses and recorded their statements as C.W.1 to C.W.3 respectively. The said C.Ws testified the registration of FIR No.64 dated 2.4.2002 in police station City Jalalpur Pirwala on the statement of Abid Hussain/P.W.1. C.W.2 deposed that during investigation of the said FIR, it transpired that the occurrence had taken place at Multan and as such, FIR No.64/2002 dated 2.4.2002 was cancelled. C.W.3 during the course of his cross-examination, clarified that Mst.Sughran Mai/victim had never stated before him that the occurrence had taken place at Multan.

6. After closure of the evidence of the prosecution and recording of the statements of the C.Ws, the accused/appellants were examined under section 342 Cr.P.C and in response to the crucial questions regarding their involvement in the case and the reasons for deposition of prosecution witnesses against them, the , accused/ Mumtaz Ahmed replied as under:-

“The case is false and frivolous. The complainant of this case No.52/02 i.e. this case was registered by Abid Hussain and his version is supported by the statement of Mst. Sughran. PWs Iqbal and Khadim also supported the version of above said case. This case was registered on 19.07.2002 under section 10(4)/7/79 Zina Ordinance read with section 377/384/292/148/149 PPC, P.S. Pakgate, Multan. The same Abid Hussain complainant lodged FIR No.64/02 on 2.4.02, at P.S. City Jalalpur Pir Wala under section 10(4)/16/7/79 Zina Ordinance read with 506/292 PPC in which Abid Hussain, the same complainant stated that he alongwith his

wife Mst. Sughran went in the house of Nazeer Ahmed to collect money of embroidery labour where Shafi took Abid Hussain to the Bazar at Jalalpur city and during his absence in the house of Nazeer Ahmed at Jalalpur Pir Wala, Nazeer and Mumtaz committed alleged rape and when Abid Hussain came back his wife Mst. Sughran was not present in the house of said Nazeer Ahmed accused nor she reached in her own house and during her search made by PWs, they found Sughran near the Bus Stand near graveyard of Jalalpur city and on the statement of Abid Hussain FIR No.64/02 above mentioned was registered repeating the same allegations which has been narrated in present FIR NO.52/02 and then the I.O. Ata Ullah Inspector recorded the statements of the PWs Mst. Sughran, the alleged victim, Iqbal and Khadim Hussain PWs. The I.O. prepared the site plan on the pointation of the PWs and the I.O. also prepared the place of recovery of Mst. Sughran and inspection note were also prepared by the I.O. of the house of Nazeer accused. Throughout the investigation, none of the PWs ever alleged before Ata Ullah Inspector I.O. of case FIR No.64/02 at P.S. City Jalalpur Pir Wala. That the occurrence has not taken place at Jalalpur Pir Wala city but at Multan city. None of the PWs of case FIR No.64/02 ever stated that the occurrence did not take place at locality of Jalalpur City rather it was committed at Pakgate Multan within jurisdiction of PS. Pakgate, Multan. No witness and the owner of the alleged Chobara were ever associated with this investigation nor they were cited or produced before this court later on. All the witnesses are imported from Shuja Abad at a distance of about 50 KMs from Multan because no such occurrence was committed at Multan so no PW of the locality supported the false and concocted version of the complainant party. It is false case. All the PWs are interested and are related inter-se inimical to me and my co-accused. They have falsely deposed against me and my co-accused. In fact Abid Hussain complainant had friendly relations and was a (WASDA) of said Mushtaq Lang. I have previous dispute with Khuda Bukhsh Lang who is close relative of said Mushtaq Lang who was Tehsil Nazim at that time. Due to enmity with Khuda Bukhsh Lang, regarding Lamberdari with Lang family this complainant was engaged to get a false case registered against me and my co-accused. Mushtaq Lang had very close relation with Saeed Gujar Inspector who is a notorious police officer of Punjab Police and this Saeed Gujar with the connivance of the Lang family above mentioned, complainant Abid Hussain and his wife Mst. Sughran were used as sex tool against me and my co-accused with a concocted story prepared by Saeed Gujar. The prosecution has also belied his own version by declaring/got acquitted Mst. Memo Mai one of the co-accused. The Lang family had been approaching me that if you give us Lamberdari of your village we will drop this false case against you. I am innocent. I have been victimized due

to my local Lamberdari rivalry with the Lang family who is big Zamindar of our area.”

Appellants/Muhammad Ishfaq and Nazeer Ahmed relied upon the statement/reply of Mumtaz Ahmed regarding their involvement in this case.

However, accused/appellants neither opted to make statement, under section 340(2) Cr.P.C on oath nor produced any witness in defence in disproof of the charge/allegation made against them.

7. Upon conclusion of the trial, the learned trial court vide judgment dated 26.10.2009 acquitted the accused Muhammad Shafi and Muhammad Iqbal by giving them benefit of doubt. However, the present appellants were found guilty and sentenced as mentioned herein before in para-1 of this judgment.

8. Being aggrieved by the impugned judgment dated 26.10.2009, the appellants have challenged the legality and validity of their convictions and sentences through the instant appeal before this Court.

9. Barrister Salman Safdar, learned counsel for the appellant/Mumtaz Ahmad contended that the prosecution has failed to prove the case beyond shadow of doubt. He submitted that the ocular account was not worthy of reliance as the presence of the only eye witness i.e P.W.3 who is a resident of Jalalpur Pirwala is not established at the place of occurrence i.e Pak Gate Multan. He submitted that complainant/P.W.1 was untrustworthy and unreliable witness, who made dishonest improvements in his statement. Even otherwise he was not an eye-witness of the occurrence. The complainant had initially got registered FIR 64/2002 on 02.04.2002 at Police Station Jalalpur Pirwala. He further submitted that earlier, the complainant and eye witnesses, including the victim, had narrated a totally different story of the alleged occurrence. The date of the alleged incident, place of occurrence, the accused and their roles were all variance with present FIR/Ex.PL which cast serious doubts on the prosecution version. The prosecution has miserably failed to give any reasonable explanation regarding inordinate delay of 15 months in lodging the FIR. The prosecution case was itself not clear whether the occurrence had taken place 3 months or 15 months prior to registration of the case. Khadim Hussain, alleged eye-witness was given up by the prosecution as having been won over by the accused. Complainant and eye-witnesses had exonerated Allah Ditta by replacing him with Muhammad Iqbal, who was ultimately acquitted by the learned trial court. The ocular account was disbelieved by the learned trial court to the extent of Muhammad Shafi, Muhammad Iqbal and Mst. Memo. He further contended that Mst.Sughran Mai (P.W.2)(victim) made dishonest improvements in her statement. The presence of P.W.3 at the scene of occurrence is doubtful; that the statements

of PW-1 and PW-2 regarding FIR 64/02 were at variance with their statements with respect to the present case. The medical evidence did not support the ocular account. No D.N.A test was conducted in this case. He claimed that the learned trial court had given undue importance to the photographs, ignoring the fact that the negatives of the said photographs were not available while concluding his arguments, the learned counsel pleaded that the appellants deserve acquittal because all the evidence and attending circumstances prove that the prosecution case is highly doubtful and it is case of no evidence.

Learned counsel for the appellant Mumtaz Ahmad has relied upon the following case law in support of his arguments:

2010 SCMR 1706 (Muhammad Asghar v. The State), **2011 SCMR 45** (Mushtaq Hussain v. The State), **2011 SCMR 208** (Abid Ali v. The State), **1996 SCMR 176** (Abdul Rehman v. Fateh Sher), **1995 SCMR 599** (Ata Muhammad v. The State), **1972 SCMR 651** (Sher Bahadur v. The State), **2003 SCMR 647** (Mst. Mumtaz Begum v. Ghulam Farid etc.), **PLD 2011 SC 554** (The State v. Abdul Khaliq), **2006 SCMR 1846** (Lal Khan v. The State), and **2001 SCMR 25**. (Allah Wadhayao v. The State)

10. Malik Muhammad Saleem, Advocate, who appeared on behalf of appellants/Nazir Ahmad and Muhammad Ishaque, submitted that prosecution has failed to establish the guilt of the appellants as no reliable evidence has been produced in this regard, that the learned trial court has not properly appreciated the evidence available on record and passed the impugned judgment on the basis of surmises, that there are many contradictions in the statements of the prosecution witnesses and no sentence could be awarded on the basis of such like contradictory/shaky evidence, He maintained that co-accused/ Muhammad Iqbal and Shafi have been acquitted from the charges by the learned trial court and on the basis of the solitary statement of victim, the present appellants have been convicted. He contended that there is neither any medical report, or report of chemical examiner nor serologist report available on the record regarding matching of semen, which were necessary in a case where gang rape is alleged to have been committed. The FIR was registered with the delay of fifteen months and no plausible explanation has been furnished for the said delay, the allegedly recovered photographs are not substantive piece of evidence and cannot be used against the appellants. Even otherwise, it is not revealed from the photographs that both the appellants committed the rape with Mst.Sughra at the same time as both have not been found to be together in any of the photographs. Further-more, it cannot be said with certainty that the person shown in the photographs is the same original person, particularly after introduction of computer technology. It is a well known practice to black mail the people in the society through this device, particularly when the Negative and original photographs are not available on the record. He argued that the photographs are only admissible in evidence when the same are proved through reliable witnesses which

is missing in this case. He contended that the story introduced by the prosecution seems to be unnatural, fabricated and false because no wife would allow her husband to commit rape with another lady in her presence, particularly, with the connivance of her real brother as alleged in this case. He further argued that the trial court has disbelieved the half story of prosecution and the remaining evidence is neither independent nor any corroboration is available on record. He claimed that the recovered Camera in this case is planted and no actual pictures available on the record and also no technical witness was produced to prove this. Finally, he argued that the judgment of the trial court is not well reasoned and the conviction recorded and sentences awarded by the learned trial court are only on the basis of conjectures as there was no evidence available on record which could justify the imposition of sentence of death.

11. Learned counsel for the appellants /Nazir Ahmad and Muhammad Ishfaq has relied upon the following judgments in support of his arguments:

- 1) 1998 MLD 1592
(WAPDA Vs.Ghلام Shabbir)
- 2) PLD 2003-Karachi-148
(Mst.Marium Haji and others Vs.Mrs.Yasmin R.Minhas and others)
- 3) 2005 YLR-1716
(Najma Shahzadi alias Rani Bibi Vs. The State)
- 4) 2000 MLD 1193
(Ashique Ali Lashari Vs. The State)
- 5) PLD 2004 Lahore-829
(Rehmat Shah Afridi Vs.The state)
- 6) PLD-1996-Lahore-28
(Sajjad Hussain Vs. The State)
- 7) 2002 P.Cr.L.J-1765
(Government of Sindh through Advocate General Sindh Vs.Fahad Naseem and 3 others.

12. Conversely, Mr.Nazir Khan,Advocate, for the complainant has contended that the impugned judgment dated 26.10.2009 is based on well reasoning and the learned trial court has rightly convicted the appellants. He stated that the recoveries effected from the

accused/appellants have proved the prosecution case and the prosecution witnesses were duly cross-examined but no specific question regarding the details of occurrence was put to them. He maintained that the delay has been properly explained by the complainant and the prosecution had the option to leave the witness, which was won over by the accused party. He asserted that the Negatives of the photographs were burnt by the accused party to destroy the evidence. He argued that the act of the accused has been elaborately explained in the F.I.R and evidence and it is a case of direct evidence. Lastly, he submitted that the occurrence has not been challenged or denied and all the witnesses supported the statement of the victim.

13. Learned D.P.G appearing on behalf of the State has supported the impugned judgment and contended that the prosecution has fully proved its case against the appellants. He contended that ocular account is proved by P.W.3, who is real brother of the victim and P.W.1, The statement of complainant/P.W.1 is relevant under Article 19 of the Qanun-e-Shahadat Order, 1984 as he has described the whole occurrence. The recovery of photographs from Mumtaz and Nazir and Camera which was recovered from the possession of Ishfaq/accused, further strengthen the prosecution case. The Photographs Ex.PA and Ex.PB show the accused Mumtaz committing zina-bil-jabr with the victim. Similarly, Ex.PC, PD and PG clearly show accused Nazir committing zina-bil-jabr with victim, that photograph/ Ex.PH depict that victim is crying and weeping helplessly, that photographs/ Ex.PA to Ex.PH were produced by the complainant while appearing in the court as witness, while photographs/ Ex.PK were recovered from the accused/ Nazir. He contended that the defence cannot confront the P.Ws with statements recorded under section 161 Cr.P.C in case FIR No.64 according to law. He claimed that the charges were proved against the accused/present appellants and they were rightly convicted and awarded punishment.

14. We have heard the learned counsel for the parties at length in addition to scanning the evidence on record with their able assistance.

15. Admittedly, in the present case two FIRs were got registered by the complainant/ Abid Hussain regarding the same occurrence. The first FIR No.64/02, dated 2.4.2002, under sections 10(4) and 16 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with sections 292, 506/384 PPC was lodged at Police Station, Jalal Pur Pirwala, wherein investigation was conducted and statements of the complainant, victim and the P.Ws. were also recorded under section 161 of the Cr.P.C. However, during the course of investigation, it transpired that the occurrence had taken place at Multan in the jurisdiction of Police Station, Pak Gate Multan and as such, the aforesaid FIR was cancelled. The second FIR No.52/02, dated 30.4.2002, was registered under sections 10(4)/19 of the Offence of Zina (Enforcement of Hadood) Ordinance, 1979 read with sections 377/148/149/292/114/109 PPC, at Police Station, Pak Gate, Multan. Though both the FIRs are regarding the same alleged occurrence but there is a difference of venue, date of the occurrence and names of the accused in both these FIRs. Abid Hussain/complainant while appearing as P.W.1

in his examination-in-chief admitted that he had first reported the occurrence to Police Station, Jalalpur Pirwala. However, during cross-examination he tried to change his stance by stating that the SHO had registered FIR No.64/2002 on his own accord and that he had put his signatures on a blank paper. He, however, admitted that he had nominated Mumtaz, Nazir, Memon, Shafi and two unknown persons as accused in the said FIR. Mst. Sughran/victim while appearing as P.W.2 showed her ignorance about the registration of the first FIR at Police Station, Jalalpur Pirwala. Muhammad Iqbal, who has been cited as an eyewitness in the second FIR, appeared as P.W.3 and during the cross-examination, deposed that he did not know about the registration of first FIR at Police Station, Jalalpur Pirwala. In this view of the matter, the learned trial Court summoned Farrukh Hafeez, ASI, Atta Ullah, Inspector and Mulazam Hussain, DSP as court witnesses (i.e C.W.1 to C.W.3) as at the relevant time, they had been performing duties at Police Station, Jalalpur Pirwala. Farrukh Hafeez, ASI appeared as C.W.1. On 2.4.2002, he was posted as Head Constable/duty officer at Police Station, Jalalpur Pirwala. He stated that on the statement of Abid Hussain(P.W.1) he chalked out FIR No.64/02, without any addition or omission. This witness had also brought with him the original record of FIR No.64. It is worthy to note that this witness was not cross-examined by the prosecution despite being provided an opportunity. In absence of any cross-examination, whole of the examination-in-chief of C.W.1 is presumed to have been admitted by the prosecution. Ata Ullah, Inspector/SHO, Police Station, Jalalpur Pirwala, appeared as C.W.2. He had recorded the statement of Abid Hussain,(P.W.1). In his cross-examination, this witness stated that the complainant/Abid Hussain(P.W.1) had not disclosed to him that the occurrence took place at Multan. This witness denied the suggestion that Abid/complainant did not make any statement before him. He stated that the complainant alleged that the accused persons Nazir and Mumtaz had committed 'zina-bil-jabr' with his wife Mst. Sughran in the house of Nazir Hussain situated in Islampura Colony, Jalalpur City and Dr. Bilal and an-other person had taken photographs of his wife. C.W.2 categorically stated that he had recorded the statement of Mst. Sughran, who did not mention in her statement that she was subjected to rape at Multan. According to C.W.2, even the complainant/Abid Hussain and the P.Ws., namely, Khadim Hussain and Iqbal did not depose that the occurrence had taken place at Multan. C.W.2 further stated that on the pointation of the P.Ws, he prepared the site plan wherein the house of Nazir has been mentioned as the place of occurrence. Mulazam Hussain, DSP while appearing as C.W.3 clarified in his cross-examination that Abid Hussain, the complainant had verified FIR No.64/02 word by word. In answer to a question put to C.W.3 by the defence counsel, he replied that "it is correct that Mst. Sughran, P.W. (alleged victim) had also stated that the occurrence happened at Jalalpur Pirwala and at any stage she never divulged that it so happened at Multan.

16. The evidence discussed above has fully proved the fact that the complainant had first lodged FIR at Police Station, Jalalpur Pirwala and after its cancellation, a second FIR, in which the present appellants were tried, was lodged at Police Station, Pak Gate,

Multan. There are noticeable and major contradictions in the prosecution story as narrated in both the FIRs. In first FIR No.64/02, dated 2.4.2002 it is alleged that the occurrence took place three months prior to the registration of the FIR, whereas in the second FIR bearing No.52/02 dated 30.4.2002 it is alleged to have taken place 15 months prior to the lodging of the FIR, though there is a difference of only 28 days in between the period of lodging of the aforesaid two FIRs. In the first FIR, the venue of the alleged occurrence is shown at the house of Nazir, at Jalalpur Pirwala and in the second FIR it is stated to be the 'chobara' of Hakim Noor Muhammad, at Multan, and distance between the two places is about 100 k.m. In the first FIR, Dr.Bilal and two unknown persons have been attributed the act of taking photographs of the victim during the commission of 'zina-bil-jabr' by the other co-accused. In the second FIR, this role has been assigned to another set of accused i.e. Ashfaq and Allah Ditta. Though the P.Ws. in both the FIRs are the same i.e. Iqbal and Khadim Hussain but their evidence is totally different in both the cases. In the first FIR, they are not shown to be the eyewitnesses of the occurrence. On the other hand, in the second FIR they claimed to have witnessed the alleged occurrence. Ex.D.D. is the statement made by the complainant/Abid Hussain in case FIR No.64/02, registered at P.S. Jalalpur Pirwala and Ex.DE, Ex.DF are the statements of the alleged victim/Mst. Sughran and the P.Ws/Khadim Hussain and Muhammad Iqbal. A perusal of the said statements would reveal that these are totally contradictory to the statements made by them during the investigation conducted in the second FIR at P.S. Pak Gate, Multan. The said P.Ws. were confronted with their statements under section 161 Cr.P.C. made in FIR No.64/02, to which the learned counsel for the complainant had objected to. He had submitted that those statements could not legally be read or confronted in the present case. We do not agree with the contention of the learned counsel for the complainant. The statements made by the P.Ws. under section 161 Cr.P.C. in the first FIR No.64/02, registered at P.S. Jalalpur Pirwala had a direct nexus with the matter in issue in the second FIR No.52/02 and as such, confronting the P.Ws. with their previous statements was not illegal and it was in accordance with the provision of Article 140 of the Qanun-e-Shahadat Order, 1984. For facility of reference it is advantageous to reproduce Art.140 hereunder:

“A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him, or being proved: but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.” (underlining is for emphasis).

Learned counsel for the appellants has placed reliance on the cases of **The State v. Abdul Khaliq** (PLD 2011 SC 554) and **Sajjad Hussain v. The State** (PLD 1996 Lahore 286). In the case of Said Munir and another Vs.The State (PLD 1964 Peshawar 194) while dealing with the application of Art. 140 of the Qanun-e-Shahadat Order, 1984 following observations have been made:

“The contradicting a witness by a previous inconsistent statement of his is a usual and often effective mode of discrediting him. This Article, therefore, provides that a witness may be cross-examined as to previous statements in writing, but that if it is intended to contradict him, his attention must be drawn to that part of the previous statement by which it is intended to contradict him, in order to enable him to explain the inconsistency between the statement in the Court and the previous inconsistent statement.”

In **Sher Bahadur v. The State** (1972 SCMR 651) it has been held that the defence is thus entitled to ask the Court that an inference adverse to the prosecution be drawn that if the statement had been produced it would not have supported the prosecution.

17. The above discussion has persuaded us to hold that the prosecution had failed to lay a strong foundation to build up its case against the accused persons and such a defect in the prosecution case had created a serious doubt qua the truthfulness of the prosecution version.

18. Delay in lodging the FIR has also caused another serious set back to the prosecution case. The present FIR No. 52/02 dated 30.4.2002 was lodged after an inordinate delay of 15 months. The explanation furnished by the prosecution is not plausible. Very serious allegations have been leveled in the FIR against the accused. Withholding such an information from the police for a pretty long time not only cast a serious doubt about the authenticity of the commission of offence but also resulted in destroying the material evidence expected to be collected by the investigating agency during the investigation, which ultimately prove to be fatal to the case of the prosecution. The delay in lodging the FIR also provides an opportunity to the prosecution to fabricate evidence with due consultation and deliberations. Reliance in this regard is placed on the case of **Mushtaq Hussain v. The State** (2011 SCMR 45). In view of the fact that the prosecution had taken ample time of 15 months in carving out the prosecution story against the accused, the possibility of the same being a concocted one and the result of due deliberation and consultation cannot be ruled out.

19. In the case in hand, the appellants have been tried on the allegation of ‘zina-bil-jabr’ and sodomy, in addition to taking nude photographs of the alleged victim/Sughran. To prove these allegations against the appellants/convicts, the prosecution has produced oral as well as documentary evidence. Admittedly, the alleged occurrence was not witnessed by Abid Hussain (P.W.1) complainant himself and the same was reported to him by Mst.Sughran Mai (P.W.2)/ alleged victim and the P.Ws., namely, Khadim Hussain and Muhammad Iqbal, who are shown to be the eyewitnesses of the alleged occurrence. The prosecution withheld the evidence of Khadim Hussain, P.W. on the ground of being won over by the accused. He was cited as an eyewitness in the FIR and he had also got recorded his statement under

section 161 Cr.P.C. during the investigation by the police. Giving up this witness by the prosecution would lead to an adverse inference against the prosecution that had this witness been produced, he would have not supported the prosecution case. Reliance is placed on the case of Lal Khan Vs. The State (2006 SCMR 1846).

20. The second eyewitness/Muhammad Iqbal appeared as P.W.3 and supported the FIR version in his examination-in-chief. After giving up Khadim Hussain, P.W., the prosecution was left only with P.W.3 to furnish the ocular account of the occurrence. In order to test the veracity and reasonability of the statement of P.W.3, we have gone through the evidence of this witness with full care and caution. Admittedly, P.W.3 is real brother of the alleged victim/Mst. Sughran and a resident of Jalalpur Pirwala, which is about 100 k.m. away from the place of occurrence i.e Multan. He claimed to have seen the entire occurrence in the company of Khadim Hussain, P.W. (given up). As such, he is a chance witness. The veracity of his statement wholly depends upon proving his presence at the scene of crime. As per his statement as P.W.3 he along with Khadim Hussain went to Multan to see Abid Hussain for the purposes of taking some money from him for the purchase of Peter Engine as they are cultivators by profession. In his examination-in-chief P.W.3 deposed that they were told by the complainant and his wife that they were going to the house of Hakim Noor Muhammad for receiving their labour charges from Mst. Memo, wife of Nazir Ahmed. As per version of P.W.2/Sughran/victim, she along with her husband reached at the shop of Hakim Noor Muhammad at 10.00 a.m. Similarly, in his statement P.W.3 also deposed that he along with Khadim Hussain, P.W. reached Multan at 10.00 a.m. Both the P.W.1(complainant) and P.W.2(victim) have not said a single word about their meeting with P.W.3 and Khadim Hussain, P.W. (given up) at their house at Jalalpur Pirwala and telling them about their purpose to visit Multan. They have also not supported the version of P.W.3 that he had to receive some money from P.W.1/Abid Hussain for purchasing Peter Engine from Multan. As such, the stance taken by P.W.3 to prove his presence at the scene of crime remained uncorroborated. Hence, the only source of P.W.3's knowledge about the program of the P.W.1(complainant) and P.W.2 (victim) of visiting the shop of Hakim Noor Muhammad at Multan was not proved on the record. P.W.3 also did not state as to how he traced the shop of Hakim Noor Muhammad. Even if his statement is presumed to be true to the extent of his meeting with the complainant and his wife, the question arises why he did not accompany them to receive money for purchase of peter engine, particularly when the complainant had the facility of a jeep and their destination was the same. His traveling along with Khadim Hussain to Multan separately is nothing but a mere concoction and after-thought.

21. The alleged place of occurrence is the upper portion of the shop of Hakim Noor Muhammad. P.W.3 claimed to have been attracted to the scene of crime along-with Khadim Hussain, P.W. (given up), on hearing hue and cry of the victim, who was at the 'chobara' of Hakim Noor Muhammad. It has also come on the record that a portion of the said

premises is used by Hakim Noor Muhammad as his residence. It is surprising that none else present in the shop or the inmates of the house heard the hue and cry of the victim. According to P.W.3, when he along with Khadim Hussain reached the scene of crime, they saw the accused, namely, Nazir and Mumtaz committing 'zina-bil-jabr' and carnal intercourse with the victim and also inserting their fingers in the vagina of the victim. They also saw Ishfaq and Allah Ditta, taking photographs of the victim in nude condition and while being subjected to 'zina-bil-jabr' by the co-accused. As per P.W.3, the door of the room was closed from inside and they witnessed the occurrence by peeping through a broken window. He stated that on their knocking the door, the accused fled away from the scene of crime by using the door of the adjacent room. This version of P.W.3 does not appeal to a man of even ordinary prudence that a real brother despite having reached the place of occurrence and witnessing the occurrence, instead of making efforts to get released the victim from the clutches of the accused, would opt to view the commission of offence of 'zina-bil-jabr' with her sister as silent spectator, providing the culprits sufficient time to succeed in satisfying their evil lust. Resultantly, we do not find the testimony of P.W.3 as being worthy of any credence. In this back-drop, we feel no hesitation to hold that the alleged occurrence was not witnessed by P.W.3 and it was an un-seen occurrence. Hence, the learned trial court has wrongly relied upon the statement of P.W.3 to record conviction against the appellants, and imposition of capital punishment of death.

22. There is another reason to discard the evidence of P.W.3. The acquitted accused/Muhammad Shafi, who was alleged to have taken the complainant to "bazaar" for collecting money from different shops is brother-in-law of the accused/Nazir. The accused /Mst. Memon Mai, who was nominated as an accused but was not tried by the learned trial Court, is the wife of the accused/Nazir. It has also come on the record that Ishfaq /accused is cousin of Nazir, while the acquitted accused/Iqbal is also his relative. It does not seem plausible that the accused/Nazir would commit such a heinous offence in the presence of his close relations i.e wife and brother-in-law and he would also have their assistance. The alleged behaviour and action of the accused Nazir and his wife/Mst. Memon Mai being not common in our society, is not believable.

23. The prosecution had failed to find any support from the ocular account to prove its case. Similarly, the prosecution had also lacked the support of medical evidence to prove 'zina-bil-jabr' and carnal intercourse with the victim by the accused as the victim was not medically examined, due to the reason that the alleged occurrence had taken place 15 months prior to the registration of the FIR. In absence of medical examination of the victim, potency test of the accused/appellants was of no use, particularly when the accused had not claimed to be impotent. Neither D.N.A test was got conducted nor any report regarding semen grouping was obtained. The absence of medical evidence had given a fatal blow to the alleged case of gang rape.

24. The learned trial court had given undue importance to the coloured photo copies of the pictures of Mst.Sughran Mai/P.W.2 alongwith accused/ Mumtaz Ahmad and Nazir Ahmad while ignoring the fact that Negatives of the said photos were not available. So far as the proof of commission of ‘zina-bil-jabr’ or sodomy by production of photographs is concerned, the same is also not helpful to the prosecution as the original photographs were not produced and instead, only the photostat copies of the original were placed on record. The original photographs and their negatives were neither recovered from any of the accused nor brought on record by the prosecution. In the case of **Mst. Marium Haji and others** v. **Mst. Yasmin R. Minhas and others** (PLD 2003 Karachi 148) it has been observed that technology has so immensely advanced, that the photographs or even video tapes can be manipulated and maneuvered. Advancement in the technology besides being advantageous, has also caused adverse effect on the society. Commission of cyber crime was not imaginable three decades before. In such circumstances, unless it is proved that the photographs are not manipulated, these could not be allowed to be produced in evidence. Reliance is also placed on the case of **Kashif Saddique and 2 others** v. **The State** (2008 P.Cr.L.J. 1039). In such circumstances, photocopies of the original photos could not be relied upon to record conviction against the appellants. Even the accused nominated in the first FIR No.64/02 namely Dr. Bilal and Allah Ditta, who were attributed the act of taking nude pictures of the victim with their respective cameras have been exonerated by the complainant. The accused Allah Ditta was substituted with Muhammad Iqbal, who has been acquitted by the learned trial Court, on the ground that recovery of camera could not be effected from this accused. The accused/appellant/Ishfaq has been convicted only on the ground that he had got recovered a camera from the place of occurrence i.e. ‘chobara’ of Hakim Noor Muhammad. Mere recovery of camera which is also highly doubtful and not proved in accordance with law does not disentitle the appellant/Ishfaq from the same treatment of acquittal as extended to Muhammad Iqbal by the learned trial Court. Further-more, acquittal of Muhammad Iqbal and Shafi had also made the prosecution story highly doubtful.

25. The recoveries of photographs made by the police in this case are also highly doubtful. According to Ex.D.P, five photo-copies of nude photos of the victim/Sughran were recovered from the pocket of the accused/Mumtaz Ahmed at the time of his arrest i.e 2.5.2002. Recovery memo. (Ex.P.W(28.6.2008) was attested by two witnesses, namely, Khadim Hussain and Iqbal Hussain. It is not believable that the accused would keep with him nude photos for fifteen months. Furthermore, one of the recovery witness Khadim Hussain was not produced as P.W. being won over and Iqbal Hussain did not narrate the fact of recovery of the said photos from the accused/Mumtaz Hussain while recording his examination-in-chief. In the similar manner, four photos of the victim are shown to have been recovered from the accused/Nazir, vide Ex.DO and the recovery witness/Iqbal Hussain has not deposed about the same. It is pertinent to mention here that Ex.P.J (1-4) and Ex.P.K. (1-4) are photographs of the victim available on record, which were produced

by the complainant/P.W.1 while recording his statement before the learned trial Court and the same could not have been allowed to be produced in evidence as being not part of the report submitted under section 173 Cr.P.C. It is worth mentioning that the pictures available on the record seems to have been printed on ordinary papers, rather than on paper which is usually used for photographs. Even otherwise, it cannot be ascertained from the said photographs as to whether the same were taken at the place of occurrence. Moreover, in none of the photo copies of the pictures, two accused are found together committing “zina-bil-jabr” to attract the provisions of section 10(4) Offence of Zina(Enforcement of Hudood) Ordinance, 1979. We are also not convinced that appellant/Muhammad Ishfaq, who was accused of taking nude pictures of Mst.Sughran Mai, could be held guilty for abetment of an offence of “zina-bil-jabr” and carnal intercourse, falling within the mischief of section 10(4) Offence of Zina(Enforcement of Hudood) Ordinance, 1979 and section 377 PPC.

26. Lastly the motive for the alleged occurrence as set out in the FIR is not only devoid of logic but also was not proved through any evidence whatsoever during the trial. In case, the complainant/ P.W.1 was suspected of having illicit relations with wife of accused Nazir (Mst.Memon), he would not have left his wife alone in the company of the said Mst.Memon. Similarly, Mst.Memon, who is wife of convicted accused Nazir cannot be expected to facilitate the commission of “zina-bil-jabr” and sodomy with the wife(Mst.Sughran Mai) of his alleged paramour (Abid Hussain/complainant). It is also worth consideration that Mst. Memon was not only specifically nominated in the FIR but was also found fully involved in this case and challaned by the investigating officer/Saeed Akhtar/P.W.6. However, she could not be arrested and was declared proclaimed offender. Nevertheless during the trial, she appeared before the learned trial court but the prosecution got her acquitted for reasons best known to them particularly the complainant. This also leads us to conclude that even the motive for the alleged occurrence was not true and the prosecution story is highly doubtful.

27. The nutshell of the above discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by the Hon’ble Supreme Court of Pakistan in the case of Tariq Pervez Vs.The State (1995 SCMR 1345) that for giving the benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

28. For the foregoing reasons, we are inclined to hold that the prosecution had failed to prove its case beyond any shadow of doubt against the appellants and the judgment of the

learned trial court dated 26.10.2009 cannot be maintained. Resultantly the instant appeal filed by the appellants is allowed and the convictions recorded and sentences awarded to the present appellants by the learned trial court vide judgment dated 26.10.2009 are set aside. The appellants are acquitted from the charges. They shall be released forthwith if not required in any other case.

The Reference for confirmation of death sentence is **answered in the Negative** and accordingly, **not confirmed**.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE SHAHZADO SHAIKH

ACTING CHIEF JUSTICE

JUSTICE MUHAMMAD JEHANGIR ARSHAD

Dated:- Lahore ,18.7.2012

IN THE FEDERAL SHARIAT COURT**(Appellate / Jurisdiction)****PRESENT****MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN****MR. JUSTICE SHEIKH AHMAD FAROOQ****CRIMINAL APPEAL NO.05-I-2011**

Mst.Sobia Shaheen W/o Mukhtar Hussain, Caste Awan, R/o Village Koont,

P.S. Jatli, Tehsil Gujar Khan, District, Rawalpindi Appellant

Versus

1. Abdul Shakoor S/o of Abdul Ghanni, caste Awan, R/of Village Koont, P.S. Jatli,
Tehsil Gujar Khan, District Rawalpindi.

2. The State Respondents

Counsel for appellant	:	Mrs. Muhammad Sharif Janjua and Quasain Faisal Mufti, Advocates
Counsel for respondent No.I.	:	Mr.Aftab Ahmed Khan, Advocate
Counsel for the State	:	Ch. Muhammad Sarwar Sidhu, Addl. Prosecutor General, Punjab
Date of Private Complaint	:	02.01.2004
Date of judgment of the trial court	:	25-11-2009
Date of institution	:	09.02.2010
Date of hearing and decision	:	12.12.2012

JUDGMENT

SH. AHMAD FAROOQ, J. Through the instant appeal, appellant/complainant Mst.Sobia Shaheen wife of Mukhtar Hussain has challenged the judgment dated 25.11.2009, whereby the learned Additional Sessions Judge, Gujar Khan has acquitted respondent/ Abdul Shakoor of the charges under sections 11 and 10(3) Offence of Zina(Enforcement of Hudood) Ordinance, 1979.

2. Succinctly, the allegations levelled by the complainant/Mst.Sobia Shaheen in the private complaint are that on 21.7.2003 at 10.00 p.m., the accused/present respondent abducted her on pistol point when she had gone to answer the call of nature in the fields of Mst.Qudrat Bi at Moza Khabba Barrar P.S. Chauntra and subjected her to zina-bil-jabr. Thereafter, the accused threatened the complainant to kill her if she disclosed the occurrence to any one. The complainant after reaching home narrated the incident to her mother, who advised her to wait for the return of her husband, who had gone to Rawalpindi on 20.7.2003 in search of some employment. The next day i.e 22.7.2003, the husband of the complainant came back to his residence, and the complainant along with her husband approached the police and lodged FIR No.181 dated 22.7.2003 in police station Jatli District Rawalpindi but the investigating officer submitted a report to the, Magistrate for discharge of the accused. However, the learned Magistrate did not accept the said report. In this back drop, the complainant Mst.Sobia Shaheen filed a complaint against Abdul Shakoor/accused under sections 10 and 11 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 in the court of the learned Sessions Judge Rawalpindi.

3. The learned trial court directed an inquiry to be conducted by a learned Magistrate as provided under section 202 Cr.P.C. After receipt of the inquiry report the learned trial court summoned the accused and framed the charges against him on 15.02.2005 under sections 10(3) and 11 Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused/present respondent did not plead guilty and claimed to be tried.

4. The complainant produced three witnesses in addition to recording her own statement as P.W.1 in order to prove her version. The complainant also got five witnesses summoned by the court, whose statements were recorded as C.W.1 to C.W.5.

5. After closure of the evidence of the complainant, the accused was examined for the purpose of enabling him to explain the circumstances appeared in the evidence against him as envisaged under section 342 Cr.P.C. In response to the pivotal questions regarding the deposition of the prosecution witnesses and the reasons for the registration of the case against him, the accused/present respondent replied as under:

“Q.4. Why the PWs deposed against you?

Ans: All the private witnesses are interested witnesses and inimical to me”.

Q.5. Why this case is registered against you?

Ans. This is a false case registered against me to make my father Abdul Ghani under pressure for compromise in case FIR No.166/1999 u/s 302PPC against accused Sharafat Hussain, Muhammad Jehangir, Pervaiz and Arshad Mehmood in which my father was eye witness of the said case and in the said case a quarrel took place between my father and accused Sharafat Hussain. In the said case, accused Sharafat etc were convicted and appeal is pending in the Hon'ble Lahore High Court. Sharafat Hussain etc are close relatives of the complainant and her husband. Due to this relationship malafidely to force my father for compromise, this false case was registered against me."

Accused also produced documentary evidence in his defence. He placed on record the attested copy of the FIR No.166/1999 (Ex.DH) and copy of the inquiry report conducted by an Army Officer (Mark-A). However, the accused did not opt to make a statement on oath in disproof of the charges or allegations made against him as provided under section 340(2) Cr.P.C.

6. Upon conclusion of the trial, the learned trial court vide judgment dated 25.11.2009 has acquitted the accused/ present respondent from all the charges, as mentioned herein before in para-1 of this judgment.

7. Being aggrieved by the impugned judgment dated 25.11.2009, the complainant/ Mst.Sobia Shaheen has filed the instant appeal before this Court.

8. Learned counsel for the appellant (complainant Mr.Qausain Faisal Mufti submitted that the impugned judgment is against the facts, material available on record and law, hence, liable to be set aside. He further submitted that the complainant had no mala fide against the accused/respondent for his false implication in such like heinous case. He argued that the impugned judgment is the result of mis-reading and non-reading of evidence available on record. He maintained that there is substantial evidence on the record both oral as well as medical, which cannot be brushed aside in a flimsy manners. He contended that the learned trial court did not consider the evidentiary value of the P.Ws as well as the C.Ws and passed the impugned judgment which is against law. He explained that no relationship of Sharafat Hussain and Arshad Mehmood with the complainant party was proved from the evidence available on record. He contended that the respondent, who is a soldier in the Pakistan Army, was not on duty on the day and time of occurrence. He claimed that the learned trial court has discarded the evidence regarding detection of semen on the swabs taken from the vagina of the victim. He clarified that the victim remained silent and did not raise any hue and cry due to fear of life as her husband was not available in the village. Lastly, he argued that the appellant/complainant had proved her case beyond reasonable shadow of doubt but the learned trial court did not evaluate the incriminating evidence in its true perspective.

9. On the contrary, the learned counsel for the respondent submitted that not only the

FIR was lodged after a delay of 24 hours but also the medical examination of the victim was conducted after two days of the occurrence. He further submitted that the private complaint was also filed on 2.1.2004 i.e after a considerable delay of more than four months with mala fide intention. He also submitted that the victim/complainant was not got medically examined at a nearby hospital, rather, she was examined in Holy Family Hospital Rawalpindi, which is at a distance of about 65 k.ms and that too after 2 days of the occurrence i.e 23.7.2003. He contended that there are material and serious discrepancies in the statements of the witnesses of the complainant. He maintained that the complainant/P.W.1 in her cross-examination admitted that during the occurrence there was 'Danga Mushati'/fighting between her and the accused but according to the statement of Lady Dr.Fariha (C.W.4) no sign of abrasion, injuries, bruises was found on the body of the victim. Even no stain on the person or clothes of the victim/complainant was observed by lady doctor. Moreover, according to medical report, only the high vaginal swabs and endocervical swabs were stained with semen. He pointed out that the perineal vaginal swabs were not stained with semen and the high vaginal swabs cannot be found to be stained with semen during the commission of zina-bil-jabr. He argued that the accused/present respondent was not connected with the commission of the offence beyond reasonable shadow of doubt and he has been rightly acquitted by the learned trial court.

10. The learned counsel for the State adopted the arguments advanced by the learned counsel for the appellant/complainant. He also did not support the impugned judgment of the learned trial court.

11. We have heard the learned counsel for the appellant as well as learned counsel for the respondent and the State. We have also examined the impugned judgment dated 25.11.2009 and carefully evaluated the evidence available on the record of the learned trial court with the able assistance of the learned counsel for the parties.

12. At the outset we would like to point out that there is no eye witness of the occurrence. Except for the complainant/Mst.Sobia Shaheen (P.W.1) no other witness was present at the scene of the crime. The statements of the P.W.2 and P.W.3 namely Mst.Jamila Begum and Mukhtar Hussain are admittedly hearsay evidence which cannot be relied upon. Similarly, the statement of P.W.4/Muhammad Akhtar regarding the alleged extra judicial confession of the parents of Abdul Shakoor/ accused, is insignificant as the same cannot be used against the accused. Even otherwise, the statement of P.W.4/Muhammad Akhtar is neither corroborated by any other witness nor a specific question was put to the accused, in this regard while recording his examination under section 342 Cr.P.C. No doubt, the Superior Courts in a large number of cases have considered the solitary testimony of the victim enough for recording conviction in a case of zina-bil-jabr if it inspire confidence. In this regard, we would like to refer to the case of Mst.Nasreen Vs.Fayyaz Khan and another reported in PLD 1991-SC-412 but in the present case the solitary statement of the victim of the occurrence i.e Mst.Sobia Shaheen(P.W.1) is not trust worthy and confidence inspiring. Particularly, when she has mentioned two different time of occurrence i.e 10.00 p.m and

10.30 a.m in her cursory statement dated 14.1.2004 and the statement dated 25.2.2008 recorded by the learned trial court respectively. It is also not believable that the victim/ Mst.Sobia Shaheen could not have raised any hue and cry when she was being forcibly taken away from the field/land possessed by Mst.Qudrat Bibi by the accused to his house for commission of zina-bil-jabr. It is worth consideration that not only the occurrence took place in the month of July, when ordinarily, the people living in the villages sleep outside their bed rooms but also the house of the mother of the complainant as well as residence of the accused/Abdul Shakoor are situated at a equal distance i.e 5 ½ karams from the land of Mst.Qudrat Bibi etc according to the site plan (CB). It also does not appeal to the mind of a prudent person that the complainant and her mother remained silent after the alleged occurrence of 'zina' till the return of the husband of Mst.Sobia Shaheen namely Mukhtar Hussain(P.W.3) on the next day. Further-more, the complainant/P.W.1 admitted in her cross-examination that her "Shalwar" was already put off when she was abducted while attending to the call of nature but the said "Shalwar" was not recovered by the investigating officer. She also admitted that she was wearing the shirt during the occurrence which was not torn by the accused, despite the fact that she strongly resisted the attempt of the accused, prior to the actual commission of zina-bil-jabr. In fact, the complainant explained that during the occurrence, there was "danga mushti"/fighting between her and the accused but according to the statement of C.W.4 (lady doctor)there was no sign of abrasion, injuries or bruises on the body of the victim at the time of her medical examination. Moreover, the complainant stated that her medical examination took place on 22.7.2003 in the Holy Family Hospital Rawalpindi, whereas according to the statement of Lady Dr.Fariha,C.W.4, the medical examination of the victim/ Mst.Sobia Shaheen was conducted on 23.7.2003. There are many other discrepancies in the statements of the complainant/P.W.1 and her mother i.e Mst.Jamila Begum, P.W.2, as well as her husband/Mukhtar Hussain/P.W.3. In this back drop, the sole testimony of the victim is neither confidence inspiring nor could be relied upon for recording conviction of the accused/present respondent.

13. Even otherwise, the commission of "zina-bil-jabr" by the accused/present respondent with Mst.Sobia Shaheen/complainant is not conclusively proved from the medical evidence available on the record. C.W.4 Lady Dr.Fariha admitted that on the day of examination i.e 23.7.2003, Mst.Sobia Shaheen/female was menstruating. It is highly doubtful whether a reliable sample could be taken from the vagina of a female for detection of semen while she is menstruating. Additionally, the victim, who is a married woman, was examined two days after the occurrence. Above all, the semen of the male accused was not sent to the Serologist for grouping, hence, evidentiary value of the swabs which were taken from the vagina of the victim and were found to be stained with semen by the Chemical Examiner loses its value. In this connection, we would like to refer to the judgment of the Federal Shariat Court delivered in the case of Waqar-ul-Islam and another Vs. The State reported in 1997 P.Cr.L.J-1107 wherein it has been held that the semen found on the vaginal swabs loses its evidentiary value if the semen of the accused was not obtained and got examined and matched with semen found on vaginal swabs by the Serologist. This fact has also

been admitted in this case by C.W.4/Lady Dr.Fariha during her cross-examination wherein she conceded that in order to determine rape with married woman, tissue time test(i.e grouping of semen) is required which was not conducted in this case. Hence, the solitary statement of the victim/complainant(P.W.1) regarding the commission of zina-bil-jabr by the accused with her is also not corroborated by the medical evidence.

14. There is another aspect of this case which requires serious consideration by this court. Admittedly, the father of the accused namely Abdul Ghani is an eye witness of the FIR No.166/1999 registered under section 302 PPC against accused namely Sharafat Husain, Jehangir, Pervez and Arshad Mehmood. P.W.2 (mother of the victim) admitted in her cross-examination that Sharafat and Arshad Mehmood (accused) have been convicted by the learned trial court in the aforementioned F.I.R. The mother of the complainant namely Mst.Jamila Begum/P.W.2 as well as the husband of the victim/Mukhtar Hussain also admitted their relationship one of the accused namely Sharafat Hussain. Even Arshad Mehmood who is also a convicted accused of FIR No.166/1999 is closely related to Ghulam Murtaza, who is a cousin of Mst.Sobia Shaheen. The relative of the accused of the said case remained in touch with the complainant after the occurrence. The accused/ Abdul Shakoor in his statement under section 342 Cr.P.C has also pleaded that he has been falsely implicated in this case in order to put pressure on his father /Abdul Ghani for effecting a compromise between complainant and the convicted accused of the case arising out of the FIR No.166/1999 registered under section 302 PPC. This version of the accused is also supported by the report of Lt.Col.C.O Muhammad Saqlain Khan dated 9.9.2003 which was produced by the accused in his evidence in defence and available on record as MARK-A. In these circumstances, the possibility of false implication of the accused/ present respondent in the instant case by the complainant party cannot be ruled out.

15. Needless to mention here that for recording conviction of an accused his guilt has to be proved beyond reasonable shadow of doubt. It is the onerous duty of the court to sift the grain from the chaff and find out the truth from the pack false hood in order to arrive at a just conclusion in any case for safe administration of justice.

16. The nutshell of the above discussion is that the complainant case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by the Hon'ble Supreme Court of Pakistan in the case of Tariq Pervez Vs.The State (1995 SCMR 1345) that for giving the benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

17. In addition to the above conclusions we cannot ignore the fact that this is an appeal against acquittal and standard for assessing evidence in appeal against acquittal are quite different from those laid down for appeals against conviction. In an appeal against

conviction, appraisal of evidence is done strictly, whereas in an appeal against acquittal, such rigid method of appraisal is not to be applied. Similarly, the appellate court would not exercise jurisdiction under section 417 Cr.P.C unless the acquittal judgment of the trial court is perverse or there is complete mis-reading or non-reading of evidence resulting in miscarriage of justice. In this regard, we would like to refer to the judgment reported in 2005 P.Cr.L.J-536(The State through Advocate General NWFP Peshawar Vs.Faqir Muhammad Ahmad Khan). Even otherwise, when an accused is acquitted from the charge by a court of competent jurisdiction, then double presumption of innocence is acquired by him and the appellate court would not interfere unless the impugned judgment is arbitrary, capricious, fanciful and against the record.

18. For the foregoing reasons, we are of the considered view that the complainant could not establish the guilt of the accused beyond reasonable shadow of doubt and as such, the charges against the accused could not be proved. Hence, the learned trial court was justified in acquitting the accused from the charges and we do not find any illegality, mis-reading or non-reading of the evidence in the impugned judgment. The impugned judgment is unexceptionable and the same is upheld.

19. Resultantly, the instant appeal, being devoid of any merit, is accordingly dismissed.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE DR.FIDA MUHAMMAD KHAN

Islamabad, 12.12.2012

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN

MR.JUSTICE SHEIKH AHMED FAROOQ.

CRIMINAL APPEAL NO.32-I-2012

1. Amjad Ali son of Shamroz Khan, and
2. Fakhar-Imam son of Chaman Khan,

Both residents of Village Charorary District Bunir.

Appellants.

Versus

The State

Respondent

For the appellants	...	Sahibzada Asadullah, Advocate.
For the State	...	Nemo
For the complainant	...	Mr.Ghulam Farooq Awan, Advocate.
No.& date of FIR	...	No.211, dt.17.12.2010 Police Station P.S Nagri, District Bunir
Date of judgment of Trial court	...	6.7.2012
Date of Institution in this Court	...	4.9.2012
Date of hearing and decision	...	25.4.2013
Date of judgment	...	30.4.2013

JUDGMENT

SH.AHMAD FAROOQ, J. – Through the instant appeal, Amjad Ali son of Shamroz Khan and Fakhar Imam son of Chaman Khan/ appellants have challenged the judgment dated 06.07.2012, whereby the learned Additional Sessions Judge-I/Izafi Zilla Qazi, Buner at Daggar has convicted and sentenced them as under:-

Amjad Ali alias Amjad	<u>U/S 354-A PPC</u>	Life Imprisonment with a fine of Rs.100,000/- (One lac)
	<u>U/S 294 PPC</u>	Three months simple imprisonment with a fine of Rs.10,000/- (Ten thousand)
	<u>U/S 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979</u>	Seven years simple imprisonment
Fakhar Imam	<u>U/S 294 PPC</u>	Three months simple imprisonment with a fine of Rs.10,000/- (Ten thousand)
	<u>U/S 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.</u>	Seven years simple imprisonment

All the substantives sentences awarded to the appellants were ordered to run concurrently with benefit of section 382-B Cr.P.C.

2. Precisely, the allegations leveled by the complainant /Kamil Khan alias Kamilay in the F.I.R(Ex.PA) lodged on 17.12.2010 at police station Nagari, district Buner are that his daughter Mst.Nagina was married to his nephew namely Johar Ali, about 7/8 years earlier but no child was born during their wedlock. Johar Ali was mentally weak and had gone to Karachi 4/5 months ago to earn his livelihood. On 10.12.2010 at about 0900 hours, complainant's brother Noor Parast shot dead Mst. Nagina by a firearm weapon. On inquiry, the complainant came to know that his daughter Mst.Nagina and his niece namely Mst.Akhtar Meena were assaulted by Amjad Ali and Fakhr Imam, who stripped off their clothes and made nude video, which was subsequently released to the public at large. The said act of the accused disgraced the whole family of the complainant and resulted in the murder of Mst.Nagina.

3. After completion of usual investigation, a report under section 173 Cr.P.C was submitted in the learned trial court for taking cognizance of the offences.

4. The learned trial court framed the charge against the accused/ appellants under sections 354-A/34, 294/34 PPC and section 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The accused/ appellants did not plead guilty and claimed to be tried.

5. During the trial, the prosecution in order to substantiate its allegations and to prove the charges produced seven witnesses including complainant/Kamil Khan, (P.W.1), SHO/ S.I/Ibrahim Khan(P.W.4), Farhatullah Marwat/ SDM Mandanh, Buner (P.W.6) and Zahir Shah Khan(P.W.&), who was the Investigating Officer of this case. P.W.3 Syed Mukhtiar, H.C placed on record the recovery memo/Ex.P.W.3/1 Memory Card/Ex.P-1, Compact Disk/ Ex-P-2 and 60 photographs/Ex/P-3. He is also a witness of recovery memo Ex.P.W.3/2 whereby the complainant handed over the Memory Card to the I.O. P.W.5/Amiranang Zeb/ASI is a marginal witness of recovery memo Ex.P.W.5/1 whereby Computer. Monitor Model 2003 Ex.P-4, CPU, 2003 Paintium Ex.P-5, Key Board Ex.P-6 and Mouse Ex.P-7, along with Power Cable Ex.P-8 were taken into possession by the police on the pointation of accused Nasir Ali. However, the prosecution gave up the witnesses namely Babir Ali, Saifullah, Sajjad, Naveed, Amir Samad, Sher Muhammad, Nasarullah, Muhammad Taj, Aamir Ali and Waris Khan and Sibtain Anwar as being unnecessary. The entire statements of the witnesses of the prosecution have been mentioned in the impugned judgment dated 06.07.2012 and there is no need to reproduce the same in this judgment to avoid unnecessary repetition. However, the relevant portion of the statements of the witnesses of the prosecution would be discussed in the subsequent paragraphs.

6. After closure of the evidence of the prosecution, the accused/ appellants were examined under section 342 Cr.P.C. wherein they categorically denied the allegation leveled by the prosecution as well as the charges framed against them. In response to crucial questions 'as to why they have been involved in this case and the witnesses of the prosecution have deposed against them, the accused replied as under:

“They have been implicated in this case with mala-fide intention and no independent witness except the police officials has deposed against them”.

7. However, neither the accused/ appellants opted to make their statements under section 340(2) Cr.P.C. on oath nor produced any witness in their defence.

8. Upon conclusion of the trial, the learned trial court vide judgment dated 06.07.2012 has convicted the accused/ appellants as mentioned herein before in para-1 of this judgment.

9. Learned counsel for the appellants namely Sahibzada Asadulah, Advocate submitted that there was no evidence available on record of the learned trial court for recording the

conviction of the appellant/Amjad Ali under section 354-A PPC as neither he assaulted or used criminal force against Mst.Nagina nor the said Mst.Nagina was exposed to public view in naked condition. He further submitted that the whole case of the prosecution is based on the Memory Card Ex.P-1 and C.D Ex.P/2 which were not recovered from the present appellants. He maintained that no witness of the prosecution has specifically stated that the convicted accused were preparing or attempting to commit zina and as such, their conviction under section 18 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was not justified. He claimed that the place where the appellants allegedly were doing obscene acts was not a public place, therefore, the provision of section 294 PPC are not attracted. Before concluding his arguments, he informed the Court that the parties have patched up the matter through the intervention of local 'jirga'. However, he conceded that the offences for which the appellants have been convicted are not compoundable but he pleaded for taking a lenient view in view of the compromise between the complainant and the accused.

Learned counsel for the appellants/Amjad Ali and Fakhar Imam has relied upon the following judgments in support of his arguments:

- 1) 1989 P.Cr.L.J 1453
(Muhammad Ashraf and 3 others Vs. The State)
- 2) 1988 P.Cr.L.J 2321
(Muhammad Saleem and another Vs. The State)
- 3) 2006 SCMR 1846
(Lal Khan Vs. The State)
- 4) 2010 P.Cr.L.J 221
(Ghulam Yasin Vs. The State)
- 5) 2009 SCMR 916
(Qadir Shah and others Vs. The State).

10. The learned counsel for the complainant did not controvert the factum of a compromise between the parties. However, he admitted that the essential ingredients of section 354-A PPC are not available in the evidence of the prosecution. Never-the-less, he maintained that the accused were found involved in doing in obscene acts after taking away/enticing the women and as such, liable to be punished accordingly.

11. We have heard the learned counsel for the appellants as well as the learned counsel for the complainant. We have also examined and evaluated the evidence produced by the prosecution during the trial in addition to carefully scanning the impugned judgment dated 6.7.2012.

12. First of all, we would like to clarify that despite compromise between the parties, the present appellants cannot be acquitted as they have been convicted for offences which are not compoundable under the statutory law as contained in section 345 Cr.P.C. Even otherwise, no compromise could legally be effected in a case where the accused have been convicted for an offence under section 18 Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Hence, this Court is not competent to give effect to a compromise in the non-compoundable offences which have been committed by the present appellants as the same is against the law as well as public policy. However, the compromise can be considered as a mitigating circumstance for the purpose of awarding sentence in non-compoundable offences in appropriate cases except in heinous offences which are considered crime against society. In this regard, we would like to rely upon the judgments reported in PLD 1996-Quetta-56(Muhammad Akbar and another Vs. The State) and PLD 1997-Quetta-17(Niaz Muhammad Vs.The State). The Hon'ble Supreme Court of Pakistan in the case of Ghulam Farid alias Farida Vs. The State reported in PLD 2006 SC-53 has held that tabulation of offences as made under S.345,Cr.P.C, being unambiguous, remove all doubts and uncertainty and must be taken as complete and comprehensive guide for compounding the offences---Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have reference to the interests of the State--Courts of law cannot go beyond the said test and substitute their own test for it--- To compound, non-compoundable offence is against public policy, keeping in view the state of facts existing on the date of application to compound---No offences shall be compounded except where the provisions of S.345,Cr.P.C are satisfied as to all matters mentioned therein. Hence, notwithstanding, the compromise between the parties we proceed to decide the instant appeal on merits.

13. In this case, appellant No.1/Amjad Ali amongst other offences has been convicted under section 354-A PPC and sentenced to life imprisonment along with fine of Rs.100,000/-. Before evaluating the evidence produced by the prosecution whereupon Amjad Ali has been convicted, it would be advantageous to reproduce hereunder section 354-A PPC:

Sec.354-A. Assault or use of criminal force to woman and stripping her of her clothes; Whoever assaults or uses criminal force to any woman and stripes her of her clothes and, in that condition exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine”.

(underlining for emphasis is ours)

A plain reading of the above provision of law would reveal that the accused should either assault or use criminal force to any woman and thereafter, strip off her clothes and in that condition, exposes her to the public view.

The word “stripping” is defined in Webster New World College Dictionary as “to remove the clothing or covering from a person and making him or her naked”. The word

also means “the undressing of the person. While further explaining the term, an explanation is mentioned therein in these words, “strip implies the pulling or tearing off clothing, outer cover, etc. and even connotes forcible or even violent action and total deprivation”. (Reliance PLD 2005 Peshawar-128). Similarly in the judgments reported in PLD 2008-Lahore-308 and 2009 SCMR-913, it has been held that two conditions must co-exist and be fulfilled to attract the provision of section 354-A Cr.P.C, firstly, there should be stripping off the clothes of the woman and secondly, the victim in that condition be exposed to public view.

14. However, in the instant case neither Mst.Nagina was stripped off her clothes making her naked nor she was exposed to public view in that condition as no one from the general public was admittedly present at the scene of the incident. Moreover, there is no evidence at all regarding the use of any criminal force or assault by convicted accused/Amjad Ali alias Amjad against Mst.Nagina, deceased at the time of the occurrence. It is worth mentioning that Mst.Nagina was murdered prior to the registration of this case and as such, there could not be any statement or allegation from her side that Amjad Ali assaulted her or used criminal force. Further-more, there is no eye witness of the occurrence. Even the date and time of the occurrence is neither mentioned in the FIR nor specified by any witness of the prosecution during the trial. The only evidence produced by the prosecution is the photographs/Ex.P-3 which have been prepared on the basis of Memory Card/Ex.P-1 and C.D Disk/Ex.P-2 but the same also did not substantiate the allegation of the prosecution that Mst.Nagina was stripped off her clothes and exposed to public view in that condition. Rather, from the photographs, Mst.Nagina seems to be a consenting party to all the obscene acts being done by accused/Amjad Ali. The playing of the video film or photographs shown to public at large by other persons would not bring the act of accused Amjad Ali within the mis-chief of section 354-A PPC. Hence, there was no evidence available on the record of the learned trial court to record the conviction of Amjad Ali alias Amjad under section 354-A PPC and award the sentence of life imprisonment thereof.

15. Now, we advert to the conviction of the appellants i.e Amjad Ali alias Amjad and Fakhr Imam under Section 18 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 294 PPC. The learned trial court has held in the impugned judgment that both the accused/present appellants were making preparation and attempted to commit zina with Mst.Nagina and Mst.Akhtar Meena respectively. The Federal Shariat Court in the case of Arshad Mehmood Vs. The State reported in PLD 1991 FSC-268 has mentioned the definitions of the words “attempt” and “preparation” as given in Black’s Law Dictionary, which are being reproduced hereunder:

“Attempt.—In statutes and in cases other than criminal prosecutions an ‘attempt’ ordinarily means an intent combined with an act falling short of the thing

intended. It may be described as an endeavour to do an act, carried beyond mere preparation, but short of execution.

An effort or endeavour to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. The requisite elements of an "attempt" to commit a crime are (1) an intent to commit it, (2) an overt act toward its commission, (3) failure of consummation, and (4) the apparent possibility of commission.

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or (b) when causing a particular result is an element of the crime, does not or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or (c) purposely does or omits to do anything, which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

"Preparation.—With respect to criminal offence, consists in devising or arranging means or measures necessary for its commission, while attempt is direct movement toward commission after preparations are made".

16. Needless to mention here that attempt is an act done in part execution of criminal design amounting to more than mere preparation, but falling short of actual consummation and possessing except for failure to consummate, all the elements of substantive crime. Attempt signifies an act which if successful would amount to commission of offence. Offence of Zina being an offence requiring actual penetration, attempt to rape, must be an attempt at penetration involving catching of female in such manner that penetration might be facilitated. If we consider the evidence produced by the prosecution in this case, particularly, the photographs in the light of the aforementioned definition of the words "attempt" and "preparation" there remains no doubt at all that there was no attempt to commit "zina" by accused/Amjad Ali with Mst.Nagina and accused. Fakhr Imam with Mst.Akhtar Meena. Neither the male and female accused had put off their clothes/naked nor any stain of semen was found on their shalwars by the I.O or the Chemical Examiner. Even from the photographs, it is not established that the convicted accused/present appellants have committed some overt act toward achieving their object of committing "zina" with Mst.Nagina and Mst.Akhtar Meena. Hence, the learned trial court was not justified in recording the conviction of the present appellants under section 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

17. Never-the-less, Mst.Nagina and Mst.Akhtar Meena were married women and they were admittedly taken away by the convicted accused/present appellants from their houses with criminal intent of having illicit intercourse. In view of above, we are of the considered opinion that act of the present appellants squarely fell within the mischief of section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 which is being reproduced herein below for ease of reference:

Sec.16 Enticing or taking away or detaining with criminal intent a woman.

Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

No doubt in order to attract the provisions of section 16 of the Ordinance *ibid* two conditions should co-exist, firstly, taking or enticing away any woman and secondly, intention that she may have illicit intercourse with any person. (Reliance 2007 S.D-321). However, the Shariat Appellate Bench of the Supreme Court of Pakistan in the judgments reported in 2004-S.D-284 and PLD 1991 SC-567 have distinguished between the words “taking and enticing”. The word “take” as used in section 16 of the Ordinance *ibid* does not mean the taking by force, it implies to get into possession or to cause a female to go with an accused. The element of force cannot be inferred by incorporating the word “taking” which does not mean taking by force. The word “take” includes constructive taking such as meeting at appointed place outside. In the instant case the accused must have exercised some influences or some kind of inducement to take the female accused to the place of occurrence. Similarly it is established from the photographs wherein the accused could be seen kissing, embracing and molesting the female that they had an intention to have illicit intercourse with them which is punishable under section 16 of the Ordinance *ibid*. It is also pertinent to mention here, that Mst.Akhtar Meena (one of the co-accused) was not only convicted under section 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and awarded a sentence of three years but also she has already undergone the said punishment and has been released from jail after the expiry of her sentence. Although we do not agree with the conviction of the present appellants under section 18 of the Ordinance *ibid* but we are of the considered view that they should be convicted for commission of an offence falling under section 16 of the Ordinance *ibid* for the reasons mentioned above, as well as in view of the conviction of their co-accused Mst.Akhtar Meena following the rule of consistency.

18. Lastly, from the photographs/Ex.P-3, the production of which was neither opposed vehemently nor accused in their statements under section 342 Cr.P.C have specifically claimed that those were fabricated, it is established that the accused were indulging in obscene act in a public place and as such, were rightly convicted by the learned trial court under section 294 PPC. No doubt, the place of occurrence is located in mountainous area but the same is not an abundant place and accessible to the public at large.

19. Before parting with this judgment, we would like to observe that there is no chance of false implication of the accused by the complainant in this case, as the complainant/ Kamil Khan is the real father of Mst.Nagina and real uncle of Mst.Akhtar Meena. We also cannot ignore the allegations that Mst.Nagina was murdered by her father-in-law due to the humiliation caused to the family as a result of the videos/photographs of this occurrence. As observed above Mst.Akhtar Meena/niece of the complainant was not only convicted and undergone her entire sentence but also her appeal against the said conviction was dismissed by this Court vide Order dated 25.4.2013. The record of the learned trial court revealed that the learned counsel, who appeared on behalf of the convicted accused, did not plead their innocence. Rather, they only requested for reduction in the quantum of the sentence being awarded to them.

20. The upshot of the above discussion and observations is that the conviction recorded and sentence awarded to appellant No.1/Amjad Ali alias Amjad by the learned trial court under section 354-A PPC are set aside. Similarly, the conviction of both the appellants and sentences awarded to them under section 18 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 are altered to one under section 16 of the Ordinance ibid and they are sentenced to four years R.I each with a fine of Rs.10,000/- each or in default thereof, both shall suffer six months S.I. Additionally, the conviction recorded and sentence of three months along with a fine of Rs.10,000/- awarded to both the appellants under section 294 PPC vide the impugned judgment dated 6.7.2012 are maintained. However, the sentences awarded to the present appellants on two counts shall run concurrently and benefit of section 382-B Cr.P.C extended to them by the learned trial court shall remain intact.

With the above modification in the impugned judgment dated 6.7.2012 , the instant appeal is accordingly dismissed.

These are the reasons for our short order dated 25.4.2013.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE DR.FIDA MUHAMMAD KHAN

Islamabad, 30.4.2013

Approved for reporting

JUSTICE SHEIKH AHMAD FAROOQ

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE RIZWAN ALI DODANI
MR. JUSTICE SHEIKH AHMAD FAROOQ
MR. JUSTICE SHAHZADO SHAIKH

CRIMINAL APPEAL NO. 77/L OF 2009

CRIMINAL APPEAL NO.85/L OF 2009

- 1) Shahnawaz son of Rabnawaz ,
 - 2) Arshad Munir son of Ghulam Muhammad and
 - 3) Waseem Ahmad son of Muhammad Aslam,
- All caste by Samtia and residents of Tibbi Kalan,
Tehsil Karor, District Layyah

Appellants

Versus

The State

Respondent

Counsel for the appellants

M/s Shahbaz A.Rizvi, M. Abdul Sattar
Chughtai, Advocates.

Counsel for the complainant

Mr. Manzoor Hussain Buttt, Advocate.

Counsel for the State

Mr. Tariq Javed, D.D.P.P.

FIR No., date

No.204/03, dt. 12.8.2003 Police Station P.S
Karor, Distt: Layyah.

Date of judgment of Trial Court

12.04.2004

Date of Institution of both appeals

7.8.2009 and 1.9.2009

Date of hearing

27.8.2013

Date of decision

27.8.2013

Date of Judgment

29.8.2013

CRIMINAL APPEAL NO.65-I-2010

Ghulam Ali son of Ghulam Sarwar

Caste Baloch ,R/o Tibbi Khurd Tehsil Karor

District Layyah.

Appellant/complainant.

Versus

- 1.The State
- 2.Arshad Munir s/o Ghulam Muhammad
- 3.Waseem Ahmad s/o Muhammad Aslam

Respondents

For the appellant/complainant	Mr.Manzoor Hussain Butt, Advocate.
Date of Institution	27.5.2010.
Date of hearing and decision	27.8.2013

CRIMINAL MURDER REFERENCE NO.11-I-2009

The State Vs. Shahnawaz

JUDGMENT

SH. AHMAD FAROOQ, J. – Three accused persons namely Arshad Munir, Waseem Ahmad and Shahnawaz were tried by learned Additional Sessions Judge, Karor District Layyah in a criminal case arising out of F.I.R No.204 dated 12.8.2003 registered in P.S Karor under sections 302,201,34 PPC and section 10 of Offence of Zina (Enforcement of Hudood) Ordinance,1979 for an occurrence wherein wife of the complainant namely Mst. Muradan and daughter/Mst.Kalsoom were murdered by the said accused with common intention after commission of ‘zina’. At the conclusion of trial, the learned trial court vide impugned judgment dated 12.4.2004 while acquitting the accused/Arshad Munir and Waseem Ahmad from the charge of murder of deceased ladies found the third accused i.e Shahnawaz guilty of ‘qatl-e-amd’ of Mst.Muradan and Mst.Kalsoom and convicted and sentenced him to death on two count under section 302(B) PPC. The convicted accused/Shahnawaz has also been directed to pay Rs.50,000/- each to the legal heirs of two deceased as compensation under section 544-A Cr.P.C, failing which, he was ordered to undergo one year’s S.I. Moreover, all the three accused i.e Shahnawaz, Arshad Munir and Waseem Ahmad were also convicted under section 201 PPC and sentenced to six years R.I each along with a fine of Rs.5000/- each and in default whereof, to suffer one month S.I each. However, the aforementioned three accused were acquitted of the charge under section 10 (4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Benefit of section 382-B Cr.P.C was extended to the convicted accused by the learned trial court.

2. While the convicted accused/Shahnawaz, Arshad Munir and Waseem Ahmad challenged their convictions and sentences as aforementioned, by filing criminal appeal No.77-L-2009 and 85-L-2009 respectively, the complainant/Ghulam Ali also filed criminal appeal No.65-L-2010 against acquittal of two accused namely Arshad Munir and Waseem Ahmad from the charge under section 302 PPC and section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance,1979. The learned trial court has also sent Murder Reference No.11/I of 2009 for confirmation or otherwise of the sentence of death imposed upon appellant/Shahnawaz. Three criminal appeals i.e 77-L-2009, 85-L-2009 and 65-L of 2010 and the Murder Reference No.11-I-2009 are being decided through this single judgment as these have arisen out of the same judgment dated 12.4.2004.

3. Succinctly, the prosecution story as narrated by the complainant /Ghulam Ali in the F.I.R(Ex.PK) is that on 12.8.2003 at about 10.00 A.M, his wife/ Muradan along with his daughter Mst.Kalsoom aged about 14/15 years went to the field of sugar cane of Malik Ghulam Abbas on a donkey cart for cutting grass. At “peshiwala” (afternoon) the donkey cart came back to the house without his wife and daughter whereupon, he become worried. The complainant alongwith his brother/Noor Muhammad alias Mako and son/ Aman Ullah started search of his wife and daughter. They saw accused Shahnawaz, Waseem, both armed with “kassi”, and Muhammad Arshad armed with “sota” digging the earth with their respective weapons in the wet sugarcane crop. They tried to approach the accused persons for inquiring about the missing ladies, but they threatened them that in case they came

near, they would be killed. Thereafter, all the three accused along with their weapons fled away towards west whereupon the complainant along with his companions reached at the spot and saw the dead bodies of Muradan and Kalsoom. They identified the dead bodies and took them out from the mud. They observed various injuries on the dead bodies and found the head of Mst. Kalsoom separated from her body. The complainant alleged that the motive behind the occurrence is that accused Shahnawaz, Waseem Ahmad and Arshad, who are of bad character, with their common intention, had murdered both the ladies after committing 'zina' with them.

4. After completion of usual investigation, a report under section 173 Cr.P.C was submitted in the learned trial court for taking cognizance of the offences.

5. In order to substantiate the allegations levelled by the complainant and to prove the charges, the prosecution got recorded statements of as many as 11 witnesses. However, the learned Prosecutor gave up P.Ws namely Gul Muhammad alias nor Muhammad and Hafiz Muhammad Ameen as being un-necessary. The report of the Chemical Examiner was produced as Ex.P.O by the Prosecutor. The ocular account of the occurrence was furnished by P.W.7/Ghulam Ali (complainant) and his son namely Abdul Rehman, who appeared as P.W.8. The medical evidence was provided by P.W.1 and P.W.5/Dr.Sartaj Tirmzi who conducted post mortem examination of Mst.Muradan Mai and Mst.Kalsoom Mai (deceased) on 13.8.2003. P.W.9/Atta Hussain, S.I was the investigating officer of this case and he narrated the various steps taken by him during the investigation including the arrest of the accused. P.W.10/Ghulam Haider witnessed the recovery of the articles belonging to the deceased ladies (Ex.P-9 to Ex.P-12/1) as well as weapons of offence i.e one 'kassi' (Ex.P/8), one 'sota' (P-7) on the pointation of accused/Shahnawaz. P.W.11/Kaleem Haider (Patwari) prepared scaled site plan Ex.PN on the direction of the police and pointation of P.Ws. The remaining witnesses are of formal nature. The learned trial court has reproduced the gist of the statements of the prosecution witnesses in the impugned judgment and there is no need to repeat the same. However, the relevant portions of the statements of the witness of the prosecution would be discussed and examined in the subsequent paragraphs of this judgment.

6. After the closure of the evidence of the prosecution, the statement the present appellants were recorded under section 342 Cr.P.C wherein they denied the allegations leveled against them by the prosecution. Accused/Shahnawaz, in response to a crucial question as to " why the P.Ws deposed against and why the case against you, replied as under:

"P.Ws are related interse and they are also under the influence of Sardar Sajjad Ahmad and Sardar Bahadar Khan MNA. The occurrence was not witnessed one. Dead bodies were recovered by the inhabitants of the area, after a considerable endeavor being made by the at about Isha Vaila. Number of persons were captured by the police on the basis of suspicion of murder of both the ladies, but they were subsequently set free on the intervention of political tycoons. As I was a poor man and was without any political

influential support, so I was booked in this false case at the behest of Sarar Bahadar Khan Seehar. I had opposed the political interest of Sardar Bahadar Khan and his brother and I had managed the votes of my brothers in favour of their rival candidates (Sahibada-Faizul Hssan) which nursed grudge in the mind of Sardar Bahadar Khan MNA. My version regarding innocence was not brought on the record by the police and I had been falsely challaned in this case. All the recoveries are planted, fictitious and fabricated. I have no concern with the murder of these ladies. I am innocent. FIR was lodged after deliberation consultation with political tycoons with malafide intention. I am innocent.

Accused /Arshad Munir and Waseem Ahmad have made similar statements as narrated by accused Shahnawaz. However, all the accused/appellants neither opted to make statements on oath in disproof of the charges as envisaged under section 340(2) Cr.P.C nor produced any evidence in their defence.

7. Upon conclusion of the trial, the learned trial court vide judgment dated 12.4.2004 has convicted and sentenced the accused/present appellants as mentioned in paragraph-1 of this judgment.

8. Mr. Shahbaz A. Rizvi, learned counsel for appellant /Shah Nawaz submitted that the F.I.R was lodged after a delay of seven hours as the incident took place at 'peshiwela' (after noon) whereas, the case was registered at 9.30 p.m on 12.8.2003. He claimed that the case was got registered after consultation, premeditation and primary inquiry, which makes the prosecution story highly doubtful. He contended that there is no eye witness of the murder of the two ladies and this fact has not only been admitted by the complainant himself while appearing as P.W.7 but also by P.W.9/Atta Hussain, S.I, who is I.O of this case. He also contended that there is no evidence available on record regarding the place and time of commission of murder of Mst.Muradan and Mst.Kalsoom. He clarified that the place wherefrom the dead bodies of the said two ladies were recovered is admittedly not the spot where they were done to death. He maintained that no blood stains were found on the surrounding plants and even the alleged weapon of offence i.e'sota' and 'kassi'were also not found to be blood stained. He maintained that the medical evidence did not support the ocular account. He pointed out various discrepancies in the statements of the eye witnesses i.e P.W.7 and P.W.8. He alleged that the recovery of the weapon of offence as well as belonging of the deceased ladies were effected at a belated stage during the physical remand of the accused and the some were actually planted in order to strengthen the case of the prosecution by the investigating agency. He highlighted that the alleged weapon of offence i.e "kassi"and "sota" were never sent to the Chemical Examiner or Serologist . He explained that the place wherein the dead bodies were allegedly being buried is visible from the nearby thorough fare and it is not probable that the accused would commit such an offence in broad day light. The learned counsel for the appellant argued that on the same set of evidence, two accused namely Arshad Munir and Waseem Ahmad have been acquitted from the charge of murder, whereas the appellant/Shahnawaz has been convicted, which is not permissible under the law. He also argued that the prosecution could not

prove the motive attributed to the appellant. He asserted that the appellant/Shahnawaz has been falsely implicated by the complainant due to political rivalry and on the instigation of Sardar Bahadar Khan Seechar MNA. Lastly, he argued that the learned trial court did not appreciate the evidence in true perspective and the prosecution has failed to prove the charge against the appellant/Shahnawaz beyond reasonable shadow of doubt. He pleaded that the impugned judgment may be set aside and the appellant/Shahnawaz be acquitted of the charges.

In support of his argument, learned counsel for the appellant/Shahnawaz has relied upon the following judgments:

- 1) 2009 P.Cr.L.J-1022
- 2) PLD 1975 SC-588
- 3) 1985 SCMR-160
- 4) 2010 SCMR-1604
- 5) NLR 2004 Criminal-676
- 6) PLD 1994-S.C-178
- 7) PLD 1994-SC-679
- 8) 1983 SCMR-428

9. Mr. M. Abdus Sattar Chughtai, learned Counsel for appellants namely Arshad Munir and Waseem Ahmad submitted that the said appellants were declared innocent in three successive investigations, which were never challenged by the complainant. He further stated that Gul Muhammad alias Makku, who was cited as an eye witness in the FIR was not produced by the prosecution during the trial and the presumption is that had he been produced, he would not have supported the prosecution story. He maintained that since the place and time of the murder of the two deceased ladies is surrounded in mystery, and as such the two appellants namely Munir Arshad and Waseem Ahmad could not have been legally convicted for commission of an offence under section 201 PPC. He also referred to the report of the Chemical Examiner (Ex.P.O) wherein the vaginal swabs were not found to be stained with semen.

10. Conversely, Mr. Manzoor Hussain Butt, learned Counsel for the complainant explained that the delay in registration of the case occurred primarily due to the fact that the concerned police station is situated at a distance of 18 k.ms as is evident from the FIR. He submitted that the accused could not have possibly found burring the dead bodies of the two ladies, had they not murdered them. He contended that the appellant/Shahnawaz was working as a labourer in the field, wherein the deceased ladies were being buried. He claimed that the complainant, who is the husband and real father of the two deceased ladies respectively cannot be expected to substitute the real culprits with the present appellants. He denied the existence of any political rivalry between the complainant and the accused.

He maintained that the medical evidence fully corroborated the ocular account. He emphasized that the absence of proof regarding the commission of 'zina' with the deceased ladies by the present appellants would not ipso facto establish that they had not murdered them. He further maintained that Sardar Bahadar Khan Seehar, MNA did not appear as a witness to support the prosecution story. He also contended that two women ordinarily could not be murdered by one accused, particularly in the manner mentioned by the witness of the prosecution and as such, the learned trial court wrongly acquitted Arshad Munir and Waseem Ahmad from the charge under section 302 read with section 34 PPC. He further submitted that the recovery of weapon of offence and other articles belonging to the deceased ladies, on the pointation of appellant/Shahnawaz, fully connect him with the commission of the offence. He clarified that the appeal against acquittal of accused/Arshad Munir and Waseem Ahmad from the charges under section 302 read with section 34 PPC and under section 10(4) Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was filed within the period of limitation in the Hon'ble Lahore High Court Lahore, which was subsequently transferred to this Court. He claimed that the learned trial court rightly convicted the appellant/Shahnawaz for the commission of "qatl-e-amd" of Mst. Muradan and Mst. Kalsoom. He pleaded that the acquittal of Arshad Munir and Waseem Ahmad on the same set of evidence may be set aside and they may also be convicted for the offence of 'qatl-e-amd' of the aforementioned two ladies. Finally, he requested for maintaining the convictions and sentences awarded thereof to the appellants by the learned trial court as the prosecution had fully proved its case beyond reasonable shadow of doubt.

In support of his contention, learned counsel for the complainant has relied upon the case law reported as 1977 P.Cr.L.J-859 and PLD-2003-S.C-656.

11. Mr. Tariq Javed, Deputy District Public Prosecutor appearing on behalf of the State, while adopting the arguments advanced by the learned counsel for the complainant added that the blood stained earth was not only collected by the I.O from the spot but the same was also found to be stained with blood according to the report of the Chemical Examiner/Ex.P.O. He pointed out that the negligence on the part of the investigating officer in respect of the non-identification of the articles/ornaments of the deceased ladies, which were recovered on the pointation of appellant/Shahnawaz, is not fatal to the prosecution case. He denied the chances of false implication of the accused by the complainant as he could not implicate innocent persons in a case of murder of his wife and daughter respectively at the instigation of any politician. He emphasized that all the appellants were seen by the eye witnesses i.e P.W.7 and P.W.8 burying the dead bodies and as such, all the three accused/present appellants should have been convicted for commission of an offence falling under section 302(B) PPC. He argued that the acquittal of accused namely Arshad Munir and Waseem Ahmad recorded by the learned trial court is not tenable in the law.

In support of his argument the learned D.D.P.P relied upon the following judgments:

- 1) 1983 SCMR-806
- 2) 1984 SCMR-646
- 3) 2010 SCMR-1020
- 4) 1995 SCMR-1365
- 5) 2005 SCMR-427

12. We have heard the learned counsel for the appellants, complainant as well as the learned D.D.P.P at length. We have also minutely examined and evaluated the oral and the documentary evidence available on the record.

13. At the out set, we would like to observe that there are sufficient grounds for condonation of delay in filing the Criminal Appeal No.65-L-2010 as the same was initially filed in Lahore High Court Multan bench Multan and the same was returned vide order dated 6.7.2009 with the direction to institute the same in the Federal Shariat Court Pakistan. Hence, the delay in the institution of the aforementioned appeal is condoned.

14. A bare perusal of the FIR would reveal that the occurrence took place at 'peshiwela' (afternoon) on 12.8.2003 whereas, the FIR was got recorded at 9.30 p.m on 12.8.2003 i.e after a delay of about 7/8 hours. Ghulam Ali/complainant while appearing as P.W.7 admitted in his cross-examination that after seeing the dead bodies, he proceeded to his own house from the place of occurrence instead of the police station and left for the police station only after arrival of his relative from Chak No.80/TDA. The complainant/P.W.7 during the course of his cross-examination also admitted that the dead bodies were searched from the sugar-cane at 'Ishawela' in the presence of 20 to 30 persons whereas, not only in the FIR but also in his statement as P.W.7, the complainant along with his son Abdul Rehman/P.W.8 and brother Noor Muhammad or Gul Muhammad (not produced) statedly saw the accused digging the earth and burying the dead bodies of Mst.Muradan and Mst. Kalsoom in the mud at 'peshiwela' (afternoon). P.W.7 and P.W.8 not only identified the dead bodies but also took them out of the mud in the afternoon of 12.8.2003. Such an un-explained delay in lodging of the FIR would lead to inference that occurrence was un-witnessed and the complainant availed enough time to deliberate, consult and fabricate a false story. Even the post mortem examination of the deceased ladies was conducted on 13.8.2003 at 1.00 p.m i.e after approximately 22to 28 hours of the death. In this back drop the possibility cannot be ruled out that the intervening period could have been consumed by the complainant for concocting a story in consultation with his relatives to falsely implicate the present appellants as there was no eye witness of the murder of the two ladies/Mst. Muradan and Mst.Kalsoom. In this regard, the following portions of the statements of P.W.7/complainant/Ghulam Ali and P.W.9/Atta Hussain,S.I who was the I.O of this case, are extremely relevant:

P.W.7

“We have not seen at what place deceased were done to death, however ,dead bodies

were recovered from the aforesaid sugar-cane crop. We do not know at what time deceased were done to death by the accused.”

P.W.9

“Correct time and place of murder of deceased did not come in to my notice during investigation and witnesses could not point out the same.”

Admittedly, the other eye witness i.e P.W.8/Abdul Rehman had also not seen the accused/present appellants committing the murder of Mst.Muradan and Mst.Kalsoom. Hence, it is established from the record that no one had seen the accused/present appellants committing ‘qatle-amd’ of Mst.Muradan and Mst.Kalsoom. The mere allegation that the present appellants were seen digging the earth and burying the dead bodies of Mst.Muradan and Mst.Kalsoom in the mud is not sufficient to hold that the said two ladies were actually murdered by the present appellants. At the most, it could be a presumption and it is a settled principle of law that no accused could be convicted unless strong ocular or circumstantial evidence is available on record to prove his guilt. Needless to mention there that benefit of doubt is to be given to an accused as matter of right and not as a matter of grace.

15. We are further strengthened in arriving at this conclusion by the submissions made by the learned counsel for the complainant as well as the learned Prosecutor, who argued that two women could not be murdered by one person in the manner narrated by the prosecution witnesses. Nevertheless, not only two accused/appellants namely Arshad Munir and Waseem Ahmad were declared innocent during investigation but also acquitted by the learned trial court. The acquittal of the aforementioned two accused, who were allegedly seen by P.W.7 and P.W.8 committing the same act would adversely affect the credibility of the witnesses and creates a serious dent in the prosecution story. It is significant to mention here, that the case of the convicted accused/Shahnawaz could not be distinguished from the acquitted co-accused namely Arshad Munir and Waseem Ahmad. The Hon’ble Supreme Court of Pakistan in the case of **(Akhtar Ali and others Vs. The State)** reported in **2008 SCMR-6** has laid down that credibility of ocular evidence was not divisible and the accused could not be convicted on the basis of same evidence without any independent corroboration. The complainant/Ghulam Ali had cited his real brother Noor Muhammad(mentioned as Gul Muhammad by P.W.8) as an eye witness of the incident but he was not produced and given up by the Prosecutor as being un-necessary, for reasons best known to them and this has also made the prosecution story doubtful. Hence, the ocular account of the occurrence furnished by the prosecution is not trust worthy or confidence inspiring and the accused/present appellants could not have been convicted on the basis of a such inherently weak and improbable prosecution story.

16. Now adverting to the medical evidence produced by the prosecution in this case, we are constrained to observe that according to the statement of P.W.5/Dr.Sirtaj Tirmazi, fatal injuries to Mst.Muradan and Mst.Kalsoom were caused by sharp-edged weapon, the head of Mst.Kalsoom Mai was found separated from the rest of her body. No doubt, P.W.9 stated

that Shahnawaz/appellant while in police custody led to the recoveries of 'sota' Ex.P/7 and 'kassi' Ex.P/8 on 24.8.2003, which were taken into possession vide recovery memo Ex.PM and attested by P.Ws Hafiz Muhammad Ameen and Ghulam Haider. However, neither the said 'kassi' Ex.P/8 was sent to the Chemical Examiner or Serologist for detection of human blood nor there is any irrebuttable evidence on record to prove that the injuries sustained by Mst.Muradan and Mst.Kalsoom could be caused by a 'kassi' particularly, when the edges of wounds show that it was a case of smooth and clean cutting. Further-more, P.W.5/ Dr.Sartaj Tirmazi admitted in her cross-examination that injury No.2 found on the body of Mst.Kalsoom could be caused by a forceful blow of dagger or 'churry' and injuries No.3 to 5 in the case of Mst.Muradan were of simple nature and could be caused by 'churry', knife (light weight sharp edged weapon). We are also not convinced that injury No.1 sustained by Mst.Kalsoom Mai (i.e'Head separated from the rest of the body by "sharp cut" from left side of the neck toward the right side and cutting the whole neck at the level of 3rd cervical vertebra) could be inflicted by the weapon of offence i.e 'sota' Ex.P/7 and 'kassi' Ex.P/8 allegedly recovered from the accused Shahnawaz, which were not found to be blood stained. It is also significant to observe that P.W.5 admitted that there was difference of time in the murder of Mst.Muradan and Mst.Kalsoom due to absence of rigor mortis on the dead body of Mst.Kalsoom. We also cannot ignore the statement of P.W.5/Dr.Sartaj Tirmzi wherein she categorically stated that no sexual intercourse was committed with both the victims. She also explained that without group matching of semens, criminal liability of a particular person cannot be fixed. Even otherwise in this case, according to the report of the Chemical Examiner(Ex.P.O), the vaginal swabs were not found to be stained with semen.P.W.5 has also gone to the extent of observing that Mst.Kalsoom Mai, who was unmarried at the time of her murder, was accustomed to sexual intercourse and her hymen was not intact. P.W.5 also did not find any sign of violence on the private part of the victims or any element of struggle or resistance on the part of the deceased ladies. In these circumstances, we are of the considered view that the ocular account of the incident is not at all corroborated by the medical evidence.

17. As far as the recovery of articles belonging to the deceased ladies i.e golden ear rings(P/9) a nozzle pin of gold(P-10), one piece of shoes of each deceased (P/11 and P/12) and a 'doppatta' Ex.P/13) from the convicted accused/Shahnawaz by P.W.9 is concerned, the same cannot be relied upon for maintaining conviction of the said accused as there was no mention in the FIR or in the statements of the prosecution witnesses that the deceased ladies were wearing the aforementioned ornaments. Furthermore, the said articles were never got identified by the I.O from the complainant or any other witness. Additionally, the said articles belonging to the deceased ladies were not only recovered at a belated stage of physical remand of the convicted accused/Shahnawaz but also from muddy wet surface of sugar- cane field. The aforementioned articles were not even sent to the Chemical Examiner or the Serologist for detection of blood. The earth, which was collected by the investigating officer from the place of occurrence and found to be stained with blood by the Chemical Examiner, is also of no help to the prosecution as admittedly, there was water/mud in the

sugar-cane field, where-from, the dead bodies of Mst.Muradan and Mst.Kalsoom were digged out. Hence, the alleged recoveries from Shahnawaz/appellant did not connect him with the commission of the offence of murder of Mst.Muradan and Mst.Kalsoom. In this regard, we would like to refer to the judgments reported in 1983 SCMR-428(Arif Hussain and another Vs. The State) and N.L.R 2004, Criminal-676(Muhammad Abdullah Vs.The State).

It is pertinent to mention here that the deceased ladies had gone for grass cutting but no sickles were recovered from the place of occurrence by the I.O.

18. As far as the motive for the alleged occurrence advanced by the complainant, is concerned, we would like to observe that the motive is a double edged weapon which cut both ways. Enmity can prompt a person to commit crime but also on the other hand, could be used for false implication in a case. In the instant case, it has been established from the ocular account as well as the medical evidence that the deceased ladies were not subjected to sexual intercourse(zina). Similarly, there is no evidence available on the record that the accused attempted to commit 'zina' with the deceased ladies and on their refusal the accused/ present appellants committed the 'qatl-e-amd' of Mst.Muradan and Mst.Kalsoom.

19. Having discussed the above aspects of this case, we are left with the last charge against the present appellants i.e commission of an offence Section 201 PPC. In this context, it would be advantageous to reproduce hereunder section 201 PPC alongwith illustration:

“Sec.201. Causing disappearance of evidence or offence, or giving false information to screen offender: Whoever, knowing or having reason to believe that offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.

If a capital offence: shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life: and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years imprisonment: and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence or with fine; or with both.

Illustration: A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years and also to fine.”

A plain reading of the aforementioned section of P.P.C would reveal that three ingredients are essential to constitute the said offence (i) knowledge (ii) commission and (iii) intention. It is worth while to mention here, that the prosecution has miserably failed to prove that who has actually murdered Mst.Muradn and Mst.Kalsoom, therefore, the present appellants cannot be held to have the knowledge of the offence and the intention of screening the offender from the legal punishment. The murder of Mst.Muradan and Mst. Kalsoom was admittedly un-witnessed and shrouded in mystery and as such, the provision of section 201 PPC could not be applied to the accused/present appellants. The entire case of the prosecution hinges upon the allegation that P.W.7 and P.W.8 had seen the accused/present appellants digging the earth from the sugar cane crop field and burying the dead bodies of Mst.Muradan Mai and Mst.Kalsoom Mai in the mud. Suffice to observe, that the field of the above mentioned sugar cane crop was visible from the nearby ‘katcha’ road as well as the brick-kiln, where people were normally present. No man of ordinary prudence what to talk of a criminal, would pick up courage and take the risk of burying dead bodies of the two women at such like place and that too at ‘peshiwela’(afternoon)in day light. Similarly, the accused who were allegedly trying to bury the dead bodies in wet muddy field could not escape from the place, without leaving their identifiable foot prints. Even otherwise, the complainant has alleged that the present appellants committed the murder of Mst.Muradan and Mst.Kalsoom and it has been held in PLD 1963 Peshawar-178 that the murderer him self trying to screen the offence and remove the evidence cannot be convicted under section 201 PPC.

20. In addition to the aforementioned weakness of the prosecution case, there are flagrant discrepancies in the statements of the star witnesses of this case i.e.P.W.7 and P.W.8. In as much as that P.W.7/complainant admitted that he was not present in the house at the time when his daughter and wife had gone out for cutting grass, whereas, the real son of the complainant namely Abdul Rehman while appearing as P.W.8 specifically stated that he along with his father/Ghulam Ali/P.W.7 was present in the house when his mother Mst. Muradan Mai and sister/ Mst.Kalsoom went on a donkey cart for cutting grass from the sugar cane crops of Ghulam Abbas Smethia. It is also highly doubtful whether a donkey cart could come back without any person after traveling a distance of 1 or 3/4 miles.

21. The upshot of the above discussion is that the prosecution case is pregnant with serious doubt and full of contradictions. The circumstances of this case strongly militate against the correctness of the prosecution story and the same is highly undoubtedly improbable. We would like to observe that finding of guilt should only be rested surely and firmly on the evidence produced in the case and plain inference that may irresistibly be drawn from the evidence. If a criminal case is to be decided merely on surmises and conjectures or high probabilities to prove the guilt of an accused, the golden rule of benefit

of doubt to the accused which is deep-rooted in our country and has been dominant feature of administration of justice with consistent approval of this Court, will be reduced to naught.

22. The case of Shahnawaz/appellant is at par with the case of co- accused/Arshad Munir and Waseem Ahmad, who have been acquitted by the learned trial court from the charge of commission of 'qatl-e-amd' of Mst.Muradan Mai and Mst.Kalsoom. The conviction of the appellants under section 201 PPC is also not sustainable under the law. There is no legal ground for accepting the appeal of the complainant for recording the conviction of Arshad Munir and Waseem Ahmad under section 302-B PPC and under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The learned trial court erred in law while recording the conviction of the appellant/Shahnawaz under section 302-B read with section 34 PPC as well as section 201 PPC. Resultantly, the convictions of the appellants recorded and sentences awarded thereof by the learned trial court are set-aside. Consequently, the criminal appeal No.77-L-2009 filed by Shahnawaz/appellant and criminal appeal No.85-L-2009 filed by appellants/Arshad Munir and Waseem Ahmad are allowed. Appellants/Arshad Muir and Waseem Ahmad present on bail, their bail bonds are discharged. Appellant/Shahnawaz is in jail, he be released forthwith, if not required in any other case.

23. Criminal Appeal No.65/L of 2010 filed by complainant/Ghulam Ali against acquittal of appellants from charges under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.section 302 read with section 34 PPC is dismissed.

24. Murder Reference No.11-I-2009 is answered in Negative and the sentence of death awarded to Shahnawaz by the learned trial court is not confirmed.

These are the reasons for our short order dated 27.8.2013.

JUSTICE SHEIKH AHMAD FAROOQ

JUSTICE RIZWAN ALI DODANI

JUSTICE SHAHZADO SHAIKH

Lahore, 29.8.2013

Approved for reporting.

JUSTICE SHEIKH AHMAD FAROOQ

IN THE FEDERAL SHARIAT COURT**(Revisional Jurisdiction)****PRESENT****MR.JUSTICE SHAHZADO SHAIKH****MR. JUSTICE RIZW AN ALI DODANI****CRIMINAL REVISION N0.15/I of 2004**

Mst. Nasreen Akhtar d/o Muhammad Iqbal Appellant

Caste Mair Minhas, r/o Dhok Harrar, near
Mona, Tehsil & District Chakwal

1. Hasnain Mehdi s/o Mehdi Hassan, Respondents
caste Sheikh, Proprietor of Anayat
Shoes, Chappar Bazar, Chakwal
2. Khalid Awan s/o Abdul Ghafoor r/o
Mohallah Dhok Feroz, Chakwal
3. Ishaq Hasrat s/o Unknown, Colum
Nigar, Other side Baldia Plaza,
District Chakwal
4. Mukhtar Ahmed, ASI (CIA) Staff District Chakwal
5. Ghulam Ahmed s/o Ghulam Rasool,
Ex-H C Police, r/o Dhok Momin, Chakwal
6. Aziz Ullah@ Till Wala, CIA Staff, Chakwal
7. Khalid Mehmood , constable, CIA Staff, Chakwal

Counsel for the petitioner	...	Mr. Ansar Nawaz Mirza, Advocate
Counsel for the respondent	....	Mr. Sakhi Muhammad Kahot, Advocate
Counsel for the State	....	Mr. Ahmad Raza Gilani Addl. Prosecutor General

CRIMINAL REVISION NO. IS/I of 2004

Hudood Private	....	06 of 1996
Complaint No.		
Date of Trial Court Order/Judgment	....	09-06-2004
Date of Institution of Revision	....	08-07-2004
Date of hearing	....	09.02.2012
Date of decision	....	09.02.2012

JUDGMENT:

Justice Shahzado Shaikh, J: - This revision has been moved by petitioner Mst. Nasreen Akhtar against the impugned order dated 09.06.2004 delivered by learned Additional Sessions Judge, Chakwal whereby the Court declined to issue process against the respondents namely 1. Hasnain Mehdi 2. Khalid Awan 3. Ishaq Hasrat 4. Mukhtar Ahmed 5. Ghulam Ahmed 6. Aziz Ullah and 7. Khalid Mehmood for Zina Bil Jabbar and as a result the Hudood private complaint No. 06 of 1996 filed by the petitioner was dismissed.

2. Brief facts of the case are that on 28.3.1996 a private complaint under sections 10(3) and 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 read with sections 166/167/, 165/163, 342/348 and 109 Pakistan Penal Code was filed by Mst. Nasreen Akhtar in the Court of Sessions Judge, Chakwal wherein, it was alleged that 5/6 days prior to 30.5.1995 the complainant alongwith her daughter namely, Mst. Rozina Shaheen, aged about 15/16 years had gone to Chappar Bazar, Chakwal for shopping. When they passed in front of the shop of Hasnain Mehdi, the respondent No.1, which was run by him in the name and style of "Inayat shoes", they were called and persuaded to enter the shop by the said respondent on the pretext that they may purchase shoes from him. On entering the shop they found that Ishaq Hasrat and Khalid Awan respondents were also present in the shop. The afore-named accused persons started teasing the complainant as well as her daughter and in the process caught hold of Mst. Rozina from her breasts. On the resistance offered by the complainant the accused persons insulted both the ladies and pushed them out of the shop. The complainant on returning to her house narrated the entire incident to her uncle namely, Ashraf with whom she, at the relevant time, was living but her uncle showed his inability to take any action against the culprits because of their influence. It was further alleged in the complaint that on 30.5.1995, in the evening, Mukhtar A.S.I. of CIA police Chakwal alongwith Azizullah Tilwala and Khalid Mahmood reached at Dhoke Hareer where, the complainant, was residing. They had already hauled up Khalid Mahmood preliminary witness, who happened to be the nephew of her uncle Ashraf. They arrested the complainant/Petitioner and also her daughter Mst. Rozina and took them to Dhoke Momin District Chakwal. The petitioner and her daughter were confined in the Chobara of the house of Constable Ghulam Ahmad. Khalid Mehmood was taken away by them whereas, Ghulam Ahmad besides, keeping a watch on them, also tried to get their thumb impression on a blank paper and ultimately succeeded in doing so. On 31.5.1995, in the evening, they took the appellant and her daughter to CIA police station where Hasnain Mehdi respondent No.1, Muzaffar Abbas, Khalid Awan respondent No.2 and Ishaq Hasrat respondent No.3 were already present. It was further alleged that on 31.5.1995 Mukhtar Ahmad, ASI Hasnain Mehdi, Ishaq Hasrat and Khalid Awan respondents took away Mst. Rozina to the house of said Ghulam Ahmad on the pretext that she would be kept at a safe place. On 01.06.1995 there arose a dispute between CIA and the police regarding registration of the case and, as a result, the complainant and Khalid Mahmood were set at

liberty. After her release the appellant searched for her daughter but in vain. She also made applications to the police as well as Executive Officers but all remained unfruitful. It was alleged that after some days petitioner's daughter reached her house and disclosed that she on 31.5.1995 and 1.6.1995 was subjected to Zina-bil Jabr by Hasnain Mehdi, Ishaq Hasrat, Khalid Awan and Mukhtar, ASI etc. It was further alleged in the complaint that despite applications, sent to high officials the case was not registered. However, taking notice of the news items Deputy Commissioner, Chakwal ordered for an inquiry which was conducted by Mr. Mobeen Alsam, Magistrate First Class, Chakwal. Inquiry report dated 18.6.1995 was later on forwarded to Superintendent Police for necessary action. Since no action, in pursuance of the inquiry report was taken, the petitioner was left with no option but to file the complaint. After holding the preliminary inquiry and recording statements of some of the witnesses the Additional Sessions Judge, Chakwal, to whom the case was made over for trial by the Sessions Judge, dismissed the complaint vide order dated 24.4.1996.

3. Being aggrieved, the petitioner filed a Criminal Appeal No.206/I of 1996 (Mst. Nasreen Akhtar Vs. Hasnain Mehdi etc) before the Federal Shariat Court on 19.6.1996 wherein Hon'ble Mr. Justice Ch. Ejaz Yousaf, the then Acting Chief Justice passed following directions:-

“We deem it appropriate to remand the case to the learned trial Court with the directed that first, statements of the rest of the witnesses, whose name have been mentioned in the scheduled of witnesses annexed with the complaint, be recorded and thereafter the complaint be proceeded with, in accordance with law.”

4. In compliance with the above mentioned directions the learned trial court recorded the statements of Khawaja Babar Saleem, Muhammad Ashraf and Dr. Munira Jalil and after recording the statements passed following observations:

“According to the contents of FIR and the preliminary evidence of victim, as well as complainant zina-bil Jabbar was committed with her by the respondents on the nights of 31.5.1995 and 1.6.1995 and according to them she menstruated after that; thereafter, no allegation of sexual abuse regarding zina-bil-jabbar has been leveled and according to the evidence on file, after that they fondle and molest her till 10.6.1995; whereas, admittedly the victim is a deserted woman having no access to her husband; whereas, according to her medical examination report Ex.PB read with the statement of Lady Doctor Munira Jalil, semen stained swabs were sent to Chemical Examiner and according to his report No.846/S dated 21.6.1995 they were found stained with semen; whereas, as stated above she menstruated on 2.6.1995 and her medical examination was conducted on 14.6.1995; therefore, the positive report after more than 13 days and especially after menses suggest something else. This report further states that no marks of violence were

found on the body of the victim; whereas, according to her, she was gang raped by seven persons and in such like situation non-observance of marks of violence do not support the complainant's allegations, regarding gang rape, by as many as seven persons."

5. We have heard Mr. Ansar Nawaz Mirza, Advocate learned counsel for the petitioner Mst. Nasreen Akhtar, Mr. Sakhi Muhammad Kahut, Advocate learned counsel for respondents and Mr. Ahmad Raza Gilani as well as Ch. Muhammad Sarwar Sidhu, Additional Prosecutors General, Punjab and have also gone through the relevant record with their assistance.

6. Mr. Ansar Nawaz Mirza, Advocate learned counsel for the petitioner contended that findings of trial Court regarding no offence under section 10 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979, are not proper in law as the trial Court has not properly appreciated the evidence and has decided the case, which suffers badly from non reading and mis-reading of the evidence, being based on conjectures and surmises; the medical evidence as well as report of the chemical examiner are in line; that the trial court went into deeper and minute examination of the case at the stage of preliminary hearing which is permissible under the law; there was no option with the trial Court for non issuance of process against the respondents, and the learned trial Court ignored clear directions of this Court to proceed according to law. Learned counsel for the petitioner relied upon following case law:-

"The Court is not expected to examine the material minutely whereas at the stage of trial it appraise the evidence thoroughly and record its findings on the basis of such appraisal and that any benefit of doubt arising out of such inquiry should be given to the accused. *It is not the stage where a material available on the record is assessed in depth but a prima facie case has to be made out to proceed further with the matter for issuance of the process. The burden of proof in a preliminary inquiry for the issuance of process is quite lighter on the complainant as compared to the burden of proof on prosecution at the trial an offence as the prosecution is to prove the case beyond reasonable doubt and at the preliminary stage the complainant is not required to discharge above heavy burden of proof.* The Court cannot overstretch the proceedings as to convert the preliminary inquiry or the averments made in the complaint to a stage of full-fledged trial of the case. (PLD 2007 SC 9).

"The proceeding under section 204 or 203 depends upon the existence or non-existence of sufficient ground which have been taken by the Courts as the existence of prima facie case, the two expressions i.e., the existence of *sufficient ground* and *prima-facie case* have been construed by the Courts interchangeably." and

"If a complaint is made before the Court, it is *only to see the existence of a prima facie case* either on the basis of averments made in the complainant and the statement

of the complainant on oath or on the basis of an inquiry if the Court thinks fit to hold an inquiry in order to ascertain the truth or falsehood of the complain. The order of the trial Court in the instant case has fully met the requirements of law by holding the existence of a prima facie case after which the process were issued.”

(Sher Sing Vs. Jetendranath Sen AIR 1931 Cal. 607 rel.)

7. Mr. Sakhi Muhammad Kahut, Advocate learned counsel for respondents contended that learned trial Court has properly appreciated the entire evidence available on the record; there is no mis-reading or non-reading in this case; the learned trial Court recorded the evidence even of those witnesses who were called under the directions of this Court; hence order dated 9.6.2004 passed by learned trial Court is proper, with justification, and meets the ends of justice. The impugned order of the learned trial Court should be upheld as the petitioner has come before this Court to save herself from the proceedings of Qazaf.

8. Mr. Ahmad Raza Gilani, Additional Prosecutor General, Punjab argued that trial Court had not adopted proper procedure under the law and recorded the statements in mechanical manner at that stage, in great depth and ignored the clear directions of this Court as passed in judgment of Cr. Appeal No.206/I of 1996 at the time of remanding the case. Learned trial Court has also violated the actual spirit of section 200 of Code of Criminal Procedure; the learned trial Court should have seen prima facie to dispose of the complaint on the bases of sufficient ground brought before it on the record.

9. Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General, Punjab, also assisted the Court, supported the impugned order and stated that learned trial Court adopted exact procedure of law and complied with the directions of this Court and proceeded the case according to law; no illegality has been committed by learned trial Court at the time of passing of impugned order.

10. In the above noted circumstances, discussions, and the law/case law, the following, inter alia, need to be considered:

Section 200 of Cr.PC. on **Examination of Complainant, provides** as follows:

“Section 200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:

(a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complaint before transferring the case under section 192 1 {or sending it to the Court of Session}

{(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complainant has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties;}2

(b)

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.”

Evidence in its broader sense includes all that is used to determine the truth with certitude. Evidence is currency by which burden of proof is discharged..Evidence in law comes through formal process for assertions:

- (i) presumed to be true,
- (ii) to be proven to demonstrate truth.

There are some important *burden-of-proof* considerations:

1. on whom the burden rests: burden of sufficiency of ground on complainant, and burden of proof of evidence on prosecution;.,
2. extent of the burden,
3. stage, as to whether it is received as a complaint or registered as a case,
4. degree of certitude of proof:
 - (i) most probable,
 - (ii) reasonable doubt, or
 - (iii) beyond shadow of doubt.
5. nature of assertion or point under contention.

Important distinction in evidence needs to be made:

- (a) what suggests truth, as opposed to
- (b) evidence that directly proves the truth.

11. This line may appear to be less clear. Therefore, what suggests truth, *prima facie*, on *apparent sufficiency of ground*, may be accepted as starting point to strive through formal course to find the truth.

For more clarity, following may be noted that:

- (i) as a starting point, it is not the *sufficient proof of evidence* but *sufficiency of ground* to issue the process,
 - (ii) prosecution has to *prove its case beyond reasonable doubt, at the trial,*
- but**
- (iii) *sufficient proof beyond any shadow of doubt* is required for awarding *punishment.. , .*

Complaint does not provide sufficient evidence, itself. At the complaint stage:

- (i) burden of complainant is to provide *sufficient ground* of its grievance,
- (ii) at the trial, burden of proof is the burden of providing sufficient evidence.

12. *Burden of proof at the stage of complaint and in preliminary inquiry for the issuance of process is quite lighter* on the complainant as compared to the burden of proof on prosecution at the trial, i.e., to prove the case beyond reasonable doubt. *At preliminary stage, complainant is not required to discharge burden of proof, in this heavy manner.*

13. Whoever does not carry heavy burden of proof carries benefit of assumption. Whoever bears burden of proof must present sufficient evidence to prove his assertion. At the trial, burden of proof must be fulfilled both by establishing positive evidence and negating defending assertions.

In this connection, following may also be considered:

“Proceedings under S. 204 or 203, Cr.P.C, depend upon existence or non existence of sufficient ground which had been taken by the Court as the existence of prima facie case. Prosecution is to prove case beyond reasonable doubt and at preliminary stage complainant is not required to discharge heavy burden of proof. [PLD 2007 S.C. 9] Non registration of FIR does not bar filing of private complaint. [2008 P.Cr.L.J. 11]”

“Examination of complainant—Not sine qua non of valid proceeding. [PLD 1966 S.C. 178]”

“Reliance may be placed by Court even upon sole testimony of complainant but same would depend upon circumstances of each case. [NLR 1998 Cr. (S.C.) 454]”

“Preliminary proceedings—Purpose behind the exercise of preliminary proceedings

is to find out truth or falsehood of the accusations made in the complaint to be examined on the basis of evidence to be adduced by the complainant. Person accused have no right of participation, until cognizance of the matter is taken and accused is summoned. [PLD 2002 S.C. 687]”

14. In Criminal Appeal No.206/I of 1996 (Mst. Nasreen Akhtar Vs. Hasnain Mehdi etc) before the Federal Shariat Court on 19.6.1996, Hon’ble Acting Chief Justice had directed that “**first**, *statements of the rest of the witnesses*, whose name have been mentioned in the scheduled of witnesses annexed with the complaint, *be recorded* and **thereafter** the **complaint be proceeded with, in accordance with law.**”

15. In view of the above position of law and above directions of this Court, in this regard, the learned trial Court was required to look into veracity (believability, truthfulness), and ‘sufficiency (capability) of evidence’, “prima facie”, which could lead towards attaining accuracy in the account (proof of facts and circumstances). “Appreciation of evidence” was the subsequent step, which could be ensured only through process, proceedings and trial by the trial Court itself under the law and procedure in that respect.

16. In this case, as is evident from the impugned order, the subsequent part of “appreciation of evidence” has also been under taken on the basis of whatever became available on record before the learned trial Court, which was prima facie considered sufficient, without examination and strict procedure of proof to arrive at the final conclusion.

17. For what has been discussed above the order of the learned Trial Court dated 09.06.2004 is set aside. Resultantly case of the petitioner shall be deemed to be pending before trial Court for decision, in remanding position. Learned trial Court is directed to proceed further under the procedure of law after appreciation of evidence and proper trial as the fate of the other pending case regarding Qazaf also depends upon this case. We are sanguine that the trial Court would decide this case within a period of six months after adopting the required procedure under the law.

18. The learned trial Court is further directed to call for the death certificate of father of respondent Aziz Ullah who did not appear today i.e. 9.2.2012 before this Court, on the plea that his (Azizullah’s father) had died immediately before that date 9.2.2012 as reported in writing by respondent Mukhtar Ahmed. The office will send a copy of this application to the learned trial Court.

19. Respondent Aziz Ullah remained absent on the following dates of hearing, in spite of Notice:

24.8.2010

11.3.2011

12.1.2012

On the last date of hearing respondents were not present before this Court and bailable warrants were issued against them. It has been observed that said bailable warrants were not promptly/properly executed on the respondents as report in this regard was not returned. However, respondents, except Azizullah, who were present before Court, today, stated that bailable warrants have not been executed and bonds were also not taken from them. They appeared before this Court on receipt of notice only.

20. The office should write to District & Sessions Judge concerned to enquire about the factual position about compliance of this Court order dated 12.1.2012.

Justice Shahzad Shaikh

Justice Rizwan Ali Dodani

Dated:- Islamabad, the 9th February, 2012

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

MR.JUSTICE SHAHZADO SHAIKH
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH AHMAD FAROOQ

SHARIAT PETITION NO.53/I OF 1991

Ch. Irshad Ahmad, Additional Draftsman, Petitioner
Ministry of Law and Justice Islamabad

Versus

Federation of Pakistan through Respondent
Secretary M/O Finance, Islamabad

Counsel for the Petitioner Nemo

Counsel for the State Nemo

Counsel for Federation of Pakistan Nemo

Date of Institution 29.07.1991

Date of hearing 16.10.2012

Date of decision 16.10.2012

JUSTICE SHAHZADO SHAIKH, J:- Shariat Petition No.53/I/1991, was filed by Ch. Irshad Ahmad whereby he challenged Sub-section (3) of Rule 16 of the Revised Leave Rules, 1980 added by Notification No.F.1(8)-R4/89 dated 30.05.1991 of the Government of Pakistan in the Finance Division. The petitioner stated in his petition that Rule 16 of the Revised Leave Rules 1980, before it was amended on 30.05.1991, provided that the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days. By a new sub-rule (3) added to the said rule by notification dated 30.05.1991 an officer of BPS 21 or 22 who opts to retire voluntarily has been made entitled to leave preparatory to retirement equal to the entire leave at his credit. Since the new sub-rule would apply discriminately and hence it is repugnant to the Injunctions of Islam as expounded by the Honourable Supreme Court in its judgment in case Pakistan versus Public at Large reported as PLD 1987 S.C. 304. The Honourable Supreme Court in the said judgment taking notice of the application of different provisions of the Civil Servants Act, 1973 for different categories of Government employees held:

“It is clear from various Injunctions of the Quran that adal, qist and ehsan are the components of total and complete justice in Islam. It requires not only equal treatment between man and man but also protects the rights of one against unfair treatment (p.329).”

The Apex Court also held:-

“....the appearance of being arbitrary and subjective and this is what is repugnant to the concept of a delegated power held in trust (page 364-365).”

At page 373 of the report the findings are:

اِس قانون سے قانون مساوات کی نفی ہوتی ہے

The petitioner has prayed that this Court may declare Sub-rule (3) of rule 16 of the Revised Leave Rules, 1980, as repugnant to the Injunctions of Islam or its application may be extended to all categories of Government employees.

2. The impugned Notification No.F.1(8)-R.4/89 dated 30th May, 1991 contains the provision as under:

“.....In the aforesaid rules, in rule 16, after sub-rule (2) the following new sub-rule be added, namely:-

“(3) An officer of BPS 21 or BPS 22 who, on or after the 19th day of

February, 1991, opts to retire voluntarily after he has completed twenty-five years of service qualifying for pension may be granted leave preparatory to retirement equal to entire leave at his credit in his leave account on full pay or till the date on which he completes the sixtieth years of his age, whichever is earlier;

Provided that such officer shall not be entitled to conversion of leave preparatory to retirement on full pay under rule 6 into leave on half pay”

3. This petition (Sh. Petition No.53/I of 1991) was admitted to regular hearing on 17.12.1991 and the respondent/Federation of Pakistan was directed to file written statement.

4. The Federation of Pakistan submitted para-wise comments, as under:-

“It is stated that in a meeting held on 08.01.1990 regarding recruitment (Page 61 of petition) from less developed regions through lateral entry, the Prime Minister was pleased to observe the desirability of providing incentives to senior civil servants to proceed on Leave preparatory to Retirement (LPR) after completion of 25 years service. Accordingly, a Committee was set up under the Chairmanship of the then Deputy Chairman, Planning Commission to recommend a *package* of measures, inter-alia, as an incentive to the civil servants particularly at *Senior levels* who have completed 25 years service to *proceed on LPR voluntarily*. As a result the Committee in its report, among others recommended that “maximum limit of three hundred and sixty five days of LPR will be relaxed in their case. Leave at full pay will be calculated at 4 days per month of service, less leave on full pay available during the service. The balance would be allowed as LPR on full pay”.

(2). On the basis of recommendations of the Committee, the Prime Minister was pleased to approve the proposed package of incentive of retirement benefits to the superannuating and *additional incentives for civil servants of BS-21 and BS-22 who desire to proceed on retirement on completion of 25 years of service w.e.f. 19-02-1991*.

(3). The *above mentioned incentive as Sub Rule (3) of Rule-16 of the Revised Leave Rules, 1980 was added* vide Notification No.1(8)R-4/89 dated 30.05.1991.

(4). According to Rule-16(1) of the Revised Leave Rules 1980, a civil servant may be granted Leave Preparatory to Retirement (LPR) upto maximum period of three hundred and sixty five days at the *uniform rate from BPS-1 to BPS-22 without any discrimination*.

(5). Under Rule-16(2) of Revised Leave Rules 1980, LPR is granted *subject to availability either on full pay or partly on full pay and partly on half pay, or entirely on half pay at the discretion of the civil servant* (comments filed by Federal Government, Page 62 of petition). Here a civil servant enjoys his discretion to avail LPR as may be applied for, opted and classified depending

- on the availability of leave at his credit. This Sub Rule negates a civil servant to be treated discriminately (comments filed by Federal Government, Page 62 of petition).
- (6). As stated by the petitioner, the Sub Rule (3) of Rule-16 of the Revised Leave Rules 1980 is neither discriminatory nor repugnant to the Injunctions of Islam, rather manifold conditionalities are imposed to this provision extended to officers of BS-21 or BS-22 who, on or after the 19th date of February 1991, opted to retire voluntarily. At par with other Government servants, officers of BS-21 or BS-22 have to complete 25 years of service qualifying for pension for grant of leave preparatory to retirement (LPR) equal to entire period of leave at their credit in the leave account on full pay or till the date on which they complete their 60th years of their age, which ever is earlier.
 - (7). All Government servants have to complete 25 years of qualifying service for pension and the same condition is applicable to the officers of BS-21 or BS-22, which means that there is no discrimination involved in the limit of 25 years and no Government servant can opt to retire before the completion of 25 years of qualifying service.
 - (8). Further, the grant of leave preparatory to retirement (LPR) to an officer of BS-21 or BS-22 is also confined to the date on which he attains the age of superannuation i.e. 60th year of his age.
 - (9). Apparently It is being considered that an absolute privilege is available to an officer of BS-21 or BS-22 regarding the entire leave at his credit, however, a proviso exists in the case of officers of BS-21 or BS-22 under Rule 16(3) of the Revised Leave Rules, 1980. According to the proviso, an officer of BS-21 or BS-22 is not entitled to conversion of leave on full pay into leave on half pay under Rule-6 of the Revised Leave Rules, 1980. (Page 62 of petition).
 - (10). The critical analysis of the petition helps to understand that the case where an officer of BS-21 or BS22 is availing this provision as in the opinion of the petitioner, also involves a number of conditionalities. The Sub Rule (3) of Rule-16 of the Revised Leave Rules, 1980 is not in any way discriminatory, contradictory and repugnant to the injunctions of Islam.
 - (11). The petitioner has emphasized that most of the provisions of the Revised Leave Rules, 1980 have areas where the other Government servants are being discriminated except an officer of BS-21 or BS-22. As regards the contradiction of these Rules to the injunctions of Islam, it is worth mentioning here that Islam, being a complete code of life is maintaining such distinctions to carry on well the course of life. The study of Islamic History reveals that the Holy Fighters of *Jang-e-Badr*, *Ohd* and *Khundak* enjoyed special privilege one over the other with regard to the Stipends.

- (12). The Committee came to the conclusion that the increasing *reluctance to proceed on retirement* has its roots in the sharp decline in the earnings levels by proceeding on pension. This decline is particularly acute at the level of 20, 21 & 22 Grades because some of the benefits like rental support and free transport do not count for pension, nor do some of the allowances e.g. Secretariat Allowance, Entertainment Allowances, Orderly Allowance, etc. Hence, if the officers of BS-21 or BS-22 were offered such a provision for *voluntary retirement after 25 years service as compared to other Government servants on the basis of their seniority and senior posts benefits as a policy measure, there is no discrimination* with regard to the Rule 16 (3) of the Revised Leave Rules, 1980.

The prayer of the Federation of Pakistan is that the present Shariat Petition having no valid and clear ground and support of rules, this Court may kindly dismiss the petition.” (Page 63 of petition).

5. The Finance Department Government of Punjab vide No.FD (SR-II)2-125/06 dated 31st March, 2007 submitted their views as under:-

<u>View Point of the Petitioner</u>	<u>View Point of Finance Department Government of the Punjab.</u>
<p>(1) Ch. Irshad Ahmad:</p> <p>Sub Rule (3) of Rule 16 of Revised Leave Rules 1980 of Govt of Pakistan is discriminatory as entitles only to the officers in BS 21 & BS 22 leave Preparatory to Retirement equal to the entire leave at his credit.</p>	<p>Rule-16 of Revised Leave Rules, 1981 of Government of the Punjab is uniform for all irrespective of the scale of the officers. This rule states that “<i>(1) the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days, (2) Such leave may be taken subject to availability either on full pay or partly on full pay and partly on half pay, or entirely on half pay at the discretion of a civil servant</i>”.</p>

6. The Government of Sindh through Advocate General Sindh has submitted written statement, as under:-

- (1). That it is admitted to extent of Rule 16 of the Revised Leave Rules 1980 and subsequent amendment therein under notification NO.F.1(8)-R.4/89, dated 30th May, 1991. *As regards its discrimination the position is not so.* Various categories of Government servants are working under *Government on different terms and conditions at different rates of remuneration for the*

same job with different nomenclature. The amendment in Rule 16 was made for early voluntary retirement of BPS-21 and 22 officers to make room for induction of young team at the top level. Its universal application to grade 1 to 20 will make cost of non-effective establishment unbearable like Defence Services and will place undue burden on tax payers as the cost will be prohibitive.

- (2). That the *petition does not disclose as to the extent or manner in which the impugned leave Rules is repugnant to Injunctions of Islam and Sunnah. No such injunction has been referred to.*
- (3). That the impugned rule does not confer unnecessary benefits on any class of civil servants nor does it cause any hardship to the civil servants. The operation of the rule is by choice and as such it does not militate against any injunction of Islam.
- (4). That the Rule complies with criteria of “*reasonable classification*” of Civil Servants. It does not offend any constitutional, legal or equitable provision.
- (5). That its *universal application is not possible due to different requirements of various services having divers service conditions.* Besides, it would make cost of non-effective establishment like Defence Services unbearable.
- (6). That the various categories of Government servants are working under Government of different terms and conditions for similar jobs having different nomenclature. The amendment in Rule 16 was made in order to encourage BPS-21 and 22 officers to take *early retirement so as to make room for induction of younger officers to top position.* Being voluntary in nature, there is no compulsion for the officers to have resort to this Rule. The precedent cited by the petitioner is not relevant, for in that case, a certain provision of the Law was detrimental to a particular class of civil servants.

The prayer of the Government of Sindh is that this Court may dismiss the petition of the petitioner.

7. The Finance Department Government of Balochistan has submitted parawise comments, as under:-

The existing policy with regard to leave preparatory to retirement under this Provincial Government is given below:-

Under Rule-14 of the Balochistan Civil Servants (Leave Rules) 1981, the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days only (irrespective of his scale). Whereas, the privilege of granting leave preparatory to retirement only to officers of BPS-21 to BPS-22, opting for voluntary retirement after 25 years of qualifying service upto the entire period of leave at his credit as provided under sub-section-3 of Rule 16 of Federal Revised Leave Rules, 1980 has *not been adopted by this Provincial Government.*

The Finance Department Government of Balochistan has prayed that operation of *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980* may also be extended to all categories of Government employees or application of the same on a particular category of officers, i.e. in BPS-21 to BPS-22 being discriminatory and without justified grounds may be declared as null and void.

The Government of Province of Khyber Pakhtunkhwa has not yet filed any comments.

8. For today's hearing, Notice was sent to petitioner Ch. Irshad Ahmad as well as to the Secretary Ministry of Law, Secretary Ministry of Finance, Attorney General for Pakistan, Mr. Shabbir Mehmood Malik, Standing Counsel No.II for Attorney General for Pakistan, Mr. M. Nazir Abbasi, Standing Counsel for Federal Government, Chief Secretaries of all the four Provinces, Advocate Generals of Punjab and Balochistan, which were duly served but none of them were present.

The Federal Shariat Court in its suo motu case/judgment dated 27.04.1984 observed regarding equality as follows:-

“Equality before law and equal protection is the main principle in the Islamic law and polity. It is one of fundamental principles of Islam which cannot be ignored.”

We do not see any reason why any such distinction between two types of permanent Govt. servants be made. (SSM 263 A 83).”

It may also be pointed out that the issues of *compulsory* or *unwilling* retirement of senior officers and distinction between various categories of officers which results in creating discrimination, have already been discussed at length by the Federal Shariat Court and Appellate Bench of the Supreme Court. (SSM No: 263 A 83, PLD 84/1 FSC 34, PLD 87/1 SC 304)

So far issue of compulsory or unwilling retirement of senior officers is concerned, the same is not involved in *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980*, and here it is not under discussion, because this section itself provides for *voluntary option* for retirement to the officers of BPS 21 and 22.

The only issue which requires consideration here is whether the newly introduced *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980*, creates distinction between different grades of civil servants which might result in discrimination.

The petitioner has challenged *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980* on the ground that it discriminates between civil servants of

different grades and deprives a group or a class of civil servants of the rights which are available to the other group of civil servants, therefore, the petitioner thinks that it is repugnant to the Injunctions of Islam.

The *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980*, under consideration, provides that officer of BPS-21 or 22 who opts to retire voluntarily after completing twenty-five years of service, may be granted leave preparatory to retirement equal to entire leave at his credit in leave account on full pay or till the date on which he completes the sixtieth year of his age, whichever is earlier.

9. This case pertains to the year 1991; i.e., it is more than two decades old. In the meantime, different Pay Committees were formed to consider, inter alia, these matters. The issue could have been agitated before such Committees during this period of more than two decades and got resolved. But there is no such reference. Furthermore, the petitioner does not seem to be interested to pursue this petition and he, in spite of service, remained absent on the following dates:-

08.12.1991, 30.04.1992, 11.05.1992, 19.10.1993,
30.11.1993, 12.01.1994, 09.04.1994, 05.12.1995,
25.01.2001, 25.01.2007, 02.04.2007, 07.05.2007,
28.05.2007, 03.09.2007, 23.10.2007, 22.01.2008,
29.01.2008, 27.03.2008, 08.04.2008, 30.04.2008,
21.05.2008, 23.10.2008, 26.03.2012, 25.06.2012

From the record and replies reproduced above, it becomes clear that Government had brought in a scheme through Finance Division Notification No. F.1(8)-R.4/89 dated 30.05.1991 under which employees in Grade 21 to 22 were given the option to choose to retire before the date of their superannuation or completion of 30 years of service as earlier prescribed, with certain incentive in the form of encashment of leave at credit in the prescribed manner, i.e. as a sort of compensation because they were to be retired earlier, i.e., before their date of superannuation.

The Government has the power to make rules in respect of different categories and classes of employees and departments, therefore, the Government acted within its power, in this case also. These rules are still in force throughout Pakistan and in all the Provinces, with a difference in one, i.e., in Balochistan, as mentioned above, alongwith all the relevant amendments which have come in the meantime in the system of leave rules. There is no apparent violation of any rule and any inconvenience or infringement of any rights of employees.

Keeping in view the foregoing discussion and principles laid down by the honourable Apex Court, as quoted in paras above, it becomes clear that Section 3 of Rule 16 of the Revised Leave Rules 1980, does not create any discrimination. But a voluntary option has been given to certain higher grades of civil servants/government employees, as a policy/scheme, to *choose voluntarily* for retirement on or after completion of very substantial portion of their service, i.e., 25 years, in order to create room for younger/junior lot to make to those positions. It can also provide a prospect for restructuring of higher service ladders and make room for balancing regional make up of services, remaining distorted due to many reasons. This can also be used to maintain and improve levels of efficiency at management and senior levels of policy and decision making.

10. In view of the foregoing discussion, Shariat Petition No.53/I of 1991 is dismissed having no merit.

JUSTICE SHAHZADO SHAIKH

JUSTICE DR.FIDA MUHAMMAD KHAN

JUSTICE SHEIKH AHMAD FAROOQ

Dated Islamabad the 16th October, 2012

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT**MR.JUSTICE SHAHZADO SHAIKH****MR.JUSTICE DR.FIDA MUHAMMAD KHAN****MR. JUSTICE SHEIKH AHMAD FAROOQ****SHARIAT PETITION NO.4/I OF 2010**

Qazi Muhammad Haroon,	....	Petitioner
Advocate High Court, Balochistan.		
	Versus	
Federal Government of Pakistan	....	Respondent
Counsel for the Petitioner	....	Nemo
Counsel for the State	....	Nemo
Counsel for Federal Govt:	....	Nemo
Date of Institution	....	25.06.2010
Date of hearing	....	22.10.2012
Date of decision	....	22.10.2012

JUDGMENT

JUSTICE SHAHZADO SHAIKH, J.- In this petition, the petitioner Qazi Muhammad Haroon has challenged Article 17(2) and Article 163 of Qanoon-e-Shahadat Order 1984 for being not in line with the Islamic Injunctions, i.e., the Holy Quran and the Sunnah of the Holy Prophet (peace be upon him). According to the petitioner, under Article 17(2) of Qanoon-e-Shahadat, it has been provided that “The competence and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam but under Article 17(2) the number of witnesses regarding future obligation has been prescribed, which is as under: “In matters pertaining to financial or future obligation, if reduced to writing, the instrument shall be attested by two men, or one man and two women”. According to the petitioner, Article 17(1) was sufficient and there was no need of this article, i.e. Article 17(2). According to him, the impugned Article has particularized the above referred Quranic verse regarding *Shahadat*, which is not in accordance with the commandments of *Shariah*.

2. Notice was sent to the petitioner which has not been returned served or un-served. However, the petitioner was informed telephonically also, but he is not present. He was also absent on 06.07.2010, 26.03.2012, 10.04.2012 and 07.05.2012, 20.06.2012. Notices were also issued to Secretary, Ministry of Law and Justice, Government of Pakistan, Attorney General for Pakistan, Mr. Shabbir Mehmood Malik, Standing Counsel-II for Attorney General, Mr. M. Nazir Abbasi, Standing Counsel for Federal Government, Barrister Feroze Jamal Shah Kakakhel as (*Amicus curiae*.), but no one appeared on their behalf in spite of service neither anyone of them has filed their written comments/written reply in this petition.

3. We have given anxious consideration to the issue raised by petitioner Qazi Muhammad Haroon in Shariat Petition No.04/I of 2010. We have carefully considered the matter, and examined the material referred to above.

4. It is pertinent to mention here that the Qanoon-e-Shahadat Order 1984, in its present form, as the history shows, had been examined and brought in conformity with the Injunctions of Islam. It has replaced Evidence Act 1872. These issues have also been discussed in a judgment titled *Rashida Patel Vs. State* 1989 FSC-95.

Implications of above proposal in the petition have to be carefully examined in view of the multifarious human activities and consequent multitudinous situations. In fact Law has manifold dynamics, which should neither be constricted nor truncated.

Article 17 (1) and (2) of Qanoon-e-Shahadat Order 1984 is reproduced below:

17. Competence and number of witness:

(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the Injunctions

of Islam as laid down in the Holy Quran and Sunnah.

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,

- a. in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly; and
- b. in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

Translation of verse 2:282 is given below:

“O you who believe, when you transact a debt payable at a specified time, put it in writing, and let a scribe write it between you with fairness. A scribe should not refuse to write as Allah has educated him. He, therefore, should write. The one who owes something should get it written, but he must fear Allah, his Lord, and he should not omit anything from it. If the one who owes is feeble-minded or weak or cannot dictate himself, then his guardian should dictate with fairness. **Have two witnesses from among your men, and if two men are not there, then one man and two women from those witnesses whom you like,** so that if one of the two women errs, the other woman may remind her. The witnesses should not refuse when summoned. And do not be weary of writing it down, along with its due date, no matter whether the debt is small or large. That is more equitable in Allah’s sight, and more supportive as evidence, and more likely to make you free of doubt. However, if it is spot transaction you are effecting between yourselves, there is no sin on you, should you not write it. Have witnesses when you transact a sale. Neither a scribe should be made to suffer, nor a witness. If you do (something harmful to them), it is certainly a sin on your part, and fear Allah. Allah educates you, and Allah is All-Knowing in respect of everything.”

(2:282)

The quality and competence essentially require to stand straight (‘bil qist’) as witnesses (*shuhadaa-a*), discharging this sacred duty for Allah (*li-Allah*). The above verse (2-282), inter alia, points towards a number of legal principles and rules, which can be derived from it, e.g.:

God consciousness-fear in all dealings with fairness, number and competence of witnesses, scribe, power of attorney, dealing with situations when some witnesses could not be available, future effect of transaction no matter small or large, along with its due date, witnesses for sale transaction, neither scribe nor witness should be made to suffer, preparing/writing a document, not to omit anything in documentation, importance of putting in writing, preservation of documentation, basis for appraisalment of evidence in such cases, avoidance of conflict and its resolution in such cases, responsibility of scribe, responsibilities of executor/creditor/debtor, responsibilities of witnesses, who should not refuse when summoned, responsibility of guardian to dictate on behalf of feeble-minded/weak, two witnesses from own men, and if two men are not there, then one man and two women of liking, financial liability, document to be duly proved, etc., etc.

The underlying emphasis on ensuring quality and competence of evidence, from the very beginning, cannot be missed in these broader pointers.

Law can neither remain static nor can it be limited by apparent lexicographics and in space and time. It is ever evolving. Stagnation of *ijtihad* putrefies the corpus of law. The Injunctions of the Quran and the Sunnah embody universal-timeless, immutable, broader laws, which need to be expanded and elaborated on the time line. Let us see how some of these aspects, highlighted in the above verse (2-282), are unfolded and expounded in their application and practice in the existing codified, juristic and jurisprudential corpus. In this regard, following case law may highlight some of the important underlying parameters, which will become more clear when re-examined in the light of verse 2-282:

It is not merely **number of witnesses**, but also their quality, and competence, and all pieces (of evidence) in circumstances, combine to constitute admissible, reliable and truth-revealing evidence:

The rule of evidence incorporated in Art. 17 is that in the cases which fall within the ambit of Sub-Article (2) of Art. 17 the Court may accept or act on the testimony of the number of witnesses mentioned therein or such other evidence as the circumstances of the case may warrant. In the light of this rule in addition to or in absence of direct evidence, the Court may also consider the direct and circumstantial evidence brought on record in proof of fact. [2005 SCMR 564]

In **appraisalment of evidence** following is essentially pertinent:

Witnesses are weighed and not numbered. [1991 MLD 2576]

Purgation—Not relevant in cases of *Ta'zir*. [1992 KLR (Cr.L.) 1]

Solitary witness—No impediment to base conviction. [7992 KLR (Cr.L.) 160]

Sole testimony of a witness to be made foundation of guilt must be clean cogent and consistent. *[2001 SCMR 199]*

Mere quantity of evidence nowhere matters. Witnesses, as a rule are weighed and not counted. *[1990 P.Cr.L.J. 73]*

In case of conflict between the witnesses, quality will certainly give way to quantity. *[1991 MLD 2576]*

Where the execution of document is in issue, it is essential and mandatory upon the person relying upon the document to examine two of the attesting witnesses. *[PLD 2005 Lah. 654]*

Article 17 read with Art. 79 makes it clear that a document creating **financial liability** must be attested by two witnesses and proved likewise. *[PLD 1995 Lah 395]*

Document not duly proved cannot be read in evidence. *[1998 MLD 1592]*

Where **both** the attesting witnesses of document in question are alive and available but not produced, execution of document not proved. *[PLD 1996 S.C. 256]*

Only one witness examined, **document** would not be deemed to have been proved. *[PLD 1996 Lah 367]*

Requirement of production of **two attesting witnesses** is sine quo non to prove the document. *[PLD 2008.Lah. 51]*

Name of the scribe not mentioned on the deed. First marginal witness produced deposing that such deed was not prepared in his presence and he never appeared before any authority for its execution. Second marginal witness not produced. Execution of document held not proved. *[PLD 2008 Lah. 511]*

Execution of **document** denied, party relying must prove the document—scribe as good a witness as anybody else. *[2008 SCMR 1639]*

Sale deed **registered** and purchaser in possession of the disputed land on the basis thereof, non-examination of its attesting witnesses would not be fatal. *[2002 SCMR 1391]*

Power of attorney:

Document conferring authority on the agent to deal with financial matters and making him responsible for future obligations squarely fall within the category of instruments which are **required to be attested by two men or**

one man or two women in terms of Art. 17(2)(a), document required to be proved as per methodology of Art. 79. *[PLD 2003 S.C. 31]*

Even the document is registered, attestation of instruments by two witnesses is mandatory. *[PLD 2003 S.C. 31]*

Respondent claiming execution of sale deed on the basis of general power of attorney, duty bound to prove the execution of the contents of general power of attorney by producing two witnesses in view of Arts. 17 and 79. *[2004 MLD 620]*

Scribe:

There is no bar in law that the statement of scribe can never be considered as being that of a person witnessing the execution, but this is subject to basic condition the scribe should also have signed the document as an attesting witness. However, a scribe cannot equate or partake as a marginal witness and his statement only remains to be in the nature of a corroborative piece of evidence. *[PLD 2007 Lah. 254]* Scribe cannot be substituted for marginal witness thereof. *[PLD 2008 Lah. 51]*

Agreement to sell:

Agreement to sell involving **future obligations** if reduced to writing and executed after 1984 is required to be attested by two male or one male *or* two female witnesses and to be proved in accordance with the provisions of Art. 79 of Qanun-e-Shahadat. *[2002 SCMR 1089]*

Agreement to sell should not be used in evidence unless at least two attesting witnesses are examined. *[PLD 1996 Lah 367]*

Production of **two female witnesses** jointly, only necessary in case of financial matters or future obligations and not in criminal cases. *[PLD 2001 S.C. (AJ&K) 1]*

Registered deed executed by *Pardanashin* lady. Sole statement of vendee on oath regarding sale by lady with her free will and for valuable consideration who being beneficiary of transaction cannot be considered sufficient to prove willingness of lady and genuineness of registered sale deed. Legal character of document must be established through independent evidence. *[PLD 2008 S.C. 140]*

At this point, it may also be pertinent to touch briefly upon the point of one man and two women witnesses required for recording a futuristic financial document which may entail civil litigation. This proviso, although apparently has case-specific stipulations also, which may however be extended by systemic analogy to akin classes and categories of cases, but it is not a general prescription for all kinds of litigation, including criminal.

In order to facilitate proper consideration of the original legal provision in its textual language, the verse 2-282 from the holy Quran is reproduced below:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ۚ وَلْيَكُتُبْ بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ ۚ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ ۚ فَلْيَكُتُبْ وَلْيَمْلِكِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا ۚ فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِكْ وَلِيُّهُ بِالْعَدْلِ ۚ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ ۚ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَىٰ ۚ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا ۚ وَلَا تَسْأَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ۚ ذَٰلِكُمْ أَفْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا ۚ إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا ۚ وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ ۚ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ ۚ وَإِنْ تَفْعَلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ ۚ وَاتَّقُوا اللَّهَ ۚ وَيُعَلِّمُكُمُ اللَّهُ ۚ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ (٢٨٢)

“Two witnesses from your own men” (شَهِيدَيْنِ مِنْ رَجَالِكُمْ) highlights yet another principle that in such cases of financial stake of futuristic effect, longer duration or perpetual nature, preferable choice of witnesses has been advised to be from one’s own community or relations. Similarly for female witnesses, not only the word ‘*imra-ataa*’, instead of ‘*an-nissa*’, has been used (امْرَأَتَانِ مِمَّنْ تَرْضَوْنَ), which emphasizes affinity, bond, or relationship of these two ladies of one’s own fold, like two men witnesses of one’s own community. But in case of female witnesses, the relationship has been further preferred by using the phrase ‘*mimman tardhoan*’, i.e., whom you preferably choose. In this linguistic frame, it may better convey the connotation in translation and interpretation of the term ‘*imra-ataa*’, as *two of your own ladies*, rather than just *any two female witnesses*. It is a common experience in litigation, in any society, that it is mostly the kin who stand by their respective litigant parties. This can guard against witnesses losing interest with time and/or even becoming hostile.

But at the same time it may be noted that it does not *exclude* evidence of other men and women, not necessarily related to the parties. It does not exclude chance witnesses and circumstantial or corroborative evidence. Evidence of one woman in many classes of litigation is admissible, and particularly solitary statement of victim, duly corroborated, is also competent.

The verse 2-282 lays down another important principle that “*if two men are not there, then one man and two women from those witnesses whom you like,*” It does not say that if two men are ‘not there’ then *four women*, which means that one man has to be there. Litigation has never been easy and likeable activity during any period of human history. Therefore, in the above verse (2-282) also, an emphasis has been placed on attendance, when summoned, as an ordainment from God, so that witnesses should not avoid it by usual aversion to it. Women as a special relaxation have been given exemption, as far as

possible. Even in modern days, particularly in underdeveloped world, litigation is not easy and not suitable at all for women. If one man is there he may bear most of its burden.

It may not be normally desirable to compel a female witness to compulsorily appear for hearing before a court, during natural and biological periods of her stress. She may not be available for about a year when in a family way, and even after that for considerable time. She can also not be over stressed during period of suckling a child. This may violate child rights also. During spell of mothering infant(s), it would be least desirable to bother her by the summons to attend court as witness. All this means that, choosing women to be witnesses would not only be least desirable for women themselves, in these circumstances, but also in all probability be disadvantageous for the person who has to make a choice for her to be her witness, as his case will suffer because of her often non-availability, and even for longer periods.

Litigation is usually undesirably protractable in nature. With time its details fade away. When the evidence is actually recorded and witnesses are cross-examined, even the experienced counsel need to revisit and recall the whole case and re-consult his clients on many aspects and details. For two male witnesses, it is easier to consult and refresh each other on required aspects and details. But for a woman, it is relatively more difficult and undesirable to converse, consult and revise, again and again, often unpalatable and objectionable descriptions, etc. When two women are there they can more conveniently help each *recall* and *revisit* all details, fading with time, which is a very common experience in lingering nature of litigations. (أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرْ إِحْدَاهُمَا الْأُخْرَى َ) *if one of the two women errs, the other woman may remind her.*) In present, and in fact in all prevailing, conditions in court, during different periods of history, in different societies, it is extremely difficult for a lone woman to face irritating and imposing male-majority environs of courts, waiting endlessly without any answer not only to thirst and hunger, but even to biological and natural calls.

Keeping two male witnesses does not mean that each one of these two men stands as ‘half (1/2) witness.’ There is no concept of *fractionalization* of a witness in any legal evidentiary system. Similarly instituting two ladies, if one of the two men is ‘not there’, does not *fractionalize* them as witnesses to be ½ of the ½ (=1/4) of the unit of a witness. There is no such splitting or dissection of a person of a witness.

5. As far as Article 163 of Qanoon-e-Shahadat is concerned, this article is regarding *acceptance* or *denial* of claims on Oath. It has been provided under this article that: “When the plaintiff takes Oath in support of his claim, the Court shall, on the application of the plaintiff, call upon the defendant to deny the claim on Oath.”

6. The contention of the petitioner is that it is the responsibility of the Plaintiff to prove his claim through evidence while the defendant has to take Oath. The petitioner has relied on the following Tradition, as a legal maxim:

الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينِ عَلَى مَنْ أَنْكَرَ

“To prove the claim is the responsibility of the Plaintiff and the defendant has to take oath”

(احمد بن الحسين بن علي البيهقي، السنن الكبرى، كتاب الدعوى والبيئات، باب
البينة على المدعى واليمين على المدعى عليه، جلد 10 ص 252)

This simply means that it is the responsibility of the claimant to establish his claim on the basis of undeniable ‘proof’, but such a ‘proof’ (*haq*) cannot be set aside merely on ‘oath’, e.g., the scientific law and fact providing the ‘proof’ of the Sun cannot merely be denied on oath.

Application or petition, in some cases, may require an oath to ‘admit’ the same for process. Proceedings for disposal and decision will require the whole set of appraisal and evaluation of all relevant evidence. The denial of the defendant may not necessarily close the matter solely on the strength of the oath, It is not merely the mechanics but the mind which makes a judgment and takes a decision.

7. Article 163 of Qanoon-e-Shahadat had been challenged before this Court in Shariat Petition No.8/L of 1996 (Muhammad Rafi Vs. Federation of Pakistan) which was dismissed in limine being without force and merit.

In view of the above examination of the impugned Article 17(2) and Article 163 of Qanoon-e-Shahadat Order, 1984, it reveals that these pieces of law are not contradictory to Islamic injunctions:

We have come to conclusion that it would not be appropriate to allow this Shariat Petition No.04/I of 2010 as we find no merit in it which is accordingly dismissed.

JUSTICE SHAHZADO SHAIKH

JUSTICE DR.FIDA MUHAMMAD KHAN

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad the 22nd October, 2012

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT:**MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE****MR. JUSTICE RIZWAN ALI DODANI****MR. JUSTICE SHAHZADO SHAIKH****SHARIAT PETITION NO.19/I OF 1998**

Mst. Sakina Bibi & Sisters C/O Ch. Muhammad Sharif,
r/o Village & Post Office Bangial, Tehsil Kharian,
District Gujrat.

Petitioner

Versus

Government of Punjab.

Respondent

For the petitioner

: Nemo

For Federal Government

: Nemo

For Province of Punjab

: Ch. Saleem Murtaza Mughal, Assistant
Advocate GeneralFor Province of KPK
Advocate General

: Mian Saadullah Jandoli, Deputy

For Province of Balochistan

: Mr. Naseerullah Bangulzai, Additional
Advocate General Balochistan.For Province of Sindh
Jurist Consults: Nemo
: Dr. Hafiz Muhammad Tufail & Syeda
Viquar-un-Nisa Hashmi

Date of Institution of Sh. Petition : 06.10.1998

Date of hearing : 28.05.2013

Date of Judgment : 18.06.2013

JUSTICE SHAHZADO SHAIKH, J.:- Petitioner Mst. Sakina Bibi and her sisters through Shariat Petition No.19/I/1998 has challenged Section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance XIII of 1983 as being repugnant to Injunctions of Islam as laid down in Holy Quran and Sunnah of the Holy Prophet (PBUH).

2. This petition was admitted to regular hearing vide order dated 19.11.1998 and Notices were issued to the Government of Punjab as well as Attorney General for Pakistan and the Advocates General of all the four provinces.

3. The petitioner stated in her Shariat Petition as under:-

“By virtue of section 5 of the Punjab Laws Act, 1872 Custom continued to be the rule of decision in the matters of succession amongst Muslims. The Shariat Application Act, 1937 excluded agricultural land from the operation of the Act. After the creation of Pakistan the West Pakistan Muslim Personal Law Shariat Application Act, 1962 enacted but section 5 of the Punjab Laws Act 1872 still was not done away with.

2. Ultimately, Article 203-B empowered the Federal Shariat Court to pronounce Section 5 of the Punjab Laws Act 1872 un-Islamic, and Custom, for all times to come was crushed in the Punjab.
3. In PLD 1983 S.C 273 the learned Judges of the Supreme Court upheld the direction of the Federal Shariat Court, that the necessary amendment should be carried out in the West Pakistan Muslim Personal Law (Shariat) Application Act 1962. Accordingly, West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance 1983 was enforced on 1-8-1983. However there is need for further amendment, because Section 2-A of the said Ordinance has restricted the effect of the Ordinance to a male heir who acquired Agricultural Land through Custom before 16-3-1948, which is un-Islamic, because the restriction of any limitation on the operation of Islamic Law is unthinkable.
4. In the case in hand the property of one Kalu Khan has not yet been distributed amongst his heirs. The rule of decision should be the Islamic Law, when Kalu Khan died in the year 1940. His one son Allah Ditta, six daughters and a widow were in existence. Allah Ditta died in 1976.
5. If at the time of the death of Kalu Khan, Islamic principles are made applicable the six daughters and widow are not deprived and they get their due share according to Islamic dispensation and Allah Ditta will also get his one-fourth share according to the dictates of Holy Quran.
6. It is therefore, prayed that this learned Court be pleased to declares section 2-A of the Ordinance XIII of 1983 known as West Pakistan Muslim Personal (Shariat) Act (Amendment) Ordinance 1983 as violative of the Injunctions of

Islam and the said Sections needs to be modified/amendment, so as to remove the un-Islamic restrictions and thus Holy Quran and Sunnah be implemented in letter and spirit.

7. The said Ordinance is great hindrance in implementation of Sura Nisa; Verses No.7, 11, 12 and 177.”

4. The impugned Section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 is reproduced as follows:-

“2-A. *Succession prior to Act IX of 1948. – Notwithstanding anything to the contrary contained in section 2 or any other law for the time being in force, or any custom or usage or decree, judgment or order of any Court, where before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948; a male heir had acquired any agricultural land under custom from the person who at the time of such acquisition was a Muslim: –*

- (a) *he shall be deemed to have become, upon such acquisition, an absolute owner of such land, as if such land had devolved on him under the Muslim Personal Law (Shariat);*
- (b) *any decree, judgment or order of any Court affirming the right of any reversioner under custom or usage, to call in question such an alienation of directing delivery or possession of agricultural land on such basis shall be void, inexecutable and of no legal effect to the extent it is contrary to the Muslim Personal Law (Shariat) Act;*
- (c) *all suits or other proceedings of such a nature pending in any Court and all execution proceedings seeking possession of land under such decree shall abate forthwith:*

Provided that nothing herein contained shall be applicable to transactions past and closed where possession of such land has already been delivered under such decrees.”

5. The Federal Government submitted written statement on 07.04.2001, which is reproduced as under:-

“PRELIMINARY OBJECTIONS

1. *The petitioner has challenged section 2 of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance 1983 being opposed to the Injunctions of Quran and Sunnah. In the petition she has sought the section to be amended in term of para 5 thereof. An estate which has not been distributed amongst the legal heirs of the deceased may be distributed according to their respective shares and section 2-(a) to be deemed to be in-effective from that date.*

Section 2-(a) referred to above was incorporated by way of amendment in the West Pakistan Muslim Law (Shariat) Act 1962 which relates to succession prior to Act IX of 1948 wherein the male heir having acquired agricultural land under Custom shall be deemed to have become upon such acquisition, an absolute owner of such land as if such land had devolved upon under the Muslim Personal Law (Shariat), notwithstanding any decree order and Judgment of a court of law affirming the right of reversioner in that behalf.

The customary law in the Punjab restricted the right of succession and the power of alienation after the enactment of the West Pakistan Muslim Personal Law (Shariat) Application Act 1948 enforced on 16.3.1948. This was challenged before the Federal Shariat Court through Shariat Petition No.13 of 1980. After having exhaustively dealt with the question referred to above, allowed the petition and ordered necessary amendments in the West Pakistan Muslim Personal Law (Shariat) Application Act 1962 which by that time had been promulgated. The amendment was also held to be not “retrospective”. Against this judgment, the Federation filed Shariat Appeal No.16/1981 before the Shariat Appellate Bench. The appeal was dismissed and the amendment was upheld directing the said amendment to be carried out by 30.5.83. In consequence thereof, section 2-(a) was inserted which clarifies that in the opening of succession before the commencement of the Punjab Muslim Personal Law (Shariat) Application 1948, if a male heir had acquired any agricultural land under custom he would be deemed to be absolute owner of the same as if such land devolved upon him under the Muslim Personal Law (Shariat).

There is no cavil that on the death of a Muslim, his estate vests in his or her legal heirs. The court is not concerned with one’s personal matter. It has to see if the provisions of a particular act are opposed to the Injunctions of Quran and Sunnah of the Holy Prophet (PBUH) and if any amendment is found necessary, it can strike down the same with a prospective effect. The Federal Government will not support any legislation which offend Quranic principles relating to inheritance among the Muslims.

Section 2-(A) inserted in the West Pakistan Muslim Personal Law (Shariat) Act, 1962 in regard to agricultural land acquired before the Act IX of 1948 when the customary law was still the governing rule. It altered the course of succession and stopped operation of customary distribution of share nevertheless, the Act as per the judgment referred to above, was declared to be not retrospective.

It is therefore, respectfully prayed that the petition be dismissed.”

6. The Staff Officer to the Advocate General Punjab, Lahore vide his letter No.5498 AG/FSCB dated 13.08.2007 submitted para-wise comments on behalf of the Province of Punjab, which are as under:-

“1. *That in the instant case Kalu Khan died in the year 1940 and his estate devolved upon Allah Ditta (son) under Customary Law. Allah Ditta son of Kalu Khan died in the year 1976. The law applicable was section 5 of Punjab Laws Act IV 1872. It reads as under:-*

“In questions regarding succession,

- a) The rule of decision shall be any custom applicable to parties concerned which is not contrary to justice, equity or good conscience and has not been by this act or any other enactment altered or abolished, and has not been declared to be void by any competent authority”.*
- b) The Muhammadan Law in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or it opposed to the provisions of this Act, or has been modified by any such custom as is above referred to. (See Shariat Act, 1948 etc)*

Therefore, the Personal Law Shariat Application, Act XXVI of 1937 was promulgated on the 7th of October, 1937, in which by virtue of Section 2, question relating to agricultural land were saved and excluded and Section 5 of Punjab Law Act 1872 was repealed vide Section 6 of Act XXVI of 1937.

It is pertinent to mention here that the West Punjab Muslim Personal Law (Shariat) Application Act IX of 1948 was promulgated on the 16th of March, 1948, and Section 2 of this Act was substituted by Punjab Act XI of 1951, which reads as, “Notwithstanding any rule of custom or usage to the contrary in all questions regarding succession (whether testate or intestate) special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions including waqf, trusts and trust property, the rule of decision shall be the Muslim Personal Law (Shariat) in cases, where the parties are Muslim”, whereafter Muslim Personal Law (Shariat) Application Act of 1962, was promulgated and the limited estates held by female were terminated with effect from 31.12.1962 by virtue of Section 3 thereof and the life estate so terminated were devolved upon such persons in accordance with Shariat, as if the last male owner from whom the life estate devolved upon female under Custom, has died at time of termination of life estates. Thus inheritance in such cases shall open and the persons

alive at the time of the death of the propositus (last male owner) shall inherit the same under Muslim Personal Law as per their respective shares. It is pertinent to mention here that in the instant case there was no limited estate and there was no life estate in existence at the time of Shariat Application Act 1948, and at the time of Shariat Application Act 1962. In the instant case the last male owner was Allah Ditta son of Kalu Khan who inherited the estate of his father in 1940 under the relevant laws in force at that time i.e., under Customary Laws. Allah Ditta being the last male owner became the full owner of the estate on 16.03.1948 under Shariat Application Act, 1948. Shariat Application Act 1962 had no retrospective effect. Sub section (2) of Section 7 of the Act saves and protects rights of persons who inherited the property before commencement of the Shariat Application Act, 1948. So the petitioners' stance is misconceived. Reliance can be placed on 1988 SCMR 8, PLD 1985 SC 407, 1988 SCMR 293, PLD 1990 SC 982, 2004 CLC 1652.

2&3 – That Section-5 of the Punjab Laws Act 1872 was declared repugnant to the Injunctions of Islam in view of judgment of the August Court reported as PLD 1983 SC 273. The Shariat Application Act, 1962, was amended by Ordinance-XIII of 1983 and Section 2-A was added wherein any male heir who acquired agricultural land under custom, upon such acquisition became the absolute owner, as if such land had devolved upon him under the Muslim Personal Law (Shariat) and in case of his death his such property would be distributed amongst his heirs under Muslim Personal Law. Thus Section 2-A of Ordinance-XIII of 1983 is quite in consonance with the Injunctions of Islam. The plea taken by the petitioners is misconceived.

- 4. That property of one Kalu Khan devolved upon his son Allah Ditta in the year 1940 under the law prevalent at that time. Thus, the petitioners are not entitled to any share in such property. Only heirs of Allah Ditta who died in 1976 are entitled to inherit his property.*
- 5. Incorrect.*
- 6. That Section 2-A of Ordinance-XIII of 1983 is not violative of the Injunctions of Islam. Thus, the instant petition is liable to be dismissed.*
- 7. Para No.7 is misconceived. Shariat is being applied in matters of inheritance since promulgation of Muslim Personal Law (Shariat) Application Act 1948 and the amendments and enactments made thereafter are in accordance with the Injunctions of Islam. Therefore, the said Ordinance does not display any hindrance for the implementation of verses of the Holy Quran.*

The petition may very graciously be dismissed.”

7. The Advocate General Sindh submitted written statement on behalf of Province of Sindh, which is reproduced below:

- “1. That the petitioner has challenged Section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 as to its vires on the touchstone of Quran and Sunnah. The petitioner seeks further amendment in West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 which was enforced on 01.08.1983. Section 2-A of the Ordinance ibid has dealt with the rights of a male heir who acquires agricultural land through custom before 16.03.1948.*
- 2. That Article 2-A of the Constitution of Pakistan, which has been made substantive part of the Constitution and has been made to take effect accordingly guarantees that the Muslim of Pakistan shall be enabled to order 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. All laws shall be framed and brought into the frame, which is not un-Islamic and against the Holy Quran and Sunnah. The restriction of any limitation on the operation of Islamic Law has to be struck down. The rule of inheritance shall be in accordance with Islamic Law. If any legislation offends the principles of Islamic laws that has to be removed from the statute book.*
- 3. That as per decision of the Supreme Court of Pakistan reported in PLD 1990 Sc 1 Muslims' Estate vests immediately at the death in his or her heirs, Brother, Father, Husband, Son or vice versa does not or cannot intervene as an intermediary. Heir in possession has to be considered to be in constructive possession of the property on behalf of the heirs in spite of his exclusive possession. Recognition and enforcement of law of inheritance by the state agencies including the Court, viz-a-viz the family heirs, is a matter of public policy in Islam. Relevant laws, therefore, need to be re-interpreted under the new right. Objectives Resolution being a part of the Constitution the new principles of public policy with Islamic Ethos/spirit would be defined and applied.*
- 4. That in the instant case as highlighted in the petition the inheritance has to be devolved and distributed in accordance with the principles of Islam and therefore, the legislation at present needs amendment to bring into folds the legal rights of the family heirs.*
- 5. That in view of the above narration the grounds mentioned in the petition cannot be accepted on the touchstone of the famous judgment of the august Supreme Court mentioned above.*

It is prayed on behalf of Province of Sindh through Advocate General Sindh, that the petition is without merit and liable to be dismissed.”

8. The Advocate Generals Balochistan and KPK relied upon and adopted the para-wise comments filed by Federal Government/Attorney General for Pakistan.

9. Dr. Hafiz Muhammad Tufail appeared as Jurist Consult and assisted the Court on the point of law of inheritance.

10. Syeda Viqar Nisa Hashmi, Advocate appearing as Jurist Consult has submitted her opinion which is as under:

1. *That the petitioner has challenged the legality of Section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 on the touchstone of Quran and Sunnah.*
2. *The key issue is whether Section 2 of the West Pakistan Muslim Personal Law Shariat Act, 1962 applies even in the cases where male legal heir has acquired any agricultural land under custom before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948 (as barred under Section 2-A West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983)?*
3. *The precise answer is yes and the reliance is placed on the following judgments of the Hon'ble Superior Courts of Pakistan:*
 - *Mst. Zainab Bibi & 2 others v/s Muhammad Yousaf & 4 others (1995 SCMR 868)*
 - *Mohib Shah & 3 others v/s Mst. Jannat Bibi & another (1997 CLC 659)*
4. **Zainab Bibi's case**

The Hon'ble Supreme Court of Pakistan held:

"Person who as "male heir" had inherited agricultural land before 15.3.1948 under custom would be deemed to have inherited such land under Shariat law. If such male person had inherited the agricultural land before 15.3.1948, his mother and two sisters would inherit 1/6th and 2/3rd shares respectively and the residue 1/6th share would go to the person who was his paternal uncle."

5. **Mohib Shah's case**

In this case the daughters of last male owner claiming to be governed by Muslim personal law in matters of inheritance filed a suit for declaratory decree to this effect in respect of estate left by their deceased father. Defendants claimed that deceased having died before partition, his inheritance was governed by Custom. Plaintiffs' (daughters') suit was dismissed by Trial Court but decreed by Appellate Court which came to conclusion on basis of evidence that deceased in matters of inheritance was governed by Muslim personal law and not by Custom.

Wajib-ul-Araz of three villages where property of deceased was situated

clearly mentioned that deceased being Syed was governed by Muslim personal law in matters of inheritance and such entries related to year 1927-28 about 11 years before death of deceased.

As against such documentary evidence produced by plaintiffs, defendant's oral evidence relating to applicability of Custom was of no significance and was insufficient to prove that deceased in matters of inheritance was governed by Custom. Defendants were required to prove not only that deceased in matters of inheritance was governed by Custom but also to establish as to what that particular Custom was. Defendants could not prove either of such factum. Shariat law in matter of inheritance of deceased thus governed parties and plaintiffs (daughters) were entitled to inherit their shares in accordance with Shariat law.

The Hon'ble High Court of Lahore held:

"The case of the Petitioners with regard to particular custom governing their succession and inheritance has not been proved by them while the evidence led by the respondent-plaintiffs is sufficient to believe that the parties were governed by the Muslim Personal Law as incorporated in Wajib-ul-Araz for the year 1927-28."

6. *Analysis of the relevant sections:*

In my humble opinion the section 2 of the Shariat Act is an overriding provision explicitly provides that all matters including succession shall be governed by the Muslim Personal Law (Shariat) Application Act, 1948 in case where the parties are Muslim. The said Section reads:

"2. Notwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions including waqf, trusts and trust property, the rule of decision shall be the Muslim Personal Law (Shariat) in cases, where the parties are Muslim"

7. *The Section 2-A prevents the retrospective application of the provision of Section 2 of the Act in certain circumstances. This provision does not apply to the transaction past and close even after the promulgation of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983, where possession of such lands in question have been delivered to avoid the chaos of any sort.*

8. *That the aforesaid intent of the legislature for inserting the provision of Section 2-A becomes clear by reading its proviso which provides that the said section*

cannot be applied retrospectively to the transaction past and closed. The relevant part of the section reads:

“.....to transactions past and closed where possession of such land has already been delivered under the decrees passed before coming into force of West Pakistan Muslim Personal Law (Shariat) (Amendment) Ordinance, 1963.”

This provision is again meant to avoid the chaos where the property rights have been transferred and acquired under the law.

9. Facts and analysis of Kalu Khan's case:

Following are the key facts of the instance case:

- a. Kalu Khan, a person whose property is in-question passed away in 1940*
- b. The deceased left behind a widow, a son named Allah Ditta and six daughters*
- c. Allah Ditta also passed away in 1976*
- d. There appears to be no proof that Allah Ditta acquired the land under the customary law*
- e. The property has not yet been divided among his legal heirs of Kalu Khan.*

10. That according to the Petitioner, if the Islamic Laws are made applicable at the time of the death of Kalu Khan (year 1940), his widow and six daughters will get their share.

11. Factually, Kalu Khan acquired the agricultural land. The fact whether that was under the customary law or not is not on record. This particular transaction is not a closed transaction as since the death of Kalu Khan till today the property has never been divided among his legal heirs. In fact the property remained in possession of the female legal heirs of Kalu Khan i.e., his widow and sisters. Secondly the only male legal heir of Kalu Khan does not seem to have acquired the land through any decree or order or even the physical possession of land and he too has passed away. Further the Petitioners have right to acquire property as legal heirs of both Kalu Khan and Allah Ditta. Therefore no question of chaos seems to arise in this particular case. Accordingly the application of Shariah Law for the distribution of property of Kalu Khan is justified in this particular case.

12. In my humble opinion Islamization of the legal framework is a gradual process that takes place by softening the prevailing laws and customs having the force of law in the larger interest of the public.

13. The provision of Section 2-A does not validate the custom that is contrary to the Injunctions of Islam but it merely provides a strategic way to avoid chaos in closed transactions. In view of the forgoing discussion, the Petitioner has a right to get her share in inheritance under Shariah.”

11. From above discussion, the following major points emerge for consideration:

12. The customary law in the Punjab restricted the right of succession and the power of alienation after the enactment of the West Pakistan Muslim Personal Law (Shariat) Application Act 1948. This was challenged before the Federal Shariat Court through Shariat Petition No.13/R of 1980 (Muhammad Ishaq vs State). The Court vide its judgment dated 19-5-1981 allowed the petition and ordered necessary amendments in the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962. The Federation of Pakistan through Secretary, Law & Parliamentary Affairs filed Shariat Appeal No.16/1981 before the Shariat Appellate Bench of Supreme Court. The appeal was dismissed and the amendment was upheld directing the said amendment to be carried out by 30.5.83. In consequence thereof, section 2-(a) was inserted which clarifies that in the opening of succession before the commencement of the Punjab Muslim Personal Law (Shariat) Application 1948, if a male heir had acquired any agricultural land under custom he would be deemed to be absolute owner of the same as if such land devolved upon him under the Muslim Personal Law (Shariat).

13. While challenging section 2-A of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance 1983 as contrary to the Injunctions of Quran and Sunnah, the Petitioner has sought this section to be amended accordingly.

14. However, the facts of the case have been reported as under:

- a. Kalu Khan died in the year 1940 and his estate devolved upon Allah Ditta (son) under Customary Law, prevalent at that time. Thus, the petitioners were not entitled to get any share in that property. Allah Ditta died in 1976, as *Kallaalaa*.

The above may be presented in more clear terms, as follows:

Kalu Khan, a person whose property is in question passed away in 1940,

The deceased left behind a widow, a son named Allah Ditta and six daughters,

Allah Ditta also passed away as *Kallaalaa* in 1976.

- b. The property has not yet been divided among legal heirs of Kalu Khan.
- c. If the Islamic Law was applied at the time of the death of Kalu Khan (year 1940), his widow and six daughters would have got their share.

- d. It is claimed that this particular transaction is not a closed transaction as since the death of Kalu Khan till today the property has never been divided among his legal heirs.
- e. The property has all along remained in possession of the female legal heirs of Kalu Khan i.e., his widow and daughters.
- f. The only male legal heir of Kalu Khan did not acquire the land through any decree or order or even the physical possession of land and he too has passed away.
- g. Based on above facts, the Petitioners claim that they have right to acquire property as legal heirs of both Kalu Khan and Allah Ditta.

15. The Petitioner has prayed that the estate which has not been distributed amongst the legal heirs of the deceased may be distributed according to their respective shares and section 2-(a) be deemed to be in-effective, being repugnant to Injunctions of Islam. This amounts to seeking relief in personam, which is beyond the jurisdiction of this Court.

16. However, it is noteworthy that in the above circumstances, no question of chaos seems to arise in this particular case. Furthermore, the Petition for relief in personam for distribution of property of Kalu Khan in this case, is beyond jurisdiction of this Court.

17. The key point is that Section 2-A of the West Pakistan Muslim Personal Law Shariat Act, 1962 applies even in the cases where male legal heir has acquired agricultural land under custom before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948.

18. The following may also be relevant to be examined:

Zainab Bibi's case (1995 SCMR 868)

The Hon'ble Supreme Court of Pakistan held:

“Person who as “male heir” had inherited agricultural land before 15.3.1948 under custom would be deemed to have inherited such land under Shariat law.”

19. Muslim Personal Law (Shariat) Application Act, 1948, explicitly provides that succession shall be governed by this Act, where the parties are Muslim. Section 2 reads as follows:

- “2. Notwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions including waqf, trusts and trust property, the rule of decision shall be the Muslim Personal Law (Shariat) in cases, where the parties are Muslim”

Section 2-A prevents the retrospective application of the provision of Section

2 of the Act in circumstances, i.e., the transactions past and closed even after the promulgation of the West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983, in order to avoid confusion and chaos.

The intent of the legislature becomes clear from proviso of Section 2-A:

“Provided that nothing herein contained shall be applicable to transactions past and closed where possession of such land has already been delivered under such decrees.”

This provision is clearly meant to avoid chaos where the property rights had already been transferred and acquired under the law.

20. The Holy Quran also, in circumstances, made a provision, for the ease and smooth operation of the corrections and improvements brought about in the laws, prospectively and not retrospectively, by exempting the ‘closed and past transactions’, without carrying any force of being a precedent. The following may be relevant to examine:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ
الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ
اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا
سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا
خَالِدُونَ ﴿٢٧٥﴾

Those who take riba (usury or interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: Sale is but like riba. “, while Allah has permitted sale, and prohibited riba. So, whoever receives an advice from his Lord and desists (from indulging in riba), then what has passed is allowed for him, and his matter is up to Allah. As for the ones who revert back, those are the people of Fire. There they will remain forever. (2:275).

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ
فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا ﴿٢٢﴾

Do not marry those women whom your fathers had married except what has passed. It is indeed shameful and detestable, and it is an evil practice. (4:22)

21. Maulana Mawdoodi commented on this verse as follows:

“While forbidding the wrong ways of ‘ignorance’, the Holy Qur’an usually ends the instruction with such words as: ‘though what has happened in the past is excepted.’

It has two meanings in view. First, that no action will be taken in regard to those wrong things that one did in ignorance, provided that one mended ones ways and gave them up after the receipt of a particular Commandment. Second, that those words meant to give reassurance that the new instructions had no retrospective effect....” (The Meaning of the Quran Abul-A’la Maudodi; Vol-II P.109. Pan Islamic Publishers Lahore (1976).

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَتُكُمُ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي جُحُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْبَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا ﴿٢٣﴾

Prohibited for you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, daughters of brother, daughters of sister, your mothers who suckled you, your sisters through suckling, mothers of your wives and your step-daughters under your care who are born of your women with whom you have had intercourse, though if you have not had intercourse with them, there is no sin on you, and the wives of your sons from your loins, and that you combine two sisters (in wedlock), except what has passed. Surely, Allah is Most-Forgiving, Very-Merciful..(4:23)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسْكِينٍ أَوْ عَدْلُ ذَلِكَ صِيَامًا لِيَذُوقَ وَبَالَ أَمْرِهُ عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ ﴿٥٥﴾

O you who believe, do not kill game when you are in Ihram (state of consecration for Hajj or Umrah). If someone from among you kills it deliberately, then compensation (will be required) from cattle equal to what one has killed, according to the judgment of two just men from among you, as an offering due to reach the Ka’bah, or an expiation, that is, to feed the poor, or its equal in fasts, so that he may taste the punishment of what he did. Allah has forgiven what has passed, but whoever does it again, Allah shall subject him to retribution. Allah is Mighty, Lord of Retribution.(5:95)

قُلْ لِلَّذِينَ كَفَرُوا إِنْ يَنْتَهُوا يُغْفَرْ لَهُمْ مَا قَدْ سَلَفَ وَإِنْ يَعُودُوا فَقَدْ مَضَتْ
سُنَّةُ الْأَوَّلِينَ ﴿٣٨﴾

Say to those who disbelieve that if they desist (from infidelity), they shall be forgiven for what has passed (of their sins), and if they repeat, then, the precedent of the earlier people is already established (that the infidels are punished(8:38).

Tradition of the Holy Prophet (S.A.W.S) also support the view that past and closed transaction should not be re-opened for the reason of elimination of Harm. The following Traditions are worth mentioning:

حَدَّثَنَا حَجَّاجُ بْنُ أَبِي يَعْقُوبَ حَدَّثَنَا مُوسَى بْنُ دَاوُدَ حَدَّثَنَا مُحَمَّدُ بْنُ
مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعَثَاءِ عَنِ ابْنِ عَبَّاسٍ قَالَ قَالَ
النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلُّ قَسَمٍ قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى مَا
قُسِمَ لَهُ وَكُلُّ قَسَمٍ أُدْرِكَهُ الْإِسْلَامُ فَهُوَ عَلَى قَسَمِ الْإِسْلَامِ

(سنن ابوداؤد: جلد دوم: حدیث نمبر ۱۱۴۰ حدیث مرفوع)

حجاج بن ابی یعقوب، موسیٰ بن داؤد، محمد بن مسلم، عمرو بن دینار، ابی شعثاء، حضرت ابن عباس سے روایت ہے کہ رسول اللہ صلی اللہ علیہ وآلہ وسلم نے فرمایا جو تقسیم زمانہ جاہلیت میں ہو چکی وہ زمانہ اسلام میں علی حالہ قائم رہے گی اور جو تقسیم اسلام کے زمانہ تک نہیں ہوئی اب وہ اسلام آجانے کے بعد اسلامی اصولوں کے مطابق تقسیم ہو گی۔

حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ أَنَّنَا عَبْدُ اللَّهِ بْنُ لَهْبَعَةَ عَنْ عُقَيْلٍ أَنَّهُ سَمِعَ نَافِعًا يُخْبِرُ عَنْ عَبْدِ اللَّهِ بْنِ
عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَا كَانَ مِنْ مِيرَاثٍ قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى
قِسْمَةِ الْجَاهِلِيَّةِ وَمَا كَانَ مِنْ مِيرَاثٍ أُدْرِكَهُ الْإِسْلَامُ فَهُوَ عَلَى قِسْمَةِ الْإِسْلَامِ (سنن ابن
ماجہ: جلد دوم: حدیث نمبر 2749 حدیث مرفوع ص 38 جلد 4)

محمد بن رمح، عبد اللہ بن لہبہ، عقیل، نافع، عبد اللہ بن عمر، حضرت عبد اللہ بن عمر سے روایت ہے کہ اللہ کے رسول صلی اللہ علیہ وآلہ وسلم نے ارشاد فرمایا جو میراث دور جاہلیت میں تقسیم ہو چکی تو وہ تقسیم جاہلیت برقرار رہے گی اور قانون اسلام آنے کے بعد ہر میراث اسلامی اصولوں کے مطابق تقسیم ہو گی۔ (اب قانون اسلام کے مطابق از سر نو اس کی تقسیم نہ ہوگی کیونکہ اس میں بہت حرج ہے)

22. Islamization of the legal framework is a gradual process, in the larger interest of the public, that takes places by reforming the prevailing laws and customs having the force of law.

23. The provision of Section 2-A does not validate the custom that is contrary to the Injunctions of Islam and at the same time it provides a strategic way to avoid chaos in closed transactions.

24. In view of the forgoing discussion, if the Petitioner still needs to pursue her right to get her share in inheritance under Shariah, she may seek such relief in personam from the appropriate forum. But so far this Shariat Petition to the extent of declaring Section 2-A of the Muslim Personal Law (Shariat) Application Act, 1948, is concerned, as discussed above, is dismissed being devoid of merit in this regard.

JUSTICE SHAHZADO SHAIKH

JUSTICE AGHA RAFIQ AHMED KHAN

CHIEF JUSTICE

JUSTICE RIZWAN ALI DODANI

Islamabad the 18.06.2013

Fit for reporting.

JUSTICE SHAHZADO SHAIKH

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RIZWAN ALI DODANI

MR. JUSTICE ZHAHZADO SHAIKH

CRIMINAL APPEAL NO.7/I OF 2013

Wali Muhammad s/o Ali Muhammad, Caste Mengal,

resident of Goth Jameel Ahmed Mengal. --- Appellant

Versus

The State --- Respondent

Counsel for appellant : Mr. Zahoor-ul-Haq Chishti, Advocate

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

FIR No. and date : 33/2012 Dated 31.07.2012 Police
Station Manjhoo Shori, District Nasirabad

Date of impugned judgment : 03.02.2013

Date of Institution of Appeal : 26.02.2013

Date of hearing : 02.07.2013

Date of decision : 02.07.2013

JUDGMENT

JUSTICE SHAHZADO SHAIKH, J:- Appellant Wali Muhammad has through Cr. Appeal No.7/I/2013 challenged the judgment dated 03.02.2013 passed by the learned Sessions Judge, Nasirabad at Dera Murad Jamali in Hadood Case No.18/2012, whereby the appellant was convicted under section 396 PPC and sentenced to life imprisonment with fine of Rs.3,00,000/- or in default thereof to further undergo three years S.I. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that complainant Abdul Khaliq (PW-1) submitted complaint before the SHO, Police Station Manjhoo Shori on 31.07.2012 wherein on 31.07.2012 he alongwith his son Abdul Hameed and Faiz Muhammad were going towards his land for looking after his paddy crop, on motorcycle of Faiz Muhammad bearing registration No.SLB-0935, chassis No. DSC0974507, engine No.DSE-332064 Model-2012. At about 11.35 a.m. when they reached near Shahi Sim Nala, they saw three accused persons, armed with fire arms, coming on 125-motorcycle. When the accused came near them, they signaled them to stop upon which his son Abdul Hameed stopped the motorcycle. The accused demanded motorcycle and on refusal of his son, all the three accused started to beat him with *Butts* of weapons. Abdul Hameed, son of the complainant, became unconscious and fell on the ground. The accused forcibly snatched the motorcycle and went towards South. The accused also took out mobile phones Nokia valuing Rs.5,000/- from the pocket of the complainant as well as of his son. The complainant further stated that he could identify the accused, if they were brought before him. He left Abdul Hameed and Faiz Muhammad Jatoi at the spot and went to police station for registration of the report.

3. Investigation ensued as a consequence of the registration of crime report. PW.6 Syed Mukhtar Hussain Shah SI had undertaken the investigation. On registration of the FIR, he alongwith the police party and the complainant reached the place of occurrence, inspected it on the pointation of the complainant, prepared memo of inspection of place of occurrence Ex.P/5A and site plan Ex.P/6B, sent injured Abdul Hameed alongwith injury statement to Civil Hospital, Dera Murad Jamali for medical check-up and recorded statements of the witnesses. He conducted investigation at the spot when he received information on telephone that Abdul Hameed succumbed to his injuries in Civil Hospital, Murad Jamali. He, reached the hospital, inspected the dead body, prepared inquest report Ex.P/6C and after completing proceeding handed over the dead body to the legal heirs. On 14.08.2012 he received secret information that one accused of the instant case was arrested in FIR No.157/2012 and was detained in Police Station City Dera Murad Jamali. He summoned the complainant and witnesses namely Abdullah and Abdul Rasheed for identification parade in Police Station Manjhoo Shori. He took the complainant and the witnesses Abdullah and Abdul Rasheed to Police Station City Murad Jamali. Identification parade was conducted under the supervision of DSP/SDPO wherein complainant Abdul Khaliq and the witnesses identified Wali Muhammad as accused. He prepared memos of identification parade Ex.P/1B, Ex.P/3A & Ex.P/4A. During investigation, the accused confessed his guilt on

22.08.2012 and made disclosure. He prepared memo of disclosure Ex.P/5B. The accused disclosed that the pistol which was used in the offence was taken into possession by the police in case FIR No.157/2012 upon which he took into possession photocopy of recovery memo of pistol Ex.P/6D in this case. After completion of the investigation he sent the accused to judicial lock up and handed over the file to the SHO. The SHO prepared challan Ex.P/6E on 23.08.2012 and submitted before the Court requiring the accused to face trial.

4. The learned trial Court framed charge against the accused 20.11.2012 under section 17(4) of the Offences against Property (Enforcement of Hudood) Ordinance, 1979. The accused did not plead guilty and claimed trial.

5. The prosecution produced six witnesses to prove its case. The gist of the statements of the prosecution witnesses is as under:-

- i) Complainant Abdul Khaliq appeared as PW.1 and endorsed the contents of his complaint Ex.P/1-A.
- ii) PW.2 Dr. Abid Hussain had medically examined Abdul Hameed on 31.07.2012 and observed as under:-

“INJURIES:

- swelling and bruise on right paritel region of skull.
- X-ray shows of skull on right orbitel region of skull.
- Emergency treatment given but patient not improved and expired at 5:30 p.m. so death is confirmed.

CAUSE OF DEATH: Skull and brain damage

WEAPON USED: Blunt.”

- iii) PW.3 Abdullah stated that on 31.07.2012 he and Abdul Rasheed were irrigating their land. At about 11.00 again stated 11.30 a.m. Abdul Khaliq, Abdul Hameed and Faiz Muhammad were coming on motorcycle. Three armed persons came on 125-motorcycle from the other side, stopped Abdul Hameed, Abdul Khaliq etc and demanded motorcycle. Abdul Hameed refused to give motorcycle upon which all the three persons started beating Abdul Hameed, who sustained injuries and fell down. The accused took away motorcycle and Nokia mobile from Abdul Hameed. He alongwith Abdul Rasheed reached at the spot and they alongwith Abdul Khaliq complainant went to police station for registration of the report leaving Faiz Muhammad and Abdul Hameed at the spot. Then they returned at the spot and took injured Abdul Hameed to the hospital at 3.00 p.m. who succumbed to injuries at 5.00 p.m. He further stated that they had seen the faces of the accused. On 14th one accused was arrested and they went to Police Station City Dera Murad where he identified the accused in identification parade,

whose name later on was known as Wali Muhammad. The identification parade was repeated three times. He produced before the trial Court memo of identification parade as Ex.P/3A.

- iv) PW.4 Abdul Rasheed stated that on 31.07.2012 he alongwith Abdullah came to their lands situated at Shahi Sim and were irrigating their lands. Abdul Hameed, Faiz Muhammad and Abdul Khaliq came there on motorcycle. Thieves, armed with fire-arms came there on 125-motorcycle, signaled Abdul Hameed to stop and then the thieves started beating them with *Butts*. Abdul Hameed became injured and fell down. In the meanwhile he alongwith Abdullah reached at the spot. The accused fled away snatching motorcycle. He and Abdullah went to Police Station Manjhoo Shori for registration of the report leaving Faiz Muhammad at the spot. After registration of the report, Abdul Khaliq alongwith police came at the spot. He and Abdullah also came at the spot on motorcycle. Police took injured Abdul Hammed to Civil Hospital, Dera Murad Jamali where he succumbed to his injuries at about 5.00 p.m. The accused were arrested and on receiving information that they were detained in Police Station City, he alongwith Abdul Khaliq and Abdullah went to police station for identification parade. They identified accused Wali Muhammad during identification parade from the line of eight persons. The I.O prepared memo of identification parade Ex.P/4A.
- v) PW.5 Sahib Dad Constable-339 stated that on 31.07.2012 he alongwith the complainant, police party and the I.O. Syed Mukhtar Hussain Shah went to the place of occurrence Shahi Sim Nala, where the I.O inspected the place of occurrence on the pointation of the complainant and prepared memo of inspection of place of occurrence Ex.P/5A. He attested the memo of inspection Ex.P/5A. On 22.08.2012 accused Wali Muhammad made disclosure and confessed his guilt before the I.O in his presence as well as in the presence of the SHO and Taj Muhammad. The I.O prepared memo of disclosure Ex.P/5B and he attested his signature on it.
- vi) PW.6 Syed Mukhtar Hussain Shah, SI had undertaken the investigation, the details of which have been mentioned in paragraph 3 of this judgment.

6. After closure of the prosecution evidence, the learned trial Court recorded statement of the accused under section 342 Cr.P.C. The accused denied the allegations leveled against him and pleaded innocence. The accused neither opted to record his statement under section 340(2) Cr.P.C. nor selected to produce defence evidence.

7. The learned trial Court, after completing the legal formalities of the trial, assessing the evidence available on the record and hearing the arguments advanced by the learned Counsel for the contending parties, returned the verdict of guilt and recorded conviction and sentence against the appellant as mentioned in opening paragraph of this judgment.

8. Being dissatisfied with the impugned judgment, appellant Wali Muhammad has challenged his conviction and sentence through the instant appeal.

9. Mr. Zahoor-ul-Haq Chishti, Advocate/learned Counsel for appellant Wali Muhammad has raised the following points for consideration of this Court:-

- i) The appellant was not nominated in the FIR.
- ii) The names of PW.3 Abdullah and PW.4 Abdul Rasheed were not mentioned in the FIR as witnesses.
- iii) The DSP, who supervised the identification parade was not produced.
- iv) The star witness Faiz Muhammad, whose motorcycle was snatched by the accused, was not produced as witnesses.
- v) The snatched articles i.e. motorcycle and mobile were not recovered from the appellant during investigation.
- vi) No role was attributed to the appellant.
- vii) The descriptions of the accused were not mentioned in the FIR.
- viii) The disclosure of the appellant before the police is inadmissible under Qanoon-e-Shahadat.
- ix) There are many contradictions between the witnesses of the prosecution itself.
- x) No description of fire-arms were mentioned in the FIR, pistol recovered from the appellant in another case, was attributed to the appellant in the instant case.
- xi) There is conflict between medical and oral evidence. According to oral evidence three persons gave beating to Abdul Hameed with *Butt* blows whereas the medical report shows only one injury on the head of Abdul Hameed.
- xii) The other two accused are absconders and the learned trial Court has shifted all the burden on the present appellant.
- xiii) The impugned judgment is not sustainable because section 396 PPC is not attracted.
- xiv) The prosecution failed to prove its case beyond shadow of reasonable doubt and the appellant deserves acquittal.

The learned Counsel for the appellant relied upon on the following judgments:

2011 SCMR 563

Sabir Ali alias Fauji Vs. The State

Complainant had neither named the accused nor given his descriptive features in the F.I.R.---Evidence of identification parade was of no value due to the inherent defect that the witnesses had not described the role of accused in

the occurrence while identifying him---Witnesses according to F.I.R. did not know the accused prior to the occurrence and the identification parade was not held according to law, therefore, identification of accused in court by the witnesses was also of no value-----Confessional statement allegedly made by accused before the Investigating Officer was not believable in the absence of any corroborating evidence and no inference in this regard could be drawn against the accused when this circumstance was not put to him in his statement recorded under S.342, Cr.P.C.

Failure on the part of witnesses to describe the role of accused at the time of identification parade is an inherent defect, which renders the identification parade valueless and unreliable.

PLD 2009 Peshawar 44

Abdul Ghani alias Fazal Ghani Vs. Muhammad Sharif and another.

Accused was not charged in the FIR, but he was for the first time named after one month by the father of deceased who did not appear for evidence before the court at the trial----Identification parade in the case was held after seven days of arrest of accused and said delay in the identification parade had not been explained---Complainant though had stated in the F.I.R that he could identify accused, who fired at the deceased, but he had given no description of features etc., which could be made a base for future recognition---In the test identification parade, the complainant had only pointed out accused to be an accused, but had not specified the role played by him---Complainant did not state that it was the accused who had fired at the deceased---Said statement of the complainant belied the medical evidence and the site plan--It was belatedly stated that accused was the one who had fired at the deceased, presuming that he was available to the prosecution for the time being qua identification---Conviction and sentence recorded by the Trial Court against accused were set aside extending him the benefit of doubt and he was acquitted of the charge and was set at liberty.

Mere fact that a witness was disinterested, by itself, was not a certification that what he would speak, would be true, unless his statement intrinsically rang true---Where a very responsible and respectable person would make a statement which was not acceptable to common sense, would be believed by the court, because the court of law would evaluate the evidence on the basis of prudence.

2010 SCMR 846

Riaz Ahmed Vs. The State

Prosecution case rested only on the solitary statement of the complainant-

--One eye-witness of the occurrence had expired and the other eye-witness had been given up by the prosecution being unnecessary---Presumption under illustration (g) of Art. 129 of Qanun-e-Shahadat, 1984, could fairly be drawn that had the given up witness been examined in the Court, his evidence would have been unfavorable to the prosecution---Oral evidence was in conflict with medical evidence---Statement of the complainant was neither supported nor corroborated by any piece of evidence.

10. On the other hand, Mr. Muhammad Sharif Janjua, learned Counsel for the State has made the following submissions:-

- i) FIR is prompt.
- ii) Statement of PW.1 Abdul Khaliq complainant is corroborated by PW.3 Abdullah and PW.4 Abdul Rasheed.
- iii) The medical report also supported the ocular account as the doctor PW.2 observed swelling and bruise on the skull of Abdul Hameed deceased.
- iv) There is no enmity between the complainant and the appellant.
- v) The prosecution has fully proved its case beyond reasonable doubt and the appellant deserves no leniency.

11. We have heard the arguments advanced by the learned Counsel for the appellant as well as the State Counsel, perused the record, and examined relevant portions of the impugned judgment with their assistance.

12. Complainant Abdul Khaliq put the law in motion by submitting complaint against three unknown accused persons regarding occurrence of snatching motorcycle and mobile phone as well as giving beating by the accused to his son Abdul Hameed, while the complainant alongwith Faiz Muhammad were present at the spot. No resistance was offered by the complainant and his other companion Faiz Muhammad and they remained silent spectators. It is very strange that a son was getting beating by three accused persons but his father did not make any effort to rescue his son from the accused. Faiz Muhammad was an important witness of this case because he was present at the spot and had seen the occurrence. His motorcycle was snatched by the accused persons but he had not made any effort even to save his own motorcycle. No alarm was raised by the complainant and Faiz Muhammad even after fleeing away of the accused.

13. PW.3 Abdullah and PW.4 Abdul Rasheed were produced as chance witnesses. They were claimed to have seen the occurrence and reached at the spot, but their names were not mentioned in the FIR as witnesses whereas the complainant stated in his statement at the trial that he, Abdullah and Abdul Rasheed had gone to police station for registration of the report, leaving his son Abdul Hameed in injured unconscious condition and Faiz Muhammad at the spot. PW.3 Abdullah and PW.4 Abdul Rasheed also stated in their statements that they accompanied the complainant to police station for registration of the case. According

to the prosecution story, five persons i.e. complainant Abdul Khaliq, Abdul Hameed, Faiz Muhammad, Abdullah and Abdul Rasheed were present at the spot but none of them made any effort to chase the accused persons. All the witnesses including complainant, father of Abdul Hameed deceased stated that they had seen the accused beating Abdul Hameed but none of them dared to intervene or interfere with the accused for the rescue of Abdul Hameed. The natural reaction of human being is that in such eventuality when the son was lying unconscious in injured condition, the father would first take him to hospital for medical treatment to save his life and then to make efforts for other legal proceedings because the human life is more precious than other things i.e. motorcycle, mobile phone etc. It seems highly improbable that the complainant left his son Abdul Hameed in unconscious injured condition at a deserted place and he himself went to police station for registration of the report.

14. The accused were not named in the FIR even the complainant had not given any details about the features of the accused persons. Appellant Wali Muhammad was stated to have been arrested in another case by the police of Police Station City Dera Murad Jamali and according to I.O Syed Mukhtar Hussain Shah PW.6 he received spy information that one accused of this occurrence was arrested by the police of Police Station City Dera Murad Jamali. It is not disclosed that when no description/features of the accused were mentioned in the FIR then how the I.O. was able to know that the accused of this occurrence was arrested.

15. Identification parade of the accused was conducted in Police Station City Dera Murad Jamali where complainant Abdul Khaliq, Abdullah and Abdul Rasheed had identified accused Wali Muhammad. No role was attributed to the accused persons in the FIR and the complainant and witnesses had identified Wali Muhammad, present appellant during identification parade without assigning any specific role which he performed at the time of occurrence. The identification parade was supervised by the DSP/SDPO but the said DSP/SDPO was not produced as witness to verify the details of the identification parade. PW.1 Complainant Abdul Khaliq, PW.3 Abdullah and PW.4 Abdul Rasheed deposed that they, on their own, went to police station for identification parade on receiving information about the arrest of the accused whereas the I.O. PW.6 Syed Mukhtar Hussain Shah stated that he summoned the complainant and the witnesses to police station Manjhoo Shoori and took them to police station City Dera Murad Jamali for identification parade. These circumstances create many doubts about the authenticity of the identification parade.

16. No recovery of snatched articles was effected from the appellant. According to the I.O, the accused made disclosure before him that the two mobile phones were taken by his co-accused Asad to his home, while the motorcycle was taken by Jehangir alias Baqar Shah, co-accused. He further stated that he could have got recovered the stolen motorcycle. Appellant Wali Muhammad remained under investigation for many days but the I.O has not explained about any efforts if he made to trace out co-accused Asad and Jehangir alias Baqar Shah nor has he given any details of his efforts, if any, to recover the snatched articles.

The I.O admitted in his cross-examination that he had not got recorded statement of the accused under section 164 Cr.P.C. before the Magistrate. It is settled principle of law that the disclosure before the police has no legal value under the provisions of Qanun-e-Shahadat Order, 1984, and in fact nothing has been established or discovered on the disclosure of accused. PW.5 Sahib Khan admitted in his cross-examination that the distance between Police Station City Dera Murad Jamali and the Court of Judicial Magistrate was 1-k.m. but the I.O did not bother to approach the Court of law for conducting identification parade and to record statement under section 164 Cr.P.C.

In this regard, the reference can be made to the following judgments/case law:-

Confessional statement of accused before police which leads to discovery of no new fact or circumstance on pointation of accused would have no evidentiary value and such confessional statement before police cannot be used against accused. [NLR 2007 Criminal Quetta 142].

No formalities of law observed. It could not be admissible in evidence at all. [AIR 1936 P.C. 253 and PLD 1950 BJ 5].

Appreciation of evidence. Extra-judicial confession. Principle. Extra-judicial confession is a very weak type of evidence and no conviction on it can be awarded without its strong corroboration on the record. [2005 SCMR 277 (a)].

17. The complainant made many improvements in his statement and at belated stage he introduced two witnesses i.e. Abdullah and Abdul Rasheed in the prosecution story, who were not mentioned at the time of complaint/FIR, whereas the star witness Faiz Muhammad, who was accompanying the complainant on the motorcycle and was present at the spot at the time of occurrence and according to the complainant was the owner of robbed motorcycle, was not produced as witness at the trial.

18. The medical evidence is also not helpful to the prosecution because the oral account does not support the medical evidence. According to the oral evidence, three accused persons gave beating with *Butt* blows of fire-arms to Abdul Hameed but the medical report shows only "swelling and bruise on right paritel region of skull."

19. In nutshell, the appellant was not nominated in the FIR, nor his features were disclosed nor any role was assigned to him in FIR or even at the time of identification parade, which was not held by Magistrate and even the concerned DSP/SDPO was not produced as witness. The owner of robbed motorcycle, who was present at the time of occurrence, was not present at the time of identification parade. The persons who claimed to have identified the accused have made contradictions as the I.O. stated that they were summoned for the purpose, whereas they stated that they had gone to the P.S. on their own accord.

20. The following create serious suspicion in the Prosecution story:

- i) The occurrence took place on 31.7.2012 within the jurisdiction of P.S. Manjhoo Shori, whereas the accused was stated to have been arrested in another FIR No.157/2012 (date of the FIR not on record), by P.S. City Dera Murad Jamali. The I.O. of this case on spy information came to know about the accused and his involvement in this case on 14.8.2012. On the same day he arranged everything including necessary processing/orders from his P.S. Manjhoo Shori, and processing/orders from P.S. Dera Murad Jamali, summoned the witnesses Abdullah, PW.3 and Abdul Rasheed, PW.4 and the complainant Abdul Khaliq, PW.1 at P.S. Manjhoo Shori, took them to P.S. Dera Murad Jamali (keeping in view the distance in rural areas of Balochistan between P.Ss), and arranged the Identification Parade, without the Magistrate. The DSP/SDPO, who supervised the identification parade was not produced. The accused was first identified on 14.8.2012, and then he (the accused) after remaining under custody for 8 days, made the confession but he was not produced before the Magistrate for statement under Section 164 Cr.P.C. Neither any effort was made to arrest the co-accused disclosed by the present accused, nor any recovery was effected to fill in the fatal gaps in the prosecution story. Even the eyewitness Faiz Muhammad, the owner of the snatched motorcycle was not produced.
- ii) PW.3 Abdullah and PW.4 Abdul Rasheed, not mentioned in the FIR as witnesses, could not give details of their land on which they were working at the time of occurrence.
- iii) Since no personal description and role was attributed to the appellant at any stage, in any manner, by any PW, he could not be linked to the fatal injury to the deceased/victim Abdul Hameed, and the alleged offences. Description of fire-arms was also not given in the FIR.

21. From the above facts and circumstances of the case, we have come to the conclusion that it is a case of no evidence and the occurrence has not taken place in the manner as disclosed in the FIR, to take the unbroken chain to the neck of the accused. The learned trial Court has failed to apply its judicial mind to the evidence available on the record, which is not sufficient and free from reasonable doubt to record conviction against the appellant.

22. Resultantly, Cr. Appeal No.7/I/2013 filed by Wali Muhammad son of Ali Muhammad is accepted, impugned judgment dated 03.02.2013 passed by learned Sessions Judge, Nasirabad at Dera Murad Jamali in Hudood Case No.18/2012 is set aside. The conviction and sentence of the appellant are also set aside. The appellant be released forthwith if not required in any other case.

23. These are the reasons of our short order dated 02.07.2013.

JUSTICE SHAHZADO SHAIKH

JUSTICE RIZWAN ALI DODANI

Islamabad the 2nd July, 2013

Fit for reporting.

JUSTICE SHAHZADO SHAIKH

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT:

MR. JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE

MR. JUSTICE MUHAMMAD JEHangir ARSHAD

MR. JUSTICE SHEIKH AHMAD FAROOQ

MR. JUSTICE SHAHZADO SHAIKH

SHARIAT PETITION NO.6/I OF 2006

1. Qasim Hassan Buki,

2. Sadiq Hassan Buki,

3. Ali Hassain Buki,

All sons of Iqbal Ahmed Turabi,
residents of House No.34/II, Street No.N,
Phase-IV, DHA, Karachi.

---Petitioners

Versus

1. Federation of Pakistan, through Secretary,
Ministry of Law, Justice Human Rights and
Parliamentary Affairs, Islamabad.

2. Mr. Iqbal Ahmed Turabi S/O Ali Kousar

3. Mrs. Najma Turabi wife of Mr. Iqbal Ahmed Turabi,

---Respondents

For the petitioners : Nemo

For Federal Government : Nemo

For Province of Punjab : Ch. Saleem Murtaza Mughal, Assistant Advocate
General

For Province of KPK : Nemo

For Province of Balochistan : Nemo

For Province of Sindh : Nemo

Date of Institution of Sh. Petition : 22.07.2006

Date of hearing : 08.07.2013

Date of Judgment : 08.07.2013

JUDGMENT

JUSTICE SHAHZADO SHAIKH, J.:- Petitioners Qasim Hassan Buki, Sadiq Hassan Buki and Ali Hassan Buki have filed Shariat Petition No.6/I/2006 under Article 203-D read with Articles 2-A, 4, 5, 9, 35 and 227 of the Constitution of Islamic Republic of Pakistan seeking declarations that (a) the rejection of plea bargain application is excess use of the power which is against the Injunction of Islam and principles of natural justice; and (b) the sentence of confinement awarded to respondent No.2 and respondent No.3 (wife of respondent No.1) is against the Islamic Injunctions.

2. The submissions of the petitioners as mentioned in their Shariat Petition are reproduced as follows:-

“1. That the petitioners are law abiding citizens of Pakistan and are studying and are sons of the respondent No.2 and 3 who have been convicted by the judgment dated 31.5.2002 passed by the learned Judge of the Accountability Court, Karachi, the petitioners parents filed an appeal against the judgment before the Hon’ble High Court of Sindh. That the petitioner challenged the impugned section 10, 11, 12 read with 25 of the NAB Ordinance 1999 alongwith the important point neither be agitated/challenged before the Hon’ble High Court nor in the Hon’ble Supreme Court of Pakistan. The judgment has become a law which can be re-opened/challenged on the ground that the Hon’ble Supreme court of Pakistan held in Malik Asad Ali case that any point which could not be considered by the apex Court can be challenged, therefore the ‘petitioners’ also challenged the vires of the impugned judgment dated 31.5.2002 only to the extent of point No.6 at page No.42 & 43 relating to deciding plea bargaining application of the petitioners parents i.e. respondent No.2 and 3 and also same punishment awarded to the accused Najma i.e. respondent No.3 who is a House wife, is against the injunction of Islam, Ayaat 27, 49, 40 Surah Al-Nisa; Ayaat 18, 182 Surah Al-Imran; Ayaat 115, 131 Surah Inaam; Ayat 29 Surah Al-Airaf; Ayat 44 Surah Younis; Ayaat 101, 117 Surah Hud, Ayat 90 Surah Numl; therefore this Hon’ble Federal Shariat Court may graciously to consider this petition inter alia on consideration of the following question of law, facts and grounds.

BRIEF FACTS OF THE CASE.

A brief facts of the reference are that the Chairman NAB had received creditable information that rumpant erosion of national funds and huge embezzlement were prevalent in the Pakistan State Oil Limited. On the said information, he had authorized the investigation agencies viz F.I.A Karachi to un-earth persons who were involved in the malpractices. Subsequently it was found that accused Iqbal Ahmed Turabi being a holding of public office (from March 1987 to July, 1998) in furtherance of common intention, criminal conspiracy and abetment of co-accused Mrs. Najma Iqbal acquired immoveable/movable properties and

pecuniary resources in his name and in the name of above co-accused were disproportionate to the known sources of their income for which they could not reasonably account and thereby they committed an offence of corruption and corrupt practices as defined under section 9(a) (iv)(v) of the NAB Ordinance 1999. Thus the Chairman NAB made reference No.39/2001 amounting to near about of Rs.25,00,000/- and submitted the same before the Accountability Court at Karachi.

QUESTION OF LAW.

1. *Whether the learned judge of the Accountability Court not mentioned the amount in the entire judgment as per reference?*
2. *Whether the learned judge of the Accountability Court overlooked the reference amount made by the Chairman NAB under the law?*
3. *Whether this Hon'ble court has jurisdiction to entertain this Shariat Petition under the Islamic Injunction?*
4. *Whether the learned judge of the Accountability Court was empowered to increase the amount, from the reference amount?*
5. *Whether Hon'ble Apex Court held in the case of Malik Asad Ali "that any point which could not be agitated/challenged either, the Court has power to re-examine the same?"*
6. *Whether the Hon'ble Accountability Trial Court on the point of plea bargaining pleaded by the petitioner has been refused which amounted as treatment of discriminations towards the petitioners?*
7. *Whether a house wife of an accused is deemed to be treated a criminal in view of teaching any instructions of Holy Quran and Sunnah?*
8. *Whether a house wife and mother of "Non-Mehsin" children of her family without having active role in the offence committed by her husband is liable to be kept in jail in view of the teaching of Holy Quran and Sunnah?*
9. *Whether the punishment of imprisonment awarded to a housewife accused without her direct involvement in the offence alleged against her is tantamount to distortion of her family which is protected by under article 35 of the Constitution of Islamic Republic of Pakistan?*
10. *Whether the "benami" transaction executed in favour of a housewife by an accused is amounted to attribution of criminal abetment on the part of wife under the principles of "Adal" and Ahsan enshrined in Shariah Law.*
11. *Whether the aspects confinement of accused who overlooked/omitted while passing the impugned judgment dated 31.5.2002 specially point No.6 at page*

42 and 42, which neither challenged before the Hon'ble Superior Judiciary nor touched at any stage up to the level of the Hon'ble Supreme Court of Pakistan is liable to be set aside in view of section 25 of the NAB Ordinance 1999?

FACTS AND GROUNDS.

1. *That the Chairman NAB made reference No.39/2001, wherein the petitioners parents i.e. respondent No.2 and 3 and 3 other were accused the reference was submitted before the learned Accountability Court, Karachi whereby the petitioners parents i.e. respondent No.1 and 2 were awarded punishment under section 9(2) (v) read with section 10 of NAB Ordinance 1999 for ten years R.I alongwith 95 Millions fines per accused. Being aggrieved by the aforesaid judgment dated 31.5.2002 passed by the learned Trial Court was assailed in form, of appeal No.46/2002 before the Hon'ble High Court of Sindh, Karachi wherein modifications in fines imposed on the petitioners were reduced to 25 millions each. Again being dissatisfied with the order of learned High Court was challenged before the Supreme Court of Pakistan wherein vide judgment dated 13.7.2004 passed in Cr.P.L.A. No.379/2003, the sentence upheld by the Hon'ble Sindh High Court was maintained by the same which was subsequently reduced from 5 years to 3 years R.I. to the respondent No.2. Hence the judgment and sentence maintained upto the Apex Court has taken the finality of law.*
2. *That the Hon'ble Supreme Court of Pakistan held that the question relating to the appointment of Chief Justice of Pakistan was not determined by this Court in Al-Jehad Trust case (Supra) and was left open as is evident from the following paragraph in the short order announced by the Court on the conclusion of arguments in the case, which was subscribed by all the learned members of the Bench. It is submitted that the aspect of the matter omitted/overlooked by any judicial forum in any case can be re-entertained/re-opened after taking the finality of the same. Hence, the petitioners rely on very judgment passed by the Hon'ble Apex Court assailed the part of judgment which pertain to the discriminatory treatment meted out by the learned Trial Court to the parents of the petitioners which is contrary to the norms of administration of justice as well as in derogation of Holy Quran and Sunnah.*
3. *That we being the children of our convicted parents especially our convicted mother seek the gracious indulgence of this Hon'ble Court under article 203-D read with Article 35 wherein protection of family etc has been guaranteed by the Constitution and in reported case 1999 PCRLJ page 638 which makes entitled the petitioners to bring the notice of any violation of law by any person or any act or proceedings which infringes his fundamental rights or cause him any unnecessary harassment, the Court has power to pass appropriate orders. We the petitioners being children of convicted and confined parents in the above referred case seek the protection of our family by the forum of this*

august Shariat Court which can competently strike down/set aside any law or provision of law under Article 203-D read with Article 227 of the Constitution of Islamic Republic of Pakistan being contrary to the direction and will of the Holy Quran and Sunnah.

- 4. That the learned Judge did not considered the application dated 10.5.2012 submitted by the petitioners' parents i.e respondent No.2 and 3 and other three accused jointly under section 25 of the NAB Ordinance. It is submitted that the learned Judge rejected the same on the ground that the accused No. 1, 2, 4 and 5 value of the properties movable and immovable is more than the amount offered by them. It is submitted that the petitioners' parents i.e. respondent No. 2 and 3 jointly filed an application under section 25 of NAB Ordinance for plea bargaining provided under the law and offered the entire amount made by the Chairman NAB under his reference No.39/2001. It is submitted that the learned Judge has no power to increase the amount from the reference which is against the provision of the Constitution, principle of law and as well as against the spirit of Islamic Injunction.*
- 5. That the petitioners parents due to confinement overlooked the important point in the judgment at page 42 and 43 and their advocates not touch the said point before the Hon'ble High Court and as well as in the Hon'ble Supreme Court of Pakistan, therefore the said point which could not be touched/agitated can be re-open by this Hon'ble Court on the ground of Islamic Injunction and principle laid down by the Apex Court. Reported 1998 SC page 161.*

PRAYER.

It is therefore, respectfully prayed that this Hon'ble Federal Shariat Court may graciously be pleased to:-

- (a) declare that only to extent the judgment dated 31.5.2002 at the point No.6 at page 42 and 43 wherein the learned Judge rejected the plea bargaining application of the accused i.e. respondent No.2 and 3 on the ground that accused have more than property of the offered amount. As the offered amount was not less than from the reference amount made by the Chairman NAB after thoroughly inquiry. Thus the rejection of plea bargaining application is excess the power which is against the injunction of Islam and Principle of natural justice.*
- (b) Declare that the sentences of confinement awarded to respondent No.3 who is wife of respondent No.1 is against the Islamic Injunction and the respondent No.2 confinement is un-Islamic.*
- (c) Any other relief/reliefs under the circumstances of the case may also be granted in the larger interest of justice and equity."*

3. This petition came up for preliminary hearing before the Court on 24.01.2007 but it was adjourned on the written request sent by the learned Counsel for the petitioners. It was again fixed for preliminary hearing before the Court on 03.04.2007 but no one put in appearance and it was adjourned to 23.04.2007. On 23.04.2007 the petition was dismissed for non-prosecution due to absence of the petitioners. Vide order dated 06.07.2010, the Hon'ble Full Bench of this Court restored the petition to its original number by recalling its earlier order holding:

“Under Rule 15 of the Federal Shariat Court (Procedure) Rules, 1981 a petition fixed for hearing may not be rejected only on the ground of absence of the petitioner, his counsel or juris-consult. The second clause of this Rule stipulates further that no petition made under Article 203-D shall abate by reason of death of the petitioner. This petition was dismissed solely on the ground of non prosecution. The Court was seized of a substantial question of law and it should have been considered on merits.”

The petition again came up for preliminary hearing on 18.10.2010 but no one appeared before the Court from the petitioners' side and the case was adjourned because the notice was not properly served. On 05.06.2013 also the petitioners were absent and pre-admission Notice was ordered to be sent to the Federation of Pakistan.

4. The Shariat Petition is again fixed today at the stage of pre-admission Notice but no one either from the petitioners' side or on behalf of the Federation of Pakistan turned up. The Research Advisor of this Court submitted research note in compliance with the Court's order dated 05.06.2013, which is reproduced as follows:

“This Shariat Petition is filed to challenge Section 10, 11 and 12 of the National Accountability Bureau Ordinance, 1999, for being repugnant to Islamic injunctions, by three brothers and the sons of the respondents No.2 and 3 of the corruption case decided by the Accountability Court, Karachi where the above mentioned two respondents were convicted by the Accountability Court and the appeal was filed before the Sindh High Court against this judgment. The High Court pleased to reduce the amount of fine as well as the period of confinement. The august Supreme Court upheld/maintained the judgment of the High Court when appeal filed before it against the judgment of High Court. As a last resort, section 10, 11 and 12 of National Accountability Ordinance 1999 were challenged before this Court for being repugnant to injunctions of Islam. It was also contended that the rejection of plea bargaining under section 25 of the said Ordinance is based on discrimination, hence repugnant to injunctions of Islam. It is also contended that “where the aspect of any matter or issue is over looked in any judicial forum, in any case, that can be reopened for discussion even after taking finality of the case. According to the petitioners, when the judgment of Supreme Court attained finality, it becomes a law and any law can be challenged before this Court for being repugnant to the injunctions of Islam. According to petitioner, the trial Court

treated their parents discriminately and awarded the woman the punishment of imprisonment, which according to them, is not allowed in Islam.

When we go through this petition, it becomes evident that it is mainly based on personal grievances and has been filed in a quest to get relief from this Court against the order of trial Court. They filed appeal before the Sindh High Court and august Supreme Court of Pakistan and succeeded in getting some relief in terms of reduction in fine and period of confinement. The petitioners have not mentioned the grounds as why and on which grounds, Section 10, 11 and 12 of the impugned law are repugnant to the injunctions of Islam nor produced the Quranic verses and traditions of the Holy Prophet (Peace be upon Him) to which these provisions are in conflict. The petitioners have referred some Suras of the Holy Quran at page 2 of the main petition which are not sufficient in terms of requirements under FSC procedure rules 1981.

This Petition was filed in this Court on 22.07.2006 and placed before the Court on 24.01.2007 for preliminary hearing. The petitioners moved an application for adjournment on the grounds of illness. The previous record shows that since then, neither the petitioners nor their Counsel has ever appeared before the Court nor sent any application for adjournment. On 23.04.2007, this petition was dismissed for non-prosecution but later on it was restored automatically because under the procedure rule of this court, a Shariat Petition once filed, cannot be dismissed for non prosecution or on a death of the petitioner. This petition was restored on 6.7.2010 but the petitioners seem to be least interested in pursuing this Shariat Petition simply because the period of confinement of their parents may have completed with the lapse of specified period of confinement.”

5. Perusal of the petition shows that the petitioners have not explained as to how the impugned sections of National Accountability Bureau Ordinance, 1999 are repugnant to the Injunctions of Holy Quran and the Sunnah of the Holy Prophet (Peace be upon Him). Although the petitioners have referred to some verses of the Holy Quran yet they have not elaborated the verses to show any relevance to their contentions. Even they did not bother to submit the text of verses of Holy Quran quoted by them in their petition. The contents of the petition show that the petitioners approached this Court through the instant Shariat Petition in order to get relief in personam because the father (respondent No.2) and mother (respondent No.3) of the petitioners were convicted by the learned Judge, Accountability Court, Karachi. The appeal filed against the said judgment was disposed of by the Hon'ble High Court of Sindh by reducing the sentence of imprisonment and fine. The Hon'ble Supreme Court of Pakistan maintained the judgment of Sindh High Court. The petitioners or their Counsel have not been appearing before this Court since filing of the instant Shariat Petition in spite of service of Notices upon them. It shows that the petitioners have no interest in pursuing the Shariat Petition.

6. The petitioners contended in their petition that any aspect of the matter omitted/overlooked by any judicial forum in any case can be re-entertained/re-opened even after attaining finality by the concerned judgment. It was also contended that when the judgment of Supreme Court attained finality, it becomes a law and any law can be challenged before this Court for being repugnant to the injunctions of Islam. According to petitioners, the trial Court treated their parents with discrimination and awarded the woman the punishment of imprisonment, which according to them, is not allowed in Islam.

In this regard, Article 203-D of the Constitution of Islamic Republic of Pakistan is very clear, which is reproduced as follows:-

203-D. Powers, jurisdiction and functions of the Court.---(1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

(1-A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated in either of those Lists, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:-

- (a) the reasons for its holding that opinion; and
- (b) the extent to which such law or provision is so repugnant; and specify the day on which the decision shall take effect.

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam:-

- (a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated

in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

- (b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

7. From the above it is clear that Article 203-D of the Constitution pertains to the jurisdiction of this Court to examine and decide the question whether or not any *law or provision of law* is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet (Peace be upon Him) whereas in the instant Shariat Petition, the petitioners challenged the *judgment* of the Hon'ble Supreme Court, which according to them, has already taken finality. A *judgment* does not fall within the definition of *law or provision of law*. In this regard relevant part of the “Article **203B Definitions**” is reproduced below:

“(c) “**law**” includes any **custom** or **usage** having the force of law but *does not include the Constitution, Muslim Personal Law,...*”

It is quite clear from the above that definition of law does not include a *judgment*.

8. Although the petitioners have referred to some verses of the Holy Quran yet they have neither reproduced the specific text nor elaborated the verses to show any relevance to their contentions. However, in this context, the following is very pertinent:

“word *law* in Articles 4, 8 and 260(3), Constitution of Pakistan (1973) relates to *positive law, not inclusive of texts of Shariat* except as made applicable by positive law. Evidence Act, 1872 though has been replaced with Qanun-e-Shahadat, 1984, Qur’anic verses, however cannot be made basis for determining guilt or otherwise of accused.

(Asalat v. State **1978 P Cr. L J 18.**)

9. It may also be relevant to examine definition of the term ‘*Judgment*’ (according to Black’s Law Dictionary):

1. A court’s final determination of the rights and obligations of the parties in a case. The term judgment includes an equitable decree and any order from which an appeal lies. (Fed. R. Civ. P. 54. — Abbr. J.)
2. (English law): An opinion delivered by a member of the appellate committee of the House of Lords; a Law Lord’s judicial opinion.

From the above, it is quite clear that the term ‘*judgment*’ does not fall within the lexical or legal definition of the term ‘*law*’.

10. According to the petitioners, the trial Court treated their parents with discrimination and awarded the woman the punishment of imprisonment, which according to them, is

not allowed in Islam. It is evident from the record that the parents of the petitioners were convicted by a Court of law. Against the said conviction they went into appeal upto the apex Court. The stance of the petitioners that they had not agitated some important points before the Hon'ble High Court of Sindh and the Hon'ble Supreme Court of Pakistan is not relevant to invoke jurisdiction of this Court against the order/judgment of the learned trial Court or the Honourable High Court or the Honourable Supreme Court.

11. Jurisdiction of a court means the competent jurisdiction of the court, i.e. its power to decide a case or a question. In this connection the following from the US court system may elucidate this point of jurisdiction:

“RULES OF JURISDICTION IN A SENSE SPEAK FROM A POSITION OUTSIDE THE COURT SYSTEM AND PRESCRIBE THE AUTHORITY OF THE COURTS WITHIN THE SYSTEM. *THEY ARE TO A LARGE EXTENT CONSTITUTIONAL RULES. THE PROVISIONS OF THE U.S. CONSTITUTION SPECIFY THE OUTER LIMITS OF THE SUBJECT-MATTER JURISDICTION OF THE FEDERAL COURTS AND AUTHORIZE CONGRESS, WITHIN THOSE LIMITS, TO ESTABLISH BY STATUTE THE ORGANIZATION AND JURISDICTION OF THE FEDERAL COURTS. THUS, ARTICLE III OF THE CONSTITUTION DEFINES THE JUDICIAL POWER OF THE UNITED STATES TO INCLUDE CASES ARISING UNDER FEDERAL LAW AND CASES BETWEEN PARTIES OF DIVERSE STATE CITIZENSHIP, AS WELL AS OTHER CATEGORIES. THE U.S. CONSTITUTION, PARTICULARLY THE DUE PROCESS CLAUSE, ALSO ESTABLISHES LIMITS ON THE JURISDICTION OF THE STATE COURTS. THESE DUE PROCESS LIMITATIONS TRADITIONALLY OPERATE IN TWO AREAS: JURISDICTION OF THE SUBJECT MATTER AND JURISDICTION OVER PERSONS. WITHIN EACH STATE, THE COURT SYSTEM IS ESTABLISHED BY STATE CONSTITUTIONAL PROVISIONS OR BY A COMBINATION OF SUCH PROVISIONS AND IMPLEMENTING LEGISLATION, WHICH TOGETHER DEFINE THE AUTHORITY OF THE VARIOUS COURTS WITHIN THE SYSTEM.*” FLEMING JAMES JR., GEOFFREY C. HAZARD JR. & JOHN LEUBSDORF. *Civil Procedure* § 2.1, AT 55 (5TH ED. 2001).

(Black's Law Dictionary)

FROM THE ABOVE CITATION, THE IMPORTANT POINTS ON THE QUESTION OF JURISDICTION, EMERGE AS FOLLOWS:

RULES OF JURISDICTION... *ARE TO A LARGE EXTENT CONSTITUTIONAL RULES.*

THE PROVISIONS OF THE U.S. CONSTITUTION SPECIFY...BY STATUTE THE ORGANIZATION AND JURISDICTION...

ARTICLE III OF: *THE CONSTITUTION DEFINES THE JUDICIAL POWER OF THE UNITED STATES TO INCLUDE CASES ARISING UNDER FEDERAL LAW AND CASES BETWEEN PARTIES OF DIVERSE STATE CITIZENSHIP, AS WELL AS OTHER CATEGORIES...*

THE U.S. CONSTITUTION,... DUE PROCESS LIMITATIONS TRADITIONALLY OPERATE IN TWO AREAS:

JURISDICTION OF THE SUBJECT MATTER AND

JURISDICTION OVER PERSONS.

...THE COURT SYSTEM IS ESTABLISHED BY STATE CONSTITUTIONAL PROVISIONS OR BY A COMBINATION OF SUCH PROVISIONS AND IMPLEMENTING LEGISLATION, WHICH TOGETHER DEFINE THE AUTHORITY OF THE VARIOUS...

12. In line with the international best constitutional practices, in Pakistan also jurisdiction of Federal Shariat Court of Pakistan is laid down in the Constitution, as elaborated above. Therefore, an individual or a party cannot extend any jurisdiction to this Court, suitable to his prayer.

13. The petitioners did not appear before this Court even on a single date of hearing. They just filed the Shariat Petition and then nobody had bothered to come forward to assist the Court, if they had a different argument to pursue. The absence of the petitioners shows that they have no interest and no argument in this Shariat Petition.

14. The petitioners have failed to give any convincing reason about the impugned sections of NAB Ordinance being repugnant to the Injunctions of the Holy Quran and the Sunnah of Holy Prophet (Peace be upon Him).

15. Even otherwise the petition is not maintainable before this Court, in view of the legal position explained above.

16. In view of what has been discussed above, we find no merits in this instant Shariat Petition, which is dismissed accordingly.

JUSTICE SHAHZADO SHAIKH

JUSTICE AGHA RAFIQ AHMED KHAN

CHIEF JUSTICE

JUSTICE MUHAMMAD JEHANGIR ARSHAD

JUSTICE SHEIKH AHMAD FAROOQ

Islamabad the 8th July, 2013

Fit for reporting.

JUSTICE SHAHZADO SHAIKH