

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.16 of 2017

*(On appeal against the judgment dated
03.05.2013 passed by the Federal Shariat
Court, Islamabad, in Jail Criminal Appeal
No.28/I of 2012)*

Muhammad Hanif

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s):	Mr. Ansar Mehmood Mirza, ASC
For the State:	Ch. M. Sarwar Sidhu, Addl. Prosecutor General Punjab.
For the Complainant:	Muhammad Zafar, witness.
Date of hearing:	01.12.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Ziarat Be Jan, 60, was spotted lying dead on a cot inside her home by her sister-in-law Zubaida Bibi (PW-1) and Safeena Bibi (PW-12), residents next door; as they approached the deceased, the appellant was seen, hurriedly leaving the room; the witnesses were joined by Zafar Iqbal (PW-2), Muhammad Sheezan and Muhammad Ayyaz who attempted to intercept the appellant albeit with no success; the deceased was lying without her loincloth with multiple injuries on her face with blood coming out of the nostrils as well as the mouth; the legs were disentangled with constriction; she was suspected to have been done to death with some blunt weapon. The deceased was survived by five sons, statedly married. Looked down in the neighbourhood, the appellant was arrayed as suspect. Autopsy was conducted at 11:00

p.m; fracture of hyoid bone suggested asphyxial death; blood was visible in the nasal, oral and vaginal cavities; walls, ribs, cartilages and trachea were fractured; upon dissection, the medical officer noted a bruise 5 x 3 cm on the parietal bone; skull contained intracranial bleeding with rigor mortis found in developing stage; vaginal swabs did not carry seminal stains; death was estimated to have occurred immediately within preceding twelve hours. Inventory from the spot included bloodstained hammer (P-1), ligature (P-2) and pillow cover (P-4). The appellant was arrested on 01.5.2006; indicted for homicide as well as carnal assault, he claimed trial on 30.10.2007 that resulted into acquittal on latter charge whereas on the former, convicted under clause (b) of section 302 of the Pakistan Penal Code, 1860, he was sentenced to imprisonment for life, maintained by the Federal Shariat Court vide impugned judgment dated 03.05.2013, being assailed through leave of the Court

2. Learned counsel for the appellant contends that after prosecution's failure on the charge of rape, the very foundation of its case against the appellant is raised to the ground; that hapless lonely widow appears to have been done to death for reasons that remain a mystery as there is far more than what meets the eye requiring a scapegoat conveniently found in the appellant who certainly could not escape the witnesses in a small rural neighbourhood; the bottom line is that petitioner's nomination is calculated to hush up the tragedy. The learned Law Officer faithfully defended the impugned judgment.

3. Heard. Record perused.

4. The deceased was survived by five sons, each married with a family, ranging 40 years to 19 years in age, admittedly residing in the same household; it is surprising that none, except the deceased, from such a sizable clan was present on the fateful day; their absence clamours for explanation and in retrospect spells out a scenario diametrically incompatible with the story set up in the crime report. Prosecution's bid to frame the appellant as a suspect in the crime on his questionable credentials is hit by Article 68 of the Qanun-e-Shahadat Order, 1984 and as such by itself does not advance its case. Allegation that the appellant forcibly committed rape upon the deceased stands negated by medical evidence leaving no apparent motive for him in the field to take on the deceased. Magnitude of violence, essentially reflecting a time intensive assault with obvious

resistance by an able bodied village-hardened woman could not have gone unnoticed by the residents of the houses located nearby. Constricted legs reflecting onslaught of rigor mortis negates the hypothesis of witnesses' arrival within the timeframe, suggested in the crime report. An assailant actuated by carnal designs is not expected to bring a hammer with him to accomplish the task; web of circumstances, each mindboggling, heavily intrigue upon the integrity of prosecution case, unmistakably found fraught with doubts, deducible from its own record, benefit whereof, cannot be withheld. Criminal Shariat Appeal No.16 of 2017 is allowed; impugned judgment is set aside; the appellant is acquitted of the charge and shall be released forthwith if not required to be detained in any other case.

Chairman

Member

Member

Member

Member

Islamabad, the
1st December, 2020
Not approved for reporting
Azmat/-