

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**Present:**

**Mr. Justice Iftikhar Muhammad Chaudhry, CJ**  
**Mr. Justice Jawwad S. Khawaja**  
**Mr. Justice Amir Hani Muslim**

**Human Rights Case No.42389-P of 2013**

(Action taken on news clipping from 'Daily Dunya' dated 4.11.2013 regarding rape on a deaf and mute lady at Nankana Sahib)

For the Complainant: Nemo.

On Court's Notice: Malik Faisal Rafique, Addl. AG, Pb.  
Mr. Irfan Ullah Khan, SP (Ivs.)  
Mr. Muhammad Ashraf, DSP, Legal  
Mr. Farmaish Ali, SHO, P.S. Nankana Sahib

Date of hearing: 20.11.2013

**ORDER**

**Iftikhar Muhammad Chaudhry, CJ.**- In the instant case proceedings were initiated on the press clipping published in 'Daily Dunya' dated 4<sup>th</sup> November, 2013 contents of the same reads as under:-

گوئی بہری خاتون سے اجتماعی زیادتی، ملزم گرفتار نہ ہو سکے

خاتون کا گونگا بہرہ خاوند ہوش و حواس کھو بیٹھا چیف جسٹس سے انصاف کے لئے اپیل

راولپنڈی (نامہ نگار) تھانہ سٹی ننگانہ صاحب کے علاقہ میں گوئی بہری خاتون کے ساتھ 6 افراد کی اجتماعی زیادتی، وحشیانہ تشدد، مقدمہ درج ہونے کے بعد بھی ملزمان عدم گرفتار، خاتون کا گونگا بہرہ خاوند ہوش و حواس کھو بیٹھا، لواحقین نے چیف جسٹس سے از خود نوٹس لینے کی اپیل کر دی، روزنامہ دنیا دفتر آکر محمد فاروق نے بتایا کہ اس کی گوئی بہری ہمیشہ فوزیہ بی بی کی شادی گونگے بہرے محمد نواز کے ساتھ ہوئی اور وہ ضلع ننگانہ صاحب تھانہ سٹی کے علاقہ شاد باغ کالونی میں رہائش پذیر تھی اس کا خاوند درزی ہے عید کی آمد سے قبل وہ کام کی زیادتی کے باعث گھر نہیں آیا 10 اکتوبر کو قریبی رہائشی مدر اور منزل نے ان کی بہن فوزیہ بی بی کو گن پوائنٹ پر گھر سے اٹھایا اور قریبی کمرے میں لے گئے جہاں پر پہلے سے موجود 4 افراد تھے ان سب نے باری باری اس کے ساتھ گینگ ریپ کیا اور پھر اسے تشدد کا نشانہ بنایا کہ کسی کو بتائے نہیں چار دن بعد عید کے دن موقع ملتے ہی وہ بھاگ کر اپنے والدین کے گھر آگئی اور اپنی والدہ کو بتایا جس پر تھانہ سے رجوع کیا گیا اور ان افراد کے خلاف مقدمہ درج کروایا گیا۔ جب خاوند کو اس بارے میں بتایا گیا تو وہ ہوش و حواس کھو بیٹھا، محمد فاروق نے کہا کہ تفتیشی مقبول سب انسپکٹر نے 2 ملزمان کو پکڑا لیکن انہیں تھانہ میں دی آئی پی پروٹوکول دیا اور گرفتاری نہیں ڈالی اور ہمیں کہا کہ ایک مکان تمہارے نام لکھ دیں گے اپنا کیس واپس لے لو۔ محمد فاروق نے چیف جسٹس سے اپیل کی ہے کہ اس کیس کا از خود نوٹس لیا جائے اور انہیں انصاف فراہم کیا جائے۔

On having considered the gravity of the incident wherein a deaf and dumb women mother of three children molested report was called for from the Inspector General Punjab Police. In response to the order of this Court and on receipt of the report submitted by Muntazir Mehdi, DPO the following order was passed on 8.11.2013:-

“An unfortunate incident of gang rape of a deaf and mute lady namely Mst.Fouzia, mother of three children, by more than two persons took place in District Nankana Sahib on 9.10.2013. Admittedly, she was running from pillar to post for redressal of her grievance but nobody listened to her. Consequently, she went to the Ilaqa Magistrate herself and submitted application praying for her medical examination. It was for the first time that on 12.10.2013, the learned Ilaqa Magistrate, ordered for her medical examination from the D.H.Q. Hospital, which was accordingly conducted and following injuries were noticed on her person : -

*“Two mild tears and very mild redness on vulva means inner side of wall of labia majora measuring .25 x .5 cm both no need to stitch just like abrasions. Progress with med.*

2. Perhaps on having smelled by the Police about adverse action being taken by the Magistrate or some other authority, FIR No.364/13 dated 14.10.2013, under section 376(2) PPC, was registered at Police Station Nankana Sahib on the application of her brother Muhammad Ibrahim, as the victim is deaf and mute. However, taking the advantage of same, the investigation of the case was not conducted honestly, in as much as the victim's statement was not recorded. When this matter was reported in newspaper “Duniya” on 4.11.2013, the same was brought to the notice of one of us (Justice Iftikhar Muhammad Chaudhry, CJ) by the office for perusal and report was called from the Inspector General of Police, on 6.11.2013. No report was submitted by the Inspector General of Police, Punjab, and it seems that instead of taking prompt action, he handed over the matter to some of his subordinate. In any case, on account of non-receipt of report on 7.11.2013, the case was ordered to be fixed in the Court with notice to the Advocate General, Punjab.

3. The S.H.O of Police Station City, Nankana Sahib, has appeared and placed on record a report dated 6.11.2013, signed by the D.P.O Nankana Sahib, concluding para there-from is reproduced herein below:-

*“Having been found sensitive incident, I also visited the place of occurrence and interrogate the nominated accused as well as the victim. The victim told through indicators/beckon that she was sleeping at the roof of the house and 03 unknown accused persons committed rape with*

*her forcibly while the complainant stated that 06 accused committed rape with her sister in a room. There is contradiction in the statements of brother and sister (victim) and this contradiction makes the story doubtful. It is pertinent to mention here that accused Muddasar and Muzzamal are also real paternal nephews of her husband Nawaz Ahmed and also living in this house so it is very astonishing thing that 06 accused can commit rape in the same house.*

*The complainant also nominated Shahid accused in his supplementary statement but on the next day i.e. 22-10-13 the complainant, PWs and victim submitted their written stamp papers/affidavit in which they have been declared Shahid Iqbal as innocent. During investigation the complainant failed to produce the PWs. Only one PW Suleman came and stated that he did not see the incident. The victim has also denied to examine her DNA test. During investigation the incident narrated above by the complainant is not proved, please.”*

4. We brought to the notice of learned Additional Advocate General, Punjab, the fact that despite the request of victim, the police did not register the case and no action was taken and having left with no option, she went to the Ilaqa Magistrate and on his directions, the victim was medically examined and report was given, which has been reproduced hereinabove, subsequent thereto on 14.10.2013, the case was registered knowing well that, prima facie, a positive report has been given, but the victim was not examined by the police and on the contrary the District Police Officer, Nankana Sahib, has given a clean chit to the accused, in as much as at one stage on having taken affidavit from the brother of the complainant, he has discharged one of the accused person namely Shahid Iqbal knowing well that no such authority vests in the police to exonerate any accused on the basis of affidavit. Similarly, there is a statement of Hafiz Muhammad Suleman, one of the prosecution witnesses, which corroborates the statement of the victim Mst. Fouzia. It appears that after registering the case though reluctantly on 14.10.2013, the police did not take any action, in as much as no proper case diaries were maintained. When we inquired from the S.H.O Farmaish Ali and Muhammad Ashraf DSP (Legal), Nankana, present in court, as to whether they made any attempt to record the statement of the victim by going to her home, they could not show any material from the case diary.

5. When the case was taken up in the morning, the learned Additional Advocate General has stated that some time be given to him to contact the concerned authorities. After some time, the case was again taken up. He informs that the matter has been brought into the notice of high ups and they have promised to take action against the accused. Prima facie, we are of the opinion that the police has been influenced on account of extraneous reasons, because no action has been taken either by the police or the high ups, despite the fact that the matter was brought to their notice. Reliance is placed on the case of Salman Akram Raja and another vs. Government of Punjab (2013

SCMR 203). Therefore, in view of the above, we appoint Mr. Nazir Gajana, District and Sessions Judge, who was previously posted at Chiniot, to conduct an inquiry in this case and submit report on 13.11.2013. This order shall be sent to him through the Registrar of the Lahore High Court, Lahore, during course of the day. The S.H.O Farmaish Ali, P.S City Nankana Sahib and Muhammad Ashraf DSP Legal, Nankana, shall appear before Mr. Nazir Gajana on 11.11.2013 along with the F.I.R, medical examination report and other relevant record (police file) of the case. They shall also produce the victim and other P.Ws including Hafiz Muhammad Suleman before him.

In pursuance of the above directions, learned District & Sessions Judge has submitted a report wherein he has discussed all the aspects of the case and also pointed out the defects in the investigation particularly about the conduct of the police the following observations were made:-

*“In this latest statement Fauzia Parveen alleged victim expressed that after last Eid ul Fitar at about 12:00 midnight she was asleep on the roof of their house along with other family member, her cot was at the corner. One person of lean stature with muffled face came upstairs awakened forcibly, threatened her, administered Betal Leaf containing tablets to her and on taking the same her eyes were closed. Fauzi Parveen further stated that he took her downstairs by lifting the other persons one of stout and the second of normal stature were also present with muffled faces and all the three took her into the room, closed the door, stripped off Fauzia’s clothes when she was almost unconscious and the person with lean stature bringing her downstairs committed rape with here, while the other two had just touched her body including breasts but did not commit Zina bil Jabar with her. The alleged victim stated clearly that she could not tell the names of the culprits. She added that she could not recognize them on appearance as they were with muffled faces. She clarified to make the above statement with her free consent and will also with the fear of Allah Almighty only. She maintained that she had not pressure whatsoever of her husband, any of his relatives or any of the policeman.*

*Brother of the victim approached the police station City Nankana Sahib on the next day i.e. Saturday for issuance of docket for medical*

*examination of Fauzia Parveen but police did not redress his grievance and then Fauzia was produced before the Magistrate who ordered for medical examination and Fauzia Parveen was ultimately examined medically.*

*Even in the above sorry state of affairs, the role of police of P.S. City Nankana Sahib is not enviable. Medical examination Fauzai Parveen was not got conducted on 12.10.2013 when complainant approached P.S. City Nankana Shaib. Admitted that complainant party succeeded to get Fauzia Parveen examined medically on that very date thorough order of Magistrate but police failed to discharge its duty about it. Delay in lodging of FIR though mainly attributed to the conduct of the compliant party but the police of P.S. City Nankana Sahib was also negligent in this regard. Police did not record the statement of victim till 8.11.2013 and no valid justification whatsoever was presented for this negligence and delay of 17 days after FIR. It is further unfortunate that police showed slackness and negligence for putting the alleged victim and three accused to DNA testing. It is further sorrowful that the alleged accused were made to sit in the P.S. promptly but their formal arrest was not made and the arrest of Mudassar and Muzammil accused was recorded to be postponed with much delay. The exoneration of Shahid accused on the basis of affidavit was another defective of the police of P.S. City Nankana Sahib. Farmaish Ali Inspector/SHO of P.S. City and Maqbool Ahmed, SI/I.O are responsible for the above delinquencies.*

*I have been shown by DSP Legal Nankana Sahib the order dated 8.11.2013 passed by Mr. Abu Bakar Khuda Bakhsh RPO, Sheikhupura Region at Lahore transferring the investigation of this case out of District Nankana Shahib and entrusting the same to Mr. Irfanullah Khan, SP (Investigation) Sheikhupura. This intervention of police high-ups was needed much earlier.*

*In the end it is humbly submitted that though the story of Fauzia Parveen the alleged victim regarding rape is somewhat doubtful but Farmaish Ali Inspector/SHO and Maqbool Ahmed SI/I.O. of P.S.*

*City Nankana Sahib committed negligence in dealing with the above matter as detailed earlier.*

Prima facie, it appears that the DPO, Muntazir Mehdi being in supervisory position did not probe diligently into the inquiry conducted by his juniors and exonerated the culprits on the ground that there was contradiction in the statements of the victim and her brother as to number of the accused; as according to the victim, rape was committed by three accused whereas her brother (complainant) stated that they were six in numbers. Not only this, even one Shahid culprit who was prima facie found to be involved was allowed to go scott free in view of the affidavit which was obtained from the complainant. The complainant has stated in the Court that he had given the affidavit under influence. It is to be noted that as per the medical report the happening of the incident cannot be denied. The opinion of the medical officer is reproduced as under:-

*“Two mild tears and very mild redness on vulva means inner side of wall of labia majora measuring .25 x .5 cm both no need to stitch just like abrasions. Progress with med.*

2. Mr. Muntazir Mehdi, DPO appeared in person and offered explanation pleading innocence but the facts noted hereinabove are sufficient to conclude that on account of his criminal negligence a poor lady who is deaf and dumb subjected to criminal act and the police knowing well about their negligence were trying to cover up their defects. In this view of the matter, we direct the Inspector General Police, Punjab to initiate criminal proceedings against all concerned delinquent police officers/officials including the said Muntazir Mehdi as early as could be possible. He shall make sure an independent investigation without being influenced by anyone who is allegedly involved in the case. In the

meanwhile, for the purpose of initiating disciplinary proceedings against the DPO Muntazir Mehdi and other delinquents, the matter shall be referred to the concerned authority in accordance with law. The petition stands disposed of in the above terms.

**Chief Justice**

**Judge**

**Judge**

**Islamabad**

**20.11. 2013**

*M. Azhar Malik*