IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Mushir Alam, Chairman
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed
Dr. Muhammad Al-Ghazali, Ad-hoc Member-I
Dr. Muhammad Khalid Masud, Ad-hoc Member-II

Criminal Shariat Appeal No.23 of 2017
(On appeal against the judgment dated 20.09.2011 passed by the Federal Shariat Court, Lahore, in Jail Criminal Appeal No.282/I of 2004, Criminal Appeal No.342/L of 2004 and Criminal Murder Reference No.17/1 of 2004)

i. Qaisar Mehmood

ii. Muhammad Shaban

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Mr. Anis Muhammad Shahzad, ASC

For the State: Ch. M. Sarwar Sidhu,
Addl. Prosecutor General Punjab.

Date of hearing: 02.12.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Hafeez Ullah (PW-3), a street vendor, was in his usual business pursuit at 5:00 p.m. on 13.5.2003, near Qazafi Park located within remit of Police Station City Muridke; his daughter Ramsha, 3 ½, was playing nearby, the appellants emerged at the scene and after cuddling the child affectionately took her inside the nearby factory where they worked; the unsuspecting father did not view child's departure with any concern or alarm, however, as the child did not return after lapse of considerable time, he along with Muhammad Tufail and Muhammad Asif PWs approached the appellants who informed them that she had already left after a brief stay with them; overnight search yielded no results; in the morning both the witnesses saw the appellants once again while coming out of the factory with a gunny bag thrown by them

near complainant's home; it carried corpse of the child with massive marks of violence all over the body, confirmed by autopsy; these included a ligature mark around the neck and a bloodstained swollen vulva; vaginal parts were massively damaged with freshly torn bleeding hymen; fourchette was torn with a tear on right labia minora measuring 0.7 x 0.5 x 0.5 c.m; rectum was noted with an anal tear measuring 1.5 cm x 1 cm around the anus, going deep into the body. Severe hemorrhagic shock coupled by asphyxia led to the cardio respiratory failure as a collective consequence of injuries, inflicted within preceding 24 hours; forensic analysis of the swabs secured during autopsy established seminal stains; the Medical Officer confirmed sexual assault beyond child's endurance. The appellants, after cleansing their breasts, one by one, before Muhammad Ismail (PW-11), escaping outrage in the neighbourhood, saved themselves by surrendering before the police on 14.5.2003; both of them were medically found potent; seizures, pursuant to their disclosures as well as during spot inspection, comprise string (P-1), bloodstained *chaddar* (P-2), bloodstained shoe (P-3) and gunny bag (P-4) alongside bloodstained earth, secured vide inventories; upon indictment they claimed trial. Prosecution produced as many as 13 witnesses to drive home the charge; confronted therewith, the appellants shifted the blame onto one Ansar, maternal cousin of factory's owner as being the culprit, saved through good offices of Ishtiaq Ahmed, a sub-inspector at the same police station; they also produced Muhammad Sharif, milkman (DW-1) and Muhammad Aslam (DW-2) in their defence. The learned trial Judge, vide judgment dated 28.09.2004, returned both the appellants a guilty verdict; they were convicted and sentenced as under:

Under Section 364-A PPC	Imprisonment for life, each.
Under Section 302(b) PPC & Section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979	Death on both counts with a direction to pay *Diyat* in the sum of Rs.150,000/- each to the legal heirs of the deceased,

The Federal Shariat Court upheld the convictions and sentences, albeit conversion of *Diyat* into compensation within the contemplation of section 544-A of the Code of Criminal Procedure 1898, vide judgment dated 20.09.2011, being assailed through leave of the Court.

2. Learned counsel for the appellants contends that the appellants are victims of a misplaced and misconceived suspicion,

orchestrated by Ishtiaq Ahmad sub-inspector to save the neck of one Ansar, a relative of the factory owner, who in fact had molested the child and since the appellants worked in the same premises, they were swapped as scapegoats; that extrajudicial confession narrated by Muhammad Ismail (PW-11), being joint in nature, is liable to be excluded from consideration leaving the last seen evidence furnished by Hafeez Ullah (PW-3), Muhammad Asif (PW-4) and Muhammad Tufail (PW-5) in a lurch. One weak piece of evidence cannot corroborate another weak piece of evidence and, thus, it would be unsafe to maintain the conviction with ultimate irreversible corporeal punishment, concluded the learned counsel. The learned Law Officer has faithfully defended the impugned judgment; highlighting abhorrently shocking nature of the crime inflicted upon a child of extreme tender age, he has referred to various pieces of evidence led by the prosecution to argue that prosecution produced straightforward evidence, available under the circumstances, inexorably pointed upon appellants' culpability, situated within the proximity of time and space, with no animosity or grudge with the complainant or the witnesses, admitting no space to entertain any hypothesis other than their guilt; he has prayed for dismissal of the appeal.

3. Heard. Record perused.

4. Prosecution has relied upon a chain of circumstances comprising child's departure in appellants' company, heading towards the factory, seen again while disposing of the corpse concealed in a gunny bag (P-4); their confession shortly before arrest and subsequent recoveries of incriminatory bloodstained articles from their residential room in the factory; these uninterrupted continuing links, synchronized in a chain of circumstances, emerging in quick succession, are tallied by findings, recorded in the autopsy report that unambiguously confirmed a beastly carnal assault within the durations compatible with the incidence of events related by the witnesses; seizure of blood, string (P-1), *Chaddar* (P-2) and shoe (P-3), each with stains of blood, from inside the room occupied by the appellants, duly depicted in site plan (Ex.PW-13/6), establish beyond an iota of doubt that the child was molested to death in the room located in the factory where both the appellants admittedly worked for good; they were strangers neither to the complainant nor to the child and, thus, in a position to lure the latter without raising any suspicion,

in a neighbouhood where children are vulnerably exposed. The appellants were identified, with the child before her death and at the time of disposal of the corpse, by the witnesses having no apparent motive either to falsely implicate them or swap them as suggested with one Ansar, a relative of the factory owner, as such substitution could not be manipulated in the small interregnum. Given the horrific magnitude of brutality inflicted upon the poor soul with entire locality in a state of shocking grief, appellants' selection as scapegoats from the multitude of people by a police officer, without much substance or status, is a story that may not find a buyer. The incident immediately went viral with senior police officers being on board and, thus, it is rather difficult to assume that a sub-inspector of the police would be in a position to divert the course of investigation so as to let off the actual offenders by roping the innocent. Similarly, the argument, articulated at length, to assail the evidence of last seen and extrajudicial confession being inherently weak and, thus, liable to be excluded is entirely beside the mark. There are no empirical parameters to characterize reliability of a particular piece of evidence, either as strong or weak, for the purpose of prosecution of offenders, as the victims seldom fall prey to their tormentors under ideal conditions and thus, it would be rather naïve to expect choice evidence to meet standard of proof, thus, in a given situation the Court is required to assess integrity of available evidence so as to consider its adequacy in a given situation having regard to the universal principles of safe administration of criminal justice; for the said purpose, direct evidence furnished even by the injured witnesses, apparently with no axe to grind, can be dismissed, if otherwise found lacking the ring of truth; likewise, applying the same principle, the Court may rely upon the evidence of last seen, without a demur, if found free from any taint, constituting a reliable link between the offender and the victim within the proximity of time and space. In the present case, appellants' employment as well as residence in the factory situated next to the complainant's outlet is a common ground; both of them were seen while taking the child by her father as well as witnesses who are resident of the locality. The family immediately after child's disappearance set out in her search and approached the appellants in the first place; they jointly pleaded ignorance while they owed an explanation; it is on the following day that they are seen while

disposing of the corpse for the obvious reasons that it was simply not possible for them to hide it inside the factory, frequented by other workers. Duration of violence endured by the child is compatible with the noted timeframe of assault, death and autopsy; she being a child of extreme tender age could not survive merciless carnal assault and her cavities, both rectal as well as vaginal, with a freshly torn hymen, were noticed by the medical officer as profusely bleeding. In this backdrop, the evidence of last seen against the appellants, in itself, admits no space to entertain any hypothesis other than appellants' guilt. Appellants' confession shortly before their arrest, in circumstances reflects, a desperate conduct to ward off the consequences of intense rage that gripped the neighbourhood. Investigative conclusions are consistent with appellants' culpability; witnesses produced by them, in retrospect aggravated their predicament. In the totality of circumstances established through various pieces of available evidence constitute a chain of circumstances with no missing link between the child and her assassins and, thus, the Courts below rightly served her justice though without possibility of any temporal recompense for most agonizing horror she experienced in disbelief. We discovered from the record that Qaisar Mehmood convict was a minor at the time of commission of crime, therefore, penalty of death inflicted upon him on both counts is reduced to imprisonment for life with concurrent commutation, benefits of pre-trial period inclusive. Convictions and sentences of Muhammad Shaban are maintained. With the above modification qua Qaisar Mehmood, the appeal is partly allowed, however, the same is dismissed vis-à-vis Muhammad Shaban convict.

Chairman

Member **Member**

Member **Member**

Islamabad, the
2nd December, 2020
Not approved for reporting
Azmat/-