

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

**CRIMINAL APPEAL NO.465/2015**

(On appeal from the judgment dated 23.11.2010 passed by the Lahore High Court, Lahore in Crl.A.No.49/2005)

Fayyaz Ahmad

...Appellant

**Versus**

The State

...Respondent

For the appellant : Mr. Muhammad Siddique Khan Baloch,  
ASC

For the State : Mirza Muhammad Usman, DPG-Punjab

Date of Hearing : 13.9.2017

**JUDGMENT**

**Dost Muhammad Khan, J.—** Appellant Fayyaz Ahmad “Lifer” at a trial held by Additional Sessions Judge, Vehari was sentenced to life imprisonment u/s 302(b) PPC with benefit of section 382-B Cr.PC and also to pay Rs.50,000/- as compensation to the LRs. of the deceased, namely, Zafar Iqbal. His appeal was dismissed vide impugned judgment dated 23.11.2010 by the then learned Chief Justice of Lahore High Court.

On a jail petition, the appellant was granted leave to appeal vide order dated 13.10.2015 to re-appraise the evidence.

2. Brief but relevant facts are, that Mst. Naziran Bibi (PW-8), while reporting the crime to the local police of police station Thengi, district Vehari on 29.8.1999 alleged that two days earlier her child, aged 3 years, was abducted by the appellant and that they did not make a report and sat quiet. Alleging further, that a day thereafter i.e. 28.08.1999, the appellant came to them and

stated that the child is in the District Courts Vehari and they should accompany him to get back the child. The deceased Zafar accompanied him but did not turn up till late night, thus they got worried and went out for search and during the process of search they reached Chak No.56/WB, where, people had assembled in a cotton crop land and were talking about a dead body, thus they reached at the spot and identified the dead body of Zafar Iqbal whose throat was cut through sharp weapon, hence she charged the appellant Fayyaz along with Riaz and Tufail.

3. Undeniably, rather admittedly it is an un-witnessed crime and the entire edifice of the prosecution case has been built on weakest circumstantial evidence. Two of the co-accused were declared innocent by the investigating agency and even they were not charge-sheeted.

4. It has come in the evidence that the child was handed over to the complainant Mst. Naziran Bibi four days after the occurrence by the police. Wherefrom and from whose custody the child was recovered, is still a begging question having not been explained anywhere by any witness for the prosecution.

5. To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.

To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have

noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. “*Reasonable Doubt*” does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without any missing link, otherwise at random reliance on such evidence would result in failure of justice.

6. It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same.

7. The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under legal obligation to fulfill the same, some of which may be cited below:-

- (i) *There must be cogent reasons that the deceased in normal and ordinary course was*

*supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.*

- (ii) The proximity of the crime seen plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which the deceased left him and parted ways in the course of transit.*
- (iii) The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.*
- (iv) There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.*
- (v) Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.*

- (vi) *The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.*

*Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.*

- (vii) *The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.*
- (viii) *The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder.”*

7. The appellant was, allegedly, forbidden to visit the house of the complainant and by her mother Mst. Urshaan Bibi (PW-9) where they were living without earning means of livelihood; the reason for that was not given in the FIR, however, at the trial, dishonest improvements were made that the appellant was demanding the hand of Naziran Bibi, complainant which was refused by her mother thus, to compel her for the said marriage, the child was abducted.

8. No prudent mind on the earth would believe that once the child of 3 years age of the complainant was abducted which incident remained un-witnessed one, by itself, was not more than sufficient to achieve the object by getting hand of the complainant? Unnatural appearance of the appellant before the complainant party asking them to accompany him to collect the child from the District Courts premises, is absolutely unbelievable aspect of the story as it runs counter to natural human behaviour and conduct.

The mother love for a child is incomparable and is blessed with a divine spirit, having been placed on high pedestal in this mundane world. Even small birds and sparrows have been shown and noticed, attacking wild animals when its child is aggressed upon, risking its own life to save it. Thus, the degree of dearness of the child to the mother is manifold higher than a brother. If the abduction of the child was true then, there existed no earthly reason to take away the deceased Zafar Iqbal by the appellant with the same motive and intention. It appears absolutely a fantastic theory that the appellant, guilty of abducting the child, would have approached the complainant, because in that event he would have been detained with the help of others or at least police would have been informed about his presence; then how, to the contrary, Zafar Iqbal deceased was let to accompany the appellant to collect the child from the District Courts Premises. The entire story in this regard is bereft of any reason and is hard to believe being of no legal worth and reliance.

9. Another intriguing aspect of the story is that instead of accompanying the appellant to the District Courts premises, the deceased went to the deserted area where his dead body was found

in a standing cotton crop, considerably away from the District Courts. This deviation is neither understandable nor believable in the absence of any believable and reliable evidence. The brutal manner, the deceased was killed by cutting his throat, speaks volumes about a frustrated mind, full of revengeful sentiments, blowing high for the reasons of very strong motive behind it, which settled down after ruthlessly killing the deceased. The belated motive, attributed to the appellant by itself appears artificial, flimsy, feeble and not sufficient for an ordinary man to act so wolfishly on that account. The complainant admitted that the appellant was frequent visitor to their house. She and her mother, both were having no means to earn bread therefore, being a divorcee and mother of a little child, if her hand was demanded by the appellant, it was not less than a good fortune and blessings, therefore, refusal on her part is absolutely unbelievable.

10. We have searched the case-file from folder to folder but could not lay hand on any piece of corroboratory evidence to lend support to the weak circumstantial evidence. The crime knife, recovered at the instance of the appellant and that too after many days after his police custody is of no help to the prosecution because it was not shown stained with human blood.

11. The above factual infirmities apart, in three successive investigations, conducted by different investigating officers no definite opinion was formed by anyone about the guilt of the appellant as all of them stated on oath at the trial that the investigations carried out by them were inconclusive about the guilt of the appellant, causing the murder of Zafar Iqbal and of abducting the child. It is strange enough that the child was

recovered by the police according to the evidence on record but the appellant was not charged for the abduction.

12. The autopsy report would suggest that the deceased was done to death 48 hours before the examination of the dead body by the medicolegal officer. This circumstance completely negates and nullifies the prosecution stance about the time of the departure of the deceased with the appellant and has cut the roots of the prosecution case.

13. In view of the combined study of the entire evidence and careful re-appraisal of the same we are led to an inescapable conclusion that the prosecution case is full of improbabilities, legal and factual infirmities of fatal nature and is pregnant with bristling doubts of grave nature. Thus, the prosecution has miserably failed to connect the neck of the appellant with the crime in any manner whatsoever.

14. Before parting with this judgment, we express our concerns and are at loss as to how the Trial Court convicted the appellant, more so, the learned Judge of the High Court maintained the conviction, which amounts to serious miscarriage of justice.

For what has been discussed above, this appeal is allowed. The appellant is acquitted of all the charges leveled against him. He shall be set free forthwith if not required to be detained in any other case.

Judge

Judge

Islamabad, the  
13<sup>th</sup> September, 2017

Nisar/-

“Approved for reporting”