

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MEHMOOD MAQBOOL BAJWA
MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH
MR. JUSTICE SHAUKAT ALI RAKHSHANI

CRIMINAL APPEAL NO.1/L OF 2018

TANVEER SON OF REHMAN, CASTE MUSLIM SHEIKH, RESIDENT
OF CHAK NO. 10/J.B. P.S. SADDAR, CHINIOT

.... APPELLANT

VERSUS

1. THE STATE.
2. INAYAT ALI SON OF SULTAN, CASTE KOWRA, RESIDENT OF
KHAWAJA ZARI FARM, DAKHLI CHAK NO.10, LAHORE
ROAD, TEHSIL CHINIOT.

.... RESPONDENTS

REFERENCE NO.1/L OF 2012

THE STATE APPELLANT

VERSUS

TANVEER SON OF REHMAN, CASTE MUSLIM SHEIKH, RESIDENT
OF CHAK NO. 10/J.B. P.S. SADDAR, CHINIOT

.... RESPONDENT

COUNSEL FOR THE : MR. MUDASSAR FAROOQ,
APPELLANT ADVOCATE.

COUNSEL FOR THE : MR. AMANAT ALI,
COMPLAINANT ADVOCATE

COUNSEL FOR THE STATE: CH. MUHAMMAD SARWAR SIDHU
ADDITIONAL PROSECUTOR
GENERAL PUNJAB

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| FIR NO. AND DATE & POLICE STATION | : | 226/2005 DATED 02.06.2005 P.S. SADDAR, CHINIOT DISTRICT, JHANG. |
| DATE OF IMPUGNED JUDGMENT OF TRIAL COURT | : | 08.02.2012 |
| DATE OF INSTITUTION OF CRIMINAL APPEAL NO.1/L OF 2018 IN FSC | : | 02.05.2018 |
| DATE OF INSTITUTION OF: CRIMINAL REFERENCE NO.01/L OF 2012 IN FSC | : | 19.07.2012 |
| DATE OF HEARING AND DECISION | : | 13.09.2018 |
| DATE OF JUDGMENT | : | 17.09.2018 |



JUDGMENT

Shaukat Ali Rakhshani, J: The appellant by means of instant Cr. Appeal No. 01/L of 2018 has assailed the judgment dated 08.02.2012 (hereinafter referred as the "impugned judgment") rendered by Additional Sessions, Judge Chiniot (hereinafter referred as "Trial Court") in pursuance of FIR bearing No.226 of 2005 (Ex.PV/1) of P.S Saddar, Chiniot for abduction of P.W.3 Mst. Fouzia and committing gang rape with her. The appellant beside co-accused was convicted and sentenced in the following terms:-

- i. Under Section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, to DEATH,
- ii. Under Section 11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, for life imprisonment with fine of Rs. 25,000/- and in case of default to further undergo six month S.I.
- iii. Under Section 458 PPC, for fourteen years R.I with fine of Rs. 10,000/- and in case of default to further undergo six month S.I.
- iv. Under Section 337-L(2) for two years S.I. and under Section 337 H(2), for three months S.I.

(All the sentences shall run concurrently).

The State has also made Reference No.1/L of 2012 for confirmation of the capital sentence.

2. In precise, the facts brought on surface by the prosecution reveals that complainant Inayat Ali on 02.06.2005 at about 10:30 am lodged an FIR bearing No. 226/2005 (Ex.PV/1) on the basis of complaint (Ex.PV) with Police Station Saddar, Chiniot with the allegations that in between the night of 30th and 31st of May, 2005, while he was sleeping alongwith his family members, Muhammad Nawaz, brother in law, one Azhar and Noor in the courtyard of his house. At about 12:00 am (night) accused Anwar, Akbar Ghulam Ali, Sajid and 6 unknown persons armed with fire arms, entered in his house and made lalkara that they had come to abduct P.W.3 Mst. Fouzia daughter of complainant to take revenge of the abduction of one Shabana daughter of Anwar. The accused persons caught hold of his daughter, P.W.3 Mst. Fouzia and during the course of rescue, the accused persons inflicted him and his family members with handle (butt) of the rifle and advance threats to kill them all and that while abducting P.W.3 Mst. Fouzia made aerial firing outside his house.

The motive was stated to be that Shabana daughter of accused Anwar had illicit relations with one Mumtaz, who had abducted her a few days back and the co-accused of the appellants had suspicion that the complainant had played some role in her abduction.

3. Proceedings with the investigation, P.W. Muhammad Sharif, S.I. being investigating officer of the case inspected the place of abduction and prepared site plan Ex.PX, secured 18 crime empties from the place of occurrence through recovery memo Ex.PF.

On 04.06.2005 abductee was recovered, whereof site plan of the place where she was kept was prepared through recovery memo Ex.PY and the abductee was medically examined by lady Dr.

Miftah Shaukat, who examined the abductee and subsequently issued medical certificate Ex.PS with the following observations:-

"History kidnapping on Monday.

On external examination the following injuries were found on her person.

Contusion with abrasion measuring 1cm x 1cm on right knee joint.

Abrasions measuring 2.5cm x 1cm on Right foot.

P/V Examination

On P/V examination hymen was old ruptured and haisted. Vagina admits two fingers easily. Six high vaginal swabs were taken and sent to the chemical examiner for detection of semen and grouping opinion.

OPINION

In my opinions, the examinee was used to regular sexual inter-course. Final opinion was kept pending till the receipt of report of Chemical Examiner and report of Serologist. Injury No.1 and 2 were declared as 337 L2 PPC caused by blunt weapon. Probably duration of injuries could not be determined. After completion of the examination carbon copy of medico-legal certificate, one sealed vial and one envelope were handed over the Bibi Rani constable. Ex. PS is the correct carbon copy of medico-legal examination which is in my hand and bears my signature. I also endorsed application for medical examination of Mst. Fauzia Ex.PT under my signatures and seal. I have seen Ex.PU report of Chemical Examiner, according to which the swabs procured by me, were found stained with semen. In view of the report of chemical examiner Ex.PU I am, of the opinion that sexual intercourse was committed with the victim.

During the course of investigation, on 07.06.2005 accused Ghulam Ali, on 17.06.2005 accused Anwar, on 23.06.2005 accused Tanveer, on 03.07.2005 accused Akbar, on 06.07.2005 accused Muhammad Ali and Liaqat Ali, and lastly on 10.07.2005 accused Nadeem and Sajid were arrested by P.W. Muhammad Sharif S.I.

On 13.07.2005 he got recovered a shot gun .12 bore rifle through recovery memo Ex.PG from Anwar, on 18.07.2005 a shot gun .12 bore rifle Ex.PK from Tanveer. On 15.07.2005 accused Muhammad Anwar got recovered at his pointation one torch through recovery memo Ex.PJ. On the same day at the pointation of accused Liaqat he got recovered a T.V, CD, Iron chain and cot through recovery memo Ex.PH.

4. On 19.07.2015 accused Mumtaz, taxi driver and Ghulam Sarwar were arrested having role in the crime and consequently, on 21.07.2005 got recovered a car, which was taken into possession vide recovery memo Ex.PE. A licensed gun of Ghulam Sarwar was also taken into possession through recovery memo Ex.PL.

P.W.9 Dr. Mumtaz Hussain Sajid examined injured Muhammad Nawaz and observed the nine injuries on his person, which included contusions, abrasions and swellings, caused by blunt weapon, which certificate was produced as Ex.PM.

5. On conclusion of the investigation, challan of the case was submitted under Section 7-ATA, 10(4)/11 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, 337-H2/337-L2/148/149/458 PPC before the Anti Terrorism Court.

The Special Judge Anti Terrorism Court, while commencing with the Trial framed charge under sections 120-B/149/148, 16 of the Offence of Zina (EOH) Ordinance 1979, 337-A(2)/337L(2), 337H(2), 10(4)/11, 10(3)/11 of the Offence of Zina (EOH), Ordinance, 1979 and under section 7 Anti-Terrorism Act, 1997, which was denied as such court proceeded with the trial.

6. In order to substantiate the allegations, the prosecution produced 12 witnesses.

P.W-7 Inayat, P.W-8, Mst. Fouzia, P.W-9 Abdul Qayyum, P.W-10 Muhammad Nawaz, P.W-11 Azhar and P.W-12 Noor did not support the prosecution version thus they were declared hostile witnesses as they had exonerated the appellants from the commission of the offence and deposed that they could not identify the culprits as they had muffled their faces.

7. On the pretext of being threatened the prosecution witnesses were recalled and re-examined as P.W.8 Mst. Fouzia and P.W.11 Azhar and P.W.1 Inayat did not change their position before Special Judge, ATC, Faisalabad and testified that none of the culprits were identified by them and similarly exonerated the accused persons facing the trial.

8. At the end of the prosecution evidence, the appellant and co-accused persons were examined under Section 342 Cr.P.C, who refuted the allegations. None of them opted to get record their statement on oath as envisaged under section 340(2) Cr.P.C.

After hearing the final arguments, instead of deciding the case learned Special Judge Anti Terrorism Court, Faisalabad transferred the instant case to the Court of District and Sessions Judge, Jhang for its onward entrustment to the Court having ordinary jurisdiction with the observation that section 7 of the ATA of 1997 was not made out.

9. The learned trial Court after receipt of the case file instead of proceeding with the case from stage it was left, proceeded with the same as denovo, henceforth the appellant alongwith co-accused persons were charged afresh under Section 458, 10(4), 337-L(2)/337-H(2); to which they pleaded not guilty and claimed trial.

In the meanwhile another co-accused Nawaz was also arrested, who was also charged to which he did not plead guilty and asked for trial.

10. In this around of litigation, the learned trial Court invited the prosecution to produce evidence to substantiate the charge; as such the prosecution produced as many as 12 witnesses however, suffice to adhere that the seriatim of the prosecution did change.

11. On closure of the prosecution evidence once again, the appellant alongwith co-accused persons were subjected to the query as envisaged under Section 342 Cr.P.C, which allegations were rebutted and held to be incorrect by them and they in clear words professed their innocence by refusing to accept their guilt. All of them did not choose to make their statement as provided under Section 340 (2) of the Cr.P.C.

12. After hearing the parties; on 08.02.2012, the learned trial Court holding the appellant and co-accused persons guilty of the charge pronounced the judgment and thereby convicted and sentenced them in the terms mentioned in para supra, whereas accused Ghulam Sarwar, Mumtaz and Nawaz were acquitted of the charge; while extending benefit of doubt to them. It is important to make note of the fact that during pronouncement of the judgment, the appellant Tanveer skipped away, who was later on arrested on 20.03.2018.

13. The co-accused persons being aggrieved from the impugned judgment preferred an appeal before this Court bearing CrI. Appeal No. 4/L of 2012 filed by one convict Nadeem and CrI. Appeal No.5/L of 2012 filed by convicts Anwar, Akbar, Sajid, Liaqat Ali, Muhammad Ali and Ghulam Ali.

14. This Court by means of common judgment dated 31.05.2013, allowed both the appeals and thereby acquitted all the appellants and answered the Reference No.1/L of 2012 as negative.

15. As stated in the preceding para, appellant Tanveer Ahmed was arrested on 20.03.2018, whereafter, he was sent to jail to serve out the sentence awarded to him through the impugned judgment.

16. The appellant being aggrieved and dissatisfied has challenged the impugned judgment through this appeal, while assailing the legality of the same on 02.05.2018, which though on the face of record was barred by time, however, this Court, keeping in view of the circumstances of the case on 23.05.2018 allowed Crl. Misc Application No.6-L of 2018 and as such condoned the delay caused in filing of the appeal.

17. We have heard the arguments advanced by learned counsel for the appellant Mr. Mudassar Farooq and conversely Ch. Muhammad Sarwar Sidhu, Additional Prosecutor General, Punjab for the State and Mr. Amanat Ali Advocate for complainant Inayat and perused the record with their valuable assistance.

18. The learned Counsel for the appellant inter-alia contended that the prosecution has failed to prove the charge as the evidence on record produced by the prosecution suffers from material contradictions, which has created high doubts, thus on such score the conviction and sentence is unsustainable. He stressed upon that there is a considerable delay of almost two days in lodging of the FIR and that despite such delay appellant was not nominated in the FIR and was subsequently involved in the case, which cannot be taken into account as involvement of the appellant is nothing but an afterthought victimization. He added that the ocular testimony is untrustworthy, which by no means can be made basis to hold the appellant guilty of the charge as the said ocular evidence also does not get corroboration from any independent evidence. He maintained that this Court has also disbelieved the

testimony of the prosecution witnesses, holding the evidence to be contradictory, thus has recorded acquittal, henceforth the case of the appellant also needs to be dealt with on the same touchstone of appreciation of evidence, which entitles him for the relief of acquittal.

On the other hand learned counsel for the complainant half heartedly and reluctantly opposed the appeal, however mulled that the appellant must pay the unpaid compensation amount agreed before this Hon'ble Court during the course of hearing of the appeals by acquitted accused persons. He mainly opposed the acquittal of the appellant on the mere ground that he remained fugitive and as such requested for dismissal of the appeal.

Learned Additional Prosecutor General Punjab for the State, Chaudhry Muhammad Sarwar Sidhu has also opposed the appeal on merits and emphasized that the appellant being proclaimed offender is not entitled for the relief claimed in the appeal and requested for dismissal of the same.

19. After analysis of the pros and cons of the adversaries, in view of the record perused from wall to wall, we have arrived at the conclusion that the entire case of the prosecution hinges upon (i) the ocular testimony of P.W.2 Inayat (father of abductee), P.W.3 Mst. Fouzia (the abductee), P.W.4 Walayat, P.W.6 Azhar and P.W.7 Muhammad Nawaz (uncle of abductee), (ii) recovery of abductee, (iii) recovery of crime weapons coupled with crime articles recovered from the place of occurrence, where she was allegedly confined and subjected to rape, (iv) pointation of place of occurrence, (v) positive FSL report of shot gun and last but not the least (vi) the motive.

While thrashing the evidence on record, we would like to firstly dilate upon the testimony of P.W.3 Mst. Fouzia, the

prosecutrix. She has got recorded her first statement before the Special Judge, Anti Terrorism Court, Faisalabad as P.W.8 on 27.09.2005, wherein she had deposed that on the intervening night of 30th-31st of May 2005, while she was sleeping at her home; at about 12:00 mid-night, some unknown persons, who had muffled their faces entered into their house, forcibly abducted her on the gun point and on resistance caused injuries to her uncle Muhammad Nawaz, where-after she was taken to a nearby Dera, where from she was taken to another Dera situated at the bank of the river, where she was humiliated, maltreated and raped by various persons. She further stated that on third day, she was released in the area of Chak No.10/JB by the said unknown persons, who she could not identify as they kept on putting scarf on their faces during such period of time. She categorically testified that the accused persons present in the Court were not the same, who had abducted her and committed rape with her. At such stage, she was declared hostile on the request of public prosecutor. She was subjected to lengthy cross-examination, but she insisted upon the version testified in her examination-in-chief and denied the suggestion put to her that Anwar, Akbar, Ghulam, Sajid and the appellant along with 5/6 persons being armed with firearms, abducted her and caused injuries to his uncle Muhammad Nawaz. She was raped by the aforesaid persons. In short, she denied the entire story of the prosecution suggested to her by the prosecutor.

20. As mentioned in the preceding para, an application was filed under Section 540 Cr.P.C for recalling and re-examination of the prosecution witnesses on the ground that the prosecutrix and other eye-witnesses earlier had recorded their statement before the Court as the accused persons had threatened them of dire consequences.

The plea of the prosecution seems to be unappealing to a prudent mind because when the prosecution witnesses had extended favor to the acquitted accused persons and the appellant, then there was no occasion for them to advance threat of dire consequences. The threats could also not have been advanced by any of the accused facing trial as all of them were behind the bars, so such contentions of the prosecution by all means seems to be absurd and ridiculous. But the request was allowed and her statement was got recorded for the second time on 05.10.2005 before the Special Judge, Anti Terrorism Court, Faisalabad, wherein she reiterated the version so recorded before the police and nominated the accused persons including the appellant with their role in abduction and rape.

As mentioned earlier, the learned Special Judge, ATC, Faisalabad at the end of the trial transferred the case for want of jurisdiction on 26.07.2007 to the trial Court for adjudication, where the case was proceeded with as denovo. Charge was re-framed and the prosecution witnesses were summoned to get record their statement as such besides recording the testimony of other witnesses, the abductee Mst. Fouzia was re-examined on 08.03.2010 as P.W.3, who once again deposed the similar story as narrated earlier of her abduction and rape committed with her.

It is worthwhile to mention here that this time regarding her recovery, she testified that she was recovered in consequence of the police raid conducted at the house of Ghulam Ali, belieing her previous statement that she came at her own after being let free by the culprits. She maintained that when she was produced by the police before the Magistrate to record her statement with regard to the occurrence, the Magistrate did not record her statement.

P.W.2. Inayat, who is father of the prosecutrix although narrated the same story in the same fashion as mentioned in the complaint Ex.PV, but he did not nominate or attribute any role to the appellant Tanveer in his earlier, two statements recorded before the Special Judge, Anti-Terrorism Court, Faisalabad too. He had categorically exonerated, the appellant and other co-accused from having role in the crime alleged as stated before, by deposing that culprits had muffled faces and that the acquitted persons including appellant are not real culprits.

P.W.4 Walayat has also got recorded his two statements, wherein he had involved the acquitted accused persons alongwith appellant only for having played the role in the abduction. His statement, in view of the statement of P.W.3 Mst. Fouzia and P.W.2 Inayat is contradictory regarding the manner the occurrence took place. Above all, P.W.2 Inayat and P.W.3 Mst. Fouzia, both have not shown P.W.4 Walayat to be present at the time of occurrence, which belies his testimony and makes his presence as eye-witness highly doubtful.

P.W.6 Azhar in his testimony recorded on 27.09.2005 before the Special Judge, Anti-Terrorism Court, Faisalabad had categorically testified that he does not know anything about the occurrence, whereas on re-examination on 11.10.2005 before the same Court only nominate Anwar and did not name Tanveer to have participated in the crime. For the first time in his statement recorded on 24.04.2010, he involved the acquitted accused persons and appellant for having role in the abduction of P.W.3 Mst. Fouzia. The testimony of the P.W.6 is also contradictory to the version given by other eye- witnesses as such no explicit reliance can be placed on his statement, particularly when P.W.3 Mst. Fouzia and P.W.2 complainant Inayat had exonerated the appellant and acquitted

accused persons for having any attribute in the abduction and rape, henceforth, in the attending circumstances, his testimony becomes worthless.

P.W.7 Muhammad Nawaz, in his statement recorded before Special Judge ATC, Faisalabad on 27.07.2005 deposed that he does-not know, who committed the abduction. He did not nominate the appellant. Similarly on 15.12.2005, when he was re-examined, he nominated acquitted accused persons Anwar, Akbar, Sajid and Ghulam Ali but did not nominate the appellant. For the first time on 24.04.2010 P.W.7 Muhammad Nawaz nominated accused Tanveer for abducting P.W.3 Mst. Fouzia. He is uncle of the prosecutrix and his testimony in view of his earlier depositions has lost credibility, whereupon no reliance can be placed for holding the appellant guilty of the charge, particularly in view of the contradictory statements made by prosecutrix herself and her father regarding the occurrence.

21. That the testimony of the aforesaid prosecution witnesses is contradictory and concocted, which infers us to hold that the instant case is of two versions and it is difficult to gather as to which story of the prosecution witnesses is trustworthy and truthful, whereupon the appellant can be held guilty of the felony alleged against him. The story of the prosecutrix is also absolutely improbable in the attending circumstances of the case.

As discussed above, the prosecution story narrated by P.W.3 Mst. Fouzia regarding her abduction commission of rape as well her recovery is self contradictory. Her statement is also in-conflict with the testimony of P.W Muhammad Sharif, S.I, who has given a different version of her recovery.

22. It would be worthwhile make note of the fact that acquitted accused persons namely Anwar, Akbar and Ghulam Ali

are real brothers, Liaqat and Muhammad Ali are also inter related as real brothers whereas Sajid is their nephew, who have allegedly committed rape with the prosecutrix P.W.3 Mst. Fouzia together. Our society may be at the verge of deterioration but even then it is beyond imagination that in such manner the brothers and nephew can commit such crime together.

The appellant allegedly took the prosecutrix to the Dera, which is within the same vicinity and was kept there for a considerable time, but there is nothing on record to show that the relative of the abductee made any effort in the area to recover her, which factually seems to be significant to arrive at a conclusion that the prosecution story does not fit within the attending circumstances of the case.

23. The delay in lodging the FIR has also cast serious doubts in the prosecution story because despite the police station and check post being close to the house of the prosecutrix, the father of abductee has lodged the report after two days of the occurrence without any explanation, which is again surprising and cannot be condoned in the attending circumstances of the case. In this regard, we are guided by the principle enumerated in the case of FARMAN AHMED VERSUS MUHAMMAD INAYAT AND OTHERS (2007 SCMR 1825).

24. Undoubtedly, the occurrence has taken place in dark night and none of the prosecution witnesses have mentioned the source of identification in their testimonies, therefore, it would be difficult for us to believe that an eye-witness could identify the culprits with such details.

25. As far as the medical certificate Ex.PS of the prosecutrix is concerned, that merely shows that the examinee is used to regular sexual intercourse, hymen was old ruptured and healed, which is

insufficient to fix the liability of crime as alleged. Admittedly, the prosecutrix PW.3 Mst. Fouzia is a married women and mother of three children, thus the report showing that she was used to regular sexual-intercourse is of no value as corroborative evidence. As per medical report Ex.PS, there was a contusion with abrasion measuring 1cm x 1cm on right knee joint and abrasion measuring 2.5 cm x 1cm on right foot only on her person, but in absence of any mark of violence on or around the vagina, which does not support her that she was subjected to rape by 10 men, as such it could be concluded that medical evidence does-not corroborate the ocular testimony furnished by the prosecutrix and other prosecution evidence.

26. It may be observed that it is always the credibility of the witness, which has to be measured within the attending circumstances, befitting within the probabilities of the entire prosecution version. In this case, there are sufficient contradictions not only within the statements of prosecution witnesses, but the prosecution witnesses themselves have contradicted their own version by making various self contradictory testimonies and backing out of their earlier depositions, thus a variant ocular account furnished by them in no way can be believed to be trustworthy and true as such. Upon such testimonies, obviously no conviction can be awarded while imparting with the judgment.

27. Undeniably, the ocular account is also in conflict with the medical evidence of the prosecutrix, which is a hard blow for the prosecution, resulting in failure of the prosecution to establish the case against the appellant. The concept of probability cannot be expressed in terms of arithmetical enumerations. The entire episode of the prosecution story, while being assessed, must lead the Court to believe that prosecution version is truthful and according to the

narrated circumstances of the case so put-forth by the prosecution witnesses and that too without any exaggeration, improvisation and malice as such until then the accused cannot held to be guilty of the crime.

In this regard, we are fortified to place reliance on the judgment, titled as **NAZIM KHAN AND 2 OTHERS VERSUS THE STATE (1984 SCMR 1092).**

28. Adverting to the recovery of shot gun of .12 bore made from the possession of appellant, it may be observed that the said recovery of weapon merely may constitute a case of contravention of provisions of the Arms Ordinance, 1965 but cannot be read as corroborative piece of evidence, unless, there is a report of Forensic Science Laboratory. Though, in the instant case there is a forensic report Ex.PHH of the shot gun allegedly recovered from the appellant but after examination of said report coupled with the recovery of empties, we have come to know that when the empties were recovered, the same were not sent to Forensic Science Laboratory to be kept in safe custody and that on recovery of alleged weapon of crime, both were sent together for Forensic Science Laboratory examination and report, which practice and procedure have strictly been disapproved by the Apex Court, particularly, when the same are sent with an unexplained delay. In the instant case, both the parcels alongwith the recoveries of other shot guns effected from the acquitted appellants were sent together, which has lost its credibility. In this regard, we would like to refer to the case of **MUHAMMAD FAROOQ AND ANOTHER VERSUS THE STATE (2006 SCMR 1707), ALI SHER AND OTHERS VERSUS THE STATE (2008 SCMR 707) AND ALI KHAN VERSUS THE STATE (1999 SCJ 502).**

29. In so far the recovery of TV-CD, Cot (charpai), Iron Chain and two pens are concerned, those also have no credence and evidentiary value, as the recovery of same appears to be a padding to strengthen the prosecution case unjustifiably, which appears from the fact that earlier on 04.06.2005 when the abducted PW.3 Mst. Fouzia was allegedly recovered from the Dera and before the arrest of the appellant and acquitted accused persons. The police inspected the place of occurrence and made site plan Ex.PX but surprisingly did not find the said alleged incriminating article i.e. TV-CD, Cot (charpai), Iron Chain and two pens. In the attending circumstances, such recovery is worthless, whereupon no reliance can be placed at all.

30. Now coming to the motive, we are conscious of the legal proposition that motive plays a vital and significant role but as a settled principle, we are also aware that the motive is a double edged weapon, which cut both the ends. Obviously, in isolation, the motive itself is of no significance in absence of strong, trustworthy and unshakeable evidence, which leads the accused to the guilt. In the instant case as remarked and observed earlier, the prosecution has failed to establish beyond any reasonable shadow of doubt that the appellant has committed the crime as charged through indefeasible evidence, thus, in the instant case the motive cannot be considered as corroborative piece of evidence. Rather, the same seems to have been pleaded for false implication on ulterior motive.

31. Mainly, learned Additional Prosecutor General Punjab for the State and counsel for the complainant party argued that the appellant being absconder is not entitled for the relief as claimed for because fugitive from law loses normal rights and his abscondence being relevant in the matter needs to be considered. We have given a thorough thought to the said objection but are

influenced by the dicta laid down in the judgments of the Apex Court in the cases of ROHTAS KHAN VERSUS THE STATE (2010 SCMR 566) AND HAJI PAIO KHAN VERSUS SHER BIAZ AND OTHERS (2009 SCMR 803), wherein it was held that though the abscondence of accused is relevant factor but alone it cannot be considered as conclusive proof of a crime as the prosecution has to independently prove the charge on the basis of strong and cogent evidence without any shadow of doubt that the accused has committed the crime. As remarked sometimes, innocent person also skip away to avoid victimization and humiliation, as now a days, it has become a practice that after an occurrence, the net is thrown to involve as many as related persons of the opponent party to either victimize them or pressurize them not to pursue the case of the other accused persons. Since the prosecution has failed to prove the case against the appellant beyond any reasonable doubt, therefore, mere abscondence of the appellant would not matter.

32. It is also worthwhile to mention here that during the hearing of Criminal Appeal No.04/L of 2012 and Criminal Appeal No.05/L of 2012, the learned counsel representing the prosecutrix PW.3 Mst. Fouzia and PW.2 Inayat her father entered into a compromise with the appellants and agreed to get compensation of Rs.1500000/- (Rupees fifteen lacs only), whereof Rs.600000/- (Rupees six lacs only), was paid in cash to the complainant in the Court and regarding remaining amount of Rs.900000/- (Rupees nine lacs only) was agreed to be paid through cheque.

This Court, while taking lenient view on compassionate and humanitarian grounds considered the compromise as well, besides merits of the case and consequently on 13.09.2018 allowed the appeal and acquitted all the appellants.

33. As stated earlier, the learned counsel for the complainant party in the presence of PW.2 Inayat (the complainant) and PW.3 Mst. Fouzia (the abductee) half heartedly opposed the appeal but their main interest was to be further compensated by the appellant. They had already been compensated, therefore, this Court would desist from intervening into the matter of recovery and compensation amount, however, the parties are left to do the needful as desired subject to legal course.

34. For the reasons discussed herein above, we are convinced with no doubt in mind that the case of the prosecution is highly doubtful and it has failed to prove the charge beyond any reasonable doubt, therefore, the conviction and sentence of the appellant Tanveer dated 08.02.2012 passed by learned additional Sessions Judge, Chiniot is not sustainable and merits to be set aside.

35. These are the reasons for our short order dated 13.09.2018, whereby Criminal Appeal bearing No.01/L of 2018 has been allowed, appellant acquitted and Reference No.01/L of 2012 answered in negative; which is reproduced herein below:-

Criminal Appeal No.01/L of 2018

"Heard.

2. *For the reasons to be recorded later on, while accepting the appeal, setting aside the judgment recording conviction and awarding sentence to the appellant, the appellant is hereby acquitted.*
3. *Sentence of death awarded to the appellant is not confirmed. Reference sent by the learned Trial Court under Section 20(2) of The Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 read with Section 374 of The Code of Criminal Procedure, 1898, is hereby answered in negative*
4. *Convict-appellant is in jail. He be released forthwith if not required in any other case.*

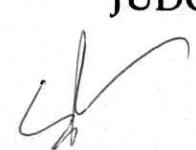
5. The grievance of the complainant during the course of arguments is that despite undertaking given on behalf of the appellants in CrI. Appeals No.04 & 05-L of 2012, he was not compensated. Suffice it to say that while deciding the present appeal, this Court cannot examine this aspect. Instead of making grievance before this Court, it would have been better to agitate this matter by availing appropriate remedy".

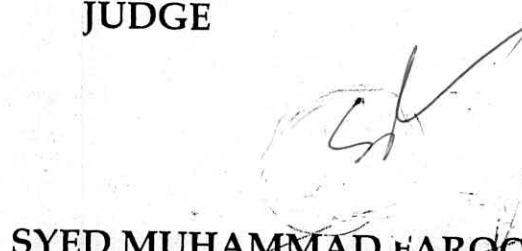
Reference No.01/L of 2012

"Heard.

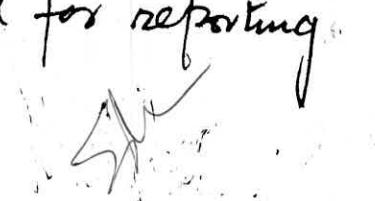
2. In pursuance of short order recorded in CrI. Appeal No.01-L of 2018 of even date to be followed by detailed judgment later on, the sentence of death awarded to the respondent-Tanveer is not confirmed. Reference is accordingly answered in negative".


SHAUKAT ALI RAKHSHANI
JUDGE


MEHMOOD MAQBOOL BAJWA
JUDGE


SYED MUHAMMAD FAROOQ SHAH
JUDGE

Islamabad, the dated
17.09.2018
Khurram/-


Approved for reporting