

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

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.716 of 2019**

*(against the impugned order dated  
13.6.2019 passed by the Lahore High Court  
Lahore in Crl. Misc.No.14549-B/2019).*

***Husnain Mustafa***

...Petitioner(s)

**VERSUS**

***The State and another***

...Respondent(s)

For the Petitioner(s)	: Ms. Bushra Qamar, ASC Syed Rifaqat Hussain Shah, AOR
For the State	: Mr. Muhammad Jaffar, D.P.G. Punjab. Akram and Tanvir, Sub-Inspectors.

Date of Hearing : 12.09.2019.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Muhammad Zain-ul-Abideen, 9/10, Kaniz Fatima, 7/8 and Muhammad Ibrahim, 4/5 were living with their mother Aneeqa Rasheed after termination of her marriage with their father Qaisar Amin, shifted at Karachi for good; on 24-3-2018, he learnt about homicidal deaths of his children in the residential flat of his former wife; he rushed to Lahore and lodged a report wherein he blamed Aneeqa Rasheed and Husnain Mustafa, present petitioner, to have killed the children; he maintained that his former wife was carrying on with the petitioner and they wanted to get rid of the children, seemingly an obstruction in their affair. As the investigation progressed, the first Investigating Officer let off the petitioner albeit with finding of his liaison with Aneeqa Rasheed; after change of investigation, however, the petitioner alongside Aneeqa Rasheed and Ayyaz Mehmood were sent to face trial; subsequently, the

complainant exonerated Aneeqa Rasheed; she was released on bail on the basis of a concessionary statement made by no other than the complainant himself; it was subsequent thereto that she instituted a private complaint against the petitioner and Ayyaz Mehmood co-accused wherein she blamed both of them to have committed the murders within her view; she also contradicted the case set up in the crime report by accusing the police to have collaborated with the accused; unimpressed by the position taken by Aneeqa Rasheed, learned Additional Sessions Judge, after recording precursory evidence, dismissed the complaint vide order dated 23-5-2019. In this backdrop, prosecution case is structured upon a positive polygraph test of the petitioner alongside statements of Muhammad Waseem Abbas and Ali Zaib recorded as late as on 9-7-2018; they claimed to have seen the petitioner on the crime scene in the morning of 24-3-2018; the complainant arrayed Ayyaz Mudassir as privy to the crime in supplementary statement dated 10-7-2018.

2. Heard.

3. Brutality inflicted upon the innocent souls is most appalling to say the least, however, in the chequered circumstances of the case, what cannot be lost sight of is that the complainant, though most grievously aggrieved and devastated, nonetheless, is not eye witness of the crime; his initial belief that the petitioner in connivance with his former wife murdered the children is essentially structured upon a suspicion; he has even recalled a substantial portion thereof while exonerating identically placed Aneeqa Rasheed before a learned Additional Sessions Judge at Lahore on 19-12-2018. Subsequently inducted co-accused Ayyaz Mehmood, with alleged active participation in the crime is on bail. Polygraph test, a modern forensic method to unearth the truth, may establish a person's capacity to lie, however, findings thereof, cannot be equated with admission of guilt. Transposition of Aneeqa Rasheed as a witness with her failure to prosecute the

petitioner through a private complaint constitutes her departure from the scene and as such squarely brings his case within the ambit of subsection 2 of section 497 of the Code of Criminal Procedure, 1898. Statements of Waseem Abbas and Ali Zaib recorded after an unexplained, inordinate delay also require evidential verification during the trial. Horrors of an heinous crime cannot impede release of accused on bail, if otherwise his guilt called for further probe nor bail can be withheld as a strategy for punishment. The petition is converted into an appeal and allowed; petitioner shall be released on bail upon furnishing bond in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

JUDGE

JUDGE

Islamabad, the  
12<sup>th</sup> September, 2019  
Azmat/\*