JUDGMENT

ATHAR MINALLAH, J.- Through this consolidated judgment, we will answer the instant Murder Reference and decide Jail Appeal No. 76 of 2015 filed by Aamir Shah son of Ali Asghar Shah (hereinafter referred to as the "Appellant"). The Murder Reference has been referred for confirmation of death sentence handed down vide judgment, dated 15.04.2015, passed by the learned Additional District and Sessions Judge-V (West), Islamabad. The Appellant has been convicted and sentenced in the following terms:-

> For reasons above, accused Amir Shah is hereby found guilty of the offence of rape with minor girl Mst, Hameeda Bibi as defined in section 375, P.P.C. And looking to the helplessness of the poor victim being minor girl, took shelter in the family of accused person being relatives and fell prey of the lust of the accused person who has ruined her life even before she turns to major and mature to foil such attempt and understand pretext. The sentences/punishment prescribed in Section 376, P.P.C. are to bring deterrence in the society, thus, in such circumstances, the accused person convicted and sentenced to death. He be hanged by the neck till he is dead subject to confirmation of death reference from the Honorable Islamabad High Court, Islamabad, as envisaged under Section 374 Cr.P.C. In addition to above, the accused is further ordered to pay Rs.100,000/- (Rupees one lac only) fine is also imposed upon the accused person. In case of default of payment of fine, he shall further undergo simple imprisonment for six (6) months."

2. The facts, in brief, are that at about 8.30 pm on 02-07-2011, Qari Muhammad Anwar, Khateeb of Syedena Hassan Mousque had informed Ch. Nazir Ahmad son of Muhammad Yaqoob (PW-2) that a child, namely, Hameeda Bibi (hereinafter referred to as the "Victim"), was bleeding and complains of being raped. The mother of the latter had passed away while her father appears to have abandoned her. Pursuant to the said information, Ch. Nazir Ahmad went to Roshan Basti where he met the Victim and her elder sister, namely, Zameeda Bibi. The Victim informed him that her paternal cousin i.e. the Appellant, had subjected her to rape. Ch. Nazir Ahmad took the Victim, accompanied by her elder sister and one of the neighbors, namely, Safia Bibi (PW-1), to the Pakistan Institute of Medical Sciences (hereinafter referred to as the "Hospital"). At the Hospital the Victim was medically examined and given treatment by Dr. Syeda Rana Fatima (PW-14). The latter took 4 swabs and prepared Medico Legal Report Exh-PL. The examination report Exh-PK was also prepared by her. The concerned Police Station was informed and in response Zafar Iqbal, ASI (PW-11) reached the Hospital and reduced the complaint to writing (Exh.PH), which was sent to the Police Station for registration of a criminal case. On receiving the written complaint, FIR No.285, dated 03.07.2011, Ex-PC, was registered under section 376 of the Pakistan Penal Code, 1860 (hereinafter referred to as 'P.P.C.'). Zafar Iqbal, ASI (PW-11) took into possession blood stained clothes of the Victim vide recovery memo Ex-PB. On 03-07-2011 the investigations were transferred to Ghulam Shabbir, SI (PW-15). On 04.07.2011, the latter arrested the Appellant who volunteered to take the police officials to the house which was the crime scene. He, therefore, led the Investigating Officer, Ghulam Shabbir (PW-15) and other officials to the crime scene, where the latter prepared an un-scaled site plan Exh.PM and took into possession a blood stained bed sheet vide recovery memo Exh.PA. The Appellant also led the Investigating Officer to the recovery of the blood stained clothes worn by him at the time when the offence was committed. The clothes were taken in possession vide recovery memo Exh.PF. Other small pieces of cloth were also taken into possession vide recovery memo Exh.12. The Appellant was examined on 05.07.2011 by Dr. Muhammad Farrukh Kamal, Deputy Director (PW-9). The latter prepared a report, which was brought on record as Exh.PG. The Appellant was said to be physically fit and sexually active. The National Forensic Science Agency (DNA Laboratory) prepared a report, dated 09.03.2012, which was tendered in evidence as Exh-PJ, while the report of the Chemical Examiner, dated 11.07.2011 was brought on record as Exh.PN. According to the latter report the sample swabs were found to be stained with semen, while the DNA report Exh.P5 was negative. The charge was framed on 13-12-2011 to which the Appellant did not plead guilty. The prosecution produced 15 witnesses while the Appellant preferred not to be examined on oath and his statement under Section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Cr.P.C.") was duly recorded. After conclusion of the trial and affording an opportunity of hearing to the parties, the learned trial Court convicted and sentenced the Appellant vide the impugned judgment, dated 15.04.2015. The Jail Appeal has

been preferred by the Appellant while Murder Reference No.07 of 2015 has been referred to this Court for confirmation of the conviction and sentence.

3. Barrister Ahsan Jamal Pirzada, Advocate High Court, assisted us on behalf of the Appellant. He has contended that; the evidence brought on record was not sufficient for convicting and sentencing the Appellant; the obvious contradictions in the testimonies of the prosecution witnesses raises serious doubts regarding the commission of the offence by the Appellant; the contradictions were pointed out from the record; the investigations conducted by PW-1 and later PW-15 were defective and not honest; the witnesses were not consistent and, therefore, the benefit ought to go in favour of the Appellant; reliance has been placed on "Mujeeb ur Rehman v. The State" 2018 YLR 389 "Mst. Nazia Anwar v. The State and others" 2018 SCMR 911, "Malik Sher Muhammad and another v. Malik Khair Muhammad and 4 others" 2018 YLR 110, "Tariq Pervez v. The State" 1995 SCMR 1345, and "Gulfam and another v. The State" 2017 SCMR 1189; the articles taken into possession by the Investigating Officers were in violation of section 103 of the Cr.P.C; the articles recovered vide recovery memos Exh.PA and Exh.PH cannot be relied upon; the police officials had visited the crime scene on 03.07.2011 and, therefore, the stance that they had been led there by the Appellant on 04.07.2011 is definitely a concocted story; reliance has been placed on "Mst. Askar Jan and others v. Muhammad Daud and others" 2010 SCMR 1604 and "Zafar Iqbal and another v. The State" 2016 YLR 1891; the DNA report was negative; the prosecution had failed to prove its case beyond a reasonable doubt.

4. Mr. Imtiaz Ahmed Sehra, Advocate, appeared on behalf of the complainant and argued that; the testimony of the Victim who entered the witness box as PW-3 was reliable and trustworthy; it is settled law that the testimony of a child victim of rape is sufficient to prove the case, provided the testimony is corroborated by other evidence; the testimony of the Victim stood corroborated; the Appellant had led the Investigating Officer to the crime scene; the prosecution proved the case beyond reasonable doubt.

5. The learned State Counsel adopted the arguments advanced by the learned counsel for the respondent Complainant. He argued that the prosecution had established the guilt of the Appellant beyond reasonable doubt.

6. The learned counsel for the parties and the learned State Counsel have been heard and we have gone through the record with their able assistance.

7. The age of the Victim was about ten years at the time of the commission of the offence. The Appellant and the Victim are related as first cousins i.e. the formers mother is the Victim's paternal aunt. The elder sister of the Victim, namely, Zameeda Bibi is married to the younger brother of the Appellant. The Victim, who had lost her mother and had been abandoned by her father, was living with her paternal aunt i.e. Ms. Nasreen Bibi, mother of the Appellant. They were living in Roshan Basti at the time of the commission of the offence and before that they used to live in the house where the offence was committed. The Appellant did not mention in his statement recorded under Section 342, Cr.P.C. regarding any ill will or acrimony towards him by the Victim or her sister. However, he referred to some vague incident in the past, which had no nexus with the Victim or her sister. The Victim had entered the witness box as PW-3 and she was subjected to extensive cross-examination, yet she remained consistent, credible and trustworthy. Ch. Nazir Ahmad (PW-2), who had no relationship with the Victim or her family, was informed about the occurrence and, pursuant thereto, he had met the Victim and her sister at the mosque. As an independent witness, his statement corroborated the deposition of the Victim. Moreover, the un-scaled site plan of the crime scene Exh.PM also supports the testimony of the victim. The recoveries and depositions of other witnesses have also been found to lend support to the deposition of the Victim.

8. The learned counsel, who assisted us on behalf of the Appellant, has laid great stress on the reliability of the Victim's testimony because, as argued by him, she was a child witness and she could have been tutored or influenced by elders. He has strenuously argued that it would not be safe to rely on the testimony of a child witness. By now the law relating to the competence of a child witness to depose in a criminal case and its evidentiary value is well settled. It would, therefore, be relevant to discuss the precedent law in this regard. Article 3 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as the "Order of 1984") contemplates that all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to

those questions, by tender or extreme old age, disease, whether of body or mind, or any other cause of the same nature. The said Article contains three provisos. The Lahore High Court in the case titled "Muhammad Afzal v. The State" PLD 1957 (WP.) Lahore 788 has observed and held that each case depends upon its particular facts and circumstances and that no general rule of universal application could be laid down that in no case should the evidence of a child witness be believed. It was further observed and held that the evidence of a child witness, before it is acted upon should, however, be subjected to close and careful scrutiny. The learned Court referred to two judgments from the Indian jurisdiction and held them to be distinguishable. The learned Sindh High Court, in the case titled "Sultan and another v. The State" PLD 1965 Karachi 615 observed and held that it was unsafe to base the conviction upon the sole testimony of a young child. In the case titled "Abdullah Shah v. The State" 1968 SCMR 852 the august Supreme Court was considering a conviction based on the solitary evidence of a child aged 7 or 8 years who happened to be the convicted accused's daughter. The august Supreme Court, while interpreting Section 118 of the Evidence Act, 1872 held and observed as follows:-

> "We have no hesitation in saying that there is no substance in either of these contentions. Section 118 of the Evidence Act, as rightly pointed out by the High Court, makes all persons competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving a rational answer to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. In the present case the Court had, by questioning the child concerned, fully satisfied itself that she was capable of understanding the questions put to her and of giving rational answers to those questions. Indeed, the trial Court had remarked that she also stood the cross-examination well and her evidence was in no way shaken by such cross-examination. In the circumstances she was a fully competent witness. Whether she was to be believed or not, was for the Courts below to consider. Both the Courts below have believed her testimony because she was a natural witness and her version found corroboration from the medical evidence and the other circumstances of the case."

9. In the case titled "Ameer Umar v. The State" 1976 SCMR 338, the august Supreme Court, in the context of a child witness, observed and held that a trial Court was required to satisfy itself that the child witness was capable of giving rational answers to the questions put to him or her. In the case titled "State through Advocate-General Sindh, Karachi v. Farman Hussain and others" PLD 1995 SC 1, the august Supreme Court observed and held that the evidence of a child witness was required to be assessed with care and caution. It was further observed and held as follows:-

> "Evidence of child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated as rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved. Evidence of child came up for examination before Division Bench of the High Court in the case of Amir Khan and others v. The State PLD 1985 Lah. 18 in which after consideration of the relevant case-law on the subject, Abdul Shakurul Salam, J. (as he then was) as author of the judgment observed that 'children are a most untrustworthy class of witnesses, for, when of tender age, as our common experience teaches us, they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard from others and are greatly influenced by fear of punishment, by hope of reward and the desire of notoriety. In any case the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some evidence on the record."

10. In the case titled "Muhammad Jamal and others v. The State" 1997 SCMR 1595, the apex Court found the testimony of the child witness as inspiring and credible and upheld the conviction because it was supported by medical evidence. In the case titled "Mst. Razia alias Jia v. The State" 2009 SCMR 1428, the august Supreme Court upheld the conviction handed down, inter alia, on the basis of ocular testimony of two child witnesses. The apex Court had observed that the trial Court had taken all possible and due steps to judge the level of intelligence and maturity of the child witnesses before recording their statements because they had given consistent accounts of the occurrence and the participation of their mother i.e. the convicted accused. It was further observed that this ocular evidence had derived strength and corroboration from other evidence. The august Supreme Court, exercising its Shariat appellate

jurisdiction, has observed and held in the case titled "Fayyaz alias Fayyazi and another v. The State" 2006 SCMR 1042 as follows:-

> "It has also been rightly observed by the learned Federal Shariat Court that conviction could be based on the solitary statement of the victim provided the same is capable of implicit reliance and is corroborated by any other piece of evidence if so available in the case."

11. In the case titled "Mushtaq Ahmed and another v. The State" 2007 SCMR 473, the august Supreme Court, exercising its Shariat appellate jurisdiction, has observed and held as follows:-

> "It is consistent view of this Court that in rape cases mere statement of the victim is sufficient to connect the petitioners with the commission of offence in case the statement of the victim inspires confidence."

12. In the case titled "Ulfat Hussain v. The State" 2010 SCMR 247 the apex Court held that although in principle a conviction could be based on the testimony of an intelligent and understanding child witness but it is always preferred to adopt the settled principle of prudence and rule of care attached to the sole testimony of a child witness despite the latter's understanding and intelligence.

13. It is, therefore, obvious from the above discussion relating to the precedent law, that a child witness is not barred from entering the witness box. It is the satisfaction of the trial Court which is of crucial importance. A child who also happens to be a victim of an offence is competent to testify as a witness and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness but as a rule of prudence it is generally preferred that it should be corroborated by some other evidence so as to ensure the safe administration of justice.

14. In the facts and circumstances of the appeal in hand, the learned trial Court, for good reasons and after adopting precautionary measures, was satisfied that the Victim was competent to testify and that her deposition could be relied upon. Her testimony remained unshaken despite being subjected to protracted cross-examination. The medical evidence, recoveries and above all testimonies of other uninterested witnesses lent support to and corroborated the plea of the Victim. There is nothing on record to even remotely indicate that the Victim or the other witnesses had any reason for falsely implicating the Appellant. To the contrary, the credence of the deposition of the Victim and other witnesses is fortified because the former, having been abandoned by her father, was living with the Appellant's mother in her house and the latter's son was also married to the Victim's sister. There is nothing on record to even remotely suggest that there could have been a reason for falsely implicating the Appellant. The prosecution had succeeded in establishing its case beyond a reasonable doubt. The Appellant had indeed committed a most heinous offence and there can be no redemption or compensation for the Victim because she will have to live with the worst scars that one can imagine. There are no mitigating circumstances in order to consider handing down a lesser sentence.

15. In view of the above discussion, we answer the reference in the affirmative and confirm the conviction and sentence handed down by the learned trial Court. The Jail Appeal No. 76 of 2015 filed by the appellant is consequently dismissed.