

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE DOST MUHAMMAD KHAN  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE DR. MUHAMMAD AL-GHAZALI, HM-I  
MR. JUSTICE DR. MUHAMMAD KHALID MASUD, HM-II

**Criminal Appeal No.07(S)/2011**

**a/w Criminal Shariat Appeal No.26/2009**

(On appeal from the judgment dated 15.7.2008  
passed by the Federal Shariat Court, Islamabad  
in Jail. Crl.A.No.195/I/2003 and  
Crl.MR.No.16/I/2003)

Imran @ dully

.....Appellant in Crl.Sh.A.No.07/2011

Farzand Ali

.....Appellant in Crl.Sh.A.No.26/2009

Versus

The State

.....Respondent in Crl.Sh.A.No.07/2011

Imran @ Dulli etc

.....Respondents in  
Crl.Sh.A.No.26/2009

For the appellants:

Mr. Muhammad Ilyas Siddiqi, ASC  
(In Crl.Sh.A. 26/09)  
Mr. Arshad Ali Ch, ASC  
(In Crl.Sh. A.07/11)

For the State:

Ch. Zubair Ahmed Farooq,  
Addl.PG.Pb.

Date of hearing:

29.10.2014

**JUDGMENT**

**Dost Muhammad Khan, M.—** This Criminal Appeal (Sh)  
alongwith Criminal Appeal No.26(S)/2009 has arisen in the  
following background: -

Allegedly on 10.06.2002 Ms. Zunaira age 9  
years, daughter of the complainant went out of the  
house to purchase french cookies from a nearby

shop. However, she did not return, which caused alarm in the mind of the complainant, thus, he went out along with Muhammad Riaz (PW-9) and one Muhammad Saleem (not produced) in search of her. Repeated announcements were made through loudspeaker in the area about disappearance of the girl but no body responded nor any clue about her could be found. It was on 11.06.2002 that the complainant again started search along with the same two persons and at 0800 hrs. they discovered her dead body lying naked in the deserted compound of Haji Muhammad Akram in street No.13, Mohalla Rashidabad. The two companions were left behind at the spot, while the complainant reported the matter to PS Jhang Bazar, Faisalabad at 10:20 am, charging unknown culprits for her kidnapping and then killing her.

(ii) During the course of investigation on 18.06.2002 the statements of Muhammad Siddique (not produced) and Amjad Ali were recorded alongwith the supplementary statement of the complainant. Both deposed that they had seen the deceased girl in the company of the appellant Imran on 10.06.2002 at about 8:00 pm, who was holding hand of the girl, however, they did not take it much abnormal to inquire from him (appellant) as to why and where he was taking the deceased girl.

(iii) On account of the charge laid at the door of the appellant Imran, he was arrested on 26.06.2002. During police custody, he confessed before the investigating officer that he abducted the deceased girl, committed rape upon her and then killed her and threw away her dead body. He also led the police party to his house where blood stained sheet (Chadar) was recovered having been pointed out by him. The same was sent to the Chemical Examiner,

who returned his opinion that it was human blood, without conducting the test of grouping with the rest of the articles, having blood stains. On 28.06.2002 Local General Councilor Ghulam Abbas (PW-10) and some other locals appeared before the investigating officer. The Councilor claimed that the appellant in the company of his father confessed before him that he was involved in the crime and requested for effecting compromise with the father of the deceased girl. However, he was of a little help to the appellant because in the previous local bodies elections the appellant and his relatives were supporters of the rival candidate. Anyhow, he promised to make effort in this regard.

(iv) On the other hand, the dead body was examined by lady doctor Farah Rauf (PW-5). On external examination, she found a blue-printed trouser tied around her neck, both legs were tied with white colour cloth, above the ankles. The shirt and trouser of the deceased were stained with blood. She also found ant-bites all over the body including the face. Her tongue was slightly protruded, which was bitten by teeth on its tip. The lady doctor found a single brownish ligature mark on the neck of the deceased, size 1.5x13 cm. from left to right. Swabs were taken for detection of semen and its analysis by the Chemical Examiner including grouping. Posterior vaginal walls were found torn upto the rectal wall including the anal sphincter. Hymen was found torn and vagina was found bruised. Clotted blood was found in the trachea. According to her opinion, the death was due to asphyxia, caused through strangulation and that sexual assault was probably made on her.

2. At the conclusion of the investigation, charge sheet was filed in the Court and the trial Judge at the

conclusion of the trial awarded death sentence to the appellant u/s 302(b) PPC with compensation of Rs.50,000/- u/s 544-A Cr.P.C.; he was further convicted and sentenced to 14 years R.I. u/s 364-A PPC; 7 years R.I. +fine of Rs.5,000/- or six months S.I. in default of payment of fine; and 10 years R.I.+ fine of Rs.10,000/- u/s 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 or six months S.I. in default of payment of fine.

3. On appeal the learned Federal Shariat Court also found the appellant guilty of the charges, however, his conviction u/s 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, recorded by the trial Court was altered to one u/s 10(3) of the Ordinance, while his conviction u/s 201 PPC was quashed. The rest of the convictions and sentences recorded by the trial Court were maintained except the death sentence, which was reduced to life imprisonment u/s 302(b) PPC.

4. We have heard the learned ASCs for the appellant in both the appeals, the learned Additional Prosecutor, Punjab and have carefully gone through the entire record with an extra degree of care and caution and our findings are as follows: -

The entire edifice/structure of the prosecution case is founded on the following pieces of circumstantial evidence: -

- (i) The last seen evidence given by PW Amjad Ali and Muhammad Siddique (not produced);

- (ii) The recovery of blood stained spread sheet (chadar) having been pointed out by the appellant;
- (iii) The extra judicial confession made on 20.06.2006 before one Ghulam Abbas, the local councilor of the Union Council of Halqa No.268, in presence of his father and Mubeen Arshad (PW-11);

**AND**

- (iv) The confirmatory medical evidence with regard to the rape committed upon the deceased girl and then causing her death through strangulation and also the Chemical Examiner's report to some extent.

In reply to question number 10 put to him u/s 342 Cr.P.C., the appellant stated that some time before his arrest by the local police as suspect, PW Ghulam Abbas (Councilor) extorted money from his parents, he was released by the police on the same day being innocent. However, he quarreled with Ghulam Abbas (PW), when the latter refused to return the money and threatened him of dire consequences and why he became witness against him in the case.

(a) First we will take up the last seen evidence provided by the above two witnesses. Both are related to the complainant and are frequent visitors to his residence, also sharing occasions of joys and mourning but they kept mum for more than a week. At the trial, to cover up the delay in giving last seen evidence, they introduced an amazing and intriguing story of having gone to Islamabad and stayed there for about seven days, returned home on 17.06.2002 at night. They came to know about the incident on

their return, however, they went to the complainant the following morning and told him that they had seen the deceased in the company of the appellant on 10.06.2002. Amjad Ali admitted that he is not on good terms with the appellant. He claimed that he along with Muhammad Siddique was proceeding to the house of one Javed at the relevant time when they saw the deceased in the company of the appellant, however, the said Javed was neither cited as a witness nor produced at the trial to corroborate their claim of visit to his house at evening time on 10.06.2002. His evidence was very crucial to support their version but he was withheld for no good reason. Again no fare ticket of transport/ travel or any other document about stay in a hotel or at any other place at Islamabad for such a long period was produced. They did no business at Islamabad. This is a big question mark, for which they had no plausible answer, thus the evidentiary worth of their evidence has diminished almost to zero. Thus, their delayed statement to police has rendered them false witnesses. It has also not been established through reliable evidence that at what time the girl was ravished and done to death. The distance of the place where the deceased was seen with the appellant and wherefrom her dead body was recovered has remained unexplained, thus, the element of close proximity of time and place being a fundamental and mandatory requirements for accepting last seen evidence are absolutely missing. Again, it was also not their case that it was their routine of passing through the same street regularly, hence, they can also be held to be chance witnesses. This fact shall give a fatal blow to their testimony. Such defective, inadequate and unreliable evidence so given is suggestive of creating a suspicious appearance leading one to an inference that crude

attempts have been made to lead the Court of law to a wrong conclusion.

(b) The legal worth of the extra judicial confession too is almost equal to naught, keeping in view the natural course of events, human behaviour, conduct and probabilities, in ordinary course.

(c) Ghulam Abbas (Councilor) in no uncertain words has confessed that he was not on good terms with the appellant as in the preceding local bodies elections, appellant and his family were supporters of his rival candidate, therefore, if at all the appellant was involved in the crime and was in need of such help then, the appropriate person was the rival candidate/his family and not Ghulam Abbas (PW). The so called venture by the appellant to get the help of Ghulam Abbas was fraught with risks. Only a blind would perceive such proposition as true. Ghulam Abbas(PW) as was expected of him, instead of taking a single step or making any effort towards the settlement/compromise or to help him readily became a witness against the appellant without taking any little pause and stop. This conduct and attitude by itself is sufficient for discarding his testimony.

(d) Needless to remark that extra judicial confession has never been considered sufficient for recording conviction on a capital charge unless it is strongly corroborated by tangible evidence coming from unimpeachable source therefore, in our view, this piece of evidence is entirely insufficient to carry conviction on such a charge, more so, when it is badly tainted one and appears to be the job of the investigating officers who normally indulge in such like police chicanery.

(e) The recovery of spread sheet (Chadar) allegedly blood stained at the instance of the appellant is also unbelievable because according to the prosecution the tragedy commenced and was consummated within the compound of uninhabited house and even the last seen evidence, which we have discarded does not suggest that the appellant was carrying the said chadar/sheet when they allegedly saw him in the company of the deceased. No earthly reason existed for keeping this incriminating article by the appellant in his house for days more so, when the blood thereon could be easily washed away. It appears to us of having been planted and fabricated piece of evidence. The same squarely deserves to be rejected.

(f) The opinion of the lady doctor is only confirmatory which does not tell the name of the culprit but just confirms the cause of death and sexual assault, made on the deceased girl. Once the recovery of spread sheet (chadar) is disbelieved then Chemical Examiner's report is also rendered of no intrinsic worth.

(g) In view of the above sketchy and shaky evidence leaving behind much to be debated upon and when fabrication of the same cannot be ruled out altogether, then by applying the universal principle, it is a case of no evidence which cannot stand the test laid down in the cases of Fazal Elahi v. The Crown (PLD 1953 FC 214), Muhammad Fayyaz v. The State (PLD 1984 SC 455), MD Nazir Hossain Sarkar v. The State (1969 SCMR 388) and Mst. Sairan v. The State (PLD 1970 SC 56) and the entire structure of the case crumbled down to the ground.

(h) In the case of Fazal Elahi Khan Hon'ble Mr. Justice Abdul Rasheed, Chief Justice, while speaking



for the Full Bench consisting of Mr. Justice A.S.M. Akram and Justice A.R. Cornelius (late) laid down principle of extra ordinary caution for guidance of the courts to be followed while recording conviction on the basis of circumstantial evidence. The relevant para is reproduced below: -

*"In cases which like the present rest entirely on circumstantial evidence, it is of the utmost importance that such a circumstance should be ascertained with minute care, before, any conclusion or inference adverse to the accused person is drawn.*

*In the ordinary case, this Court is content to accept findings of fact reached in the High Court. The present case, however, rests on nothing but circumstantial evidence, i.e. evidence relating directly to a number of minor facts, which facts, the prosecution regarded as sufficient, in the total absence of direct evidence, to sustain an inference that Fazal Elahi murdered Jamal Din. It may be conceded that "a concurrence of well-authenticated circumstance composes a stronger ground of assurance than positive testimony, unconfirmed by circumstances, usually affords" (Paley). Nevertheless, where the direct evidence relates only to minor facts, and consequently, the case rests wholly on circumstantial evidence, it is necessary to remember that 'processes of inference and deduction are essentially involved, frequently of a delicate and perplexing, character, liable to numerous causes of fallacy' (Wills on Circumstantial Evidence). This danger points the need for caution in accepting proof regarding any one of the purpose of drawing inferences therefrom. A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, is apt to create specious appearance, which is calculated to lead to fallacious inference. Hence the necessity of accepting, as the basis of inferences, only such circumstances as are "well-authenticated."*

*Where there are indications of design, in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference."*

5. By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end its noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge. As was held in the case of Fazal Elahi (ibid) and in view of the changed social norms and standard of ethics of the society, to which the witnesses belong and also the questionable credibility of the investigating agency and its incompetency to professionally investigate such blind crimes, by now, the Courts have to exercise more and more cautions before accepting and resting its opinion of being guilty on a circumstantial evidence collected apparently in a dishonest, dubious and rough manner.

6. Therefore, we are left with no option but to adopt the same care and caution, keeping in view the peculiar facts and circumstances of this case, which cannot be put apart from the one, cited above.

7. With all respects to the Bench of the learned Federal Shariat Court, these precautions and judicial care so required, was not observed and view of the trial Judge with regard to the guilt of the appellant was endorsed by it. Thus, the approach to the evidence in the case was not in accord with the principle since long well settled.

8. Accordingly, while extending benefit of doubt to the appellant, this appeal is allowed and the appellant Imran @ Dully is acquitted of all the charges, leveled against him by setting aside his conviction and all sentences awarded to him. He be set free forthwith if not required in any other case.

9. In view of our above findings, Criminal Shariat Appeal No.26(S)/09 titled Farzand Ali v. Imran @ Dulli etc. has become infructuous and is dismissed.

Chairman

Member

Member

Member

Member

Announced on 13.11.2014 at Islamabad

Member