

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.122-L of 2017

(On appeal from the judgment dated 10.02.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No.365-J of 2012 and CSR No.27-T of 2012).

Iftikhar Ahmad

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s)	:	Ch. Nisar Ahmed Kausar, ASC
For the Complainant	:	Mr. Muhammad Ozair Chughtai, ASC/AoR
For the State	:	Mr. Mazhar Sher Awan, Additional Prosecutor General, Punjab with Furqan, S.I.
Date of Hearing	:	16.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Bisma Murad, 11, left home on 21.11.2011 to attend school; she did not return at the expected time whereupon her father, Murad Ali, PW-13 went to the school; he was informed that the girl did not turn up; a day passed by in search and finally the incident was reported at Police Station Nawan Kot, Lahore on 22.11.2011; after receipt of calls from two different cell phone numbers whereby the unknown caller demanded ransom of Rs.50,000. The complainant alongside Shahzad, PW went to the designated place with the amount once again and dropped it inside the corner of a steel fence; the caller directed them towards main road Sabza Zar to receive the abductee, however, to their dismay none were there. A dead body was spotted at about noon time identified by the complainant as that of his missing daughter Bisma Murad. According to the autopsy report, she was strangulated to death; hymen was found freshly ruptured with tears on anal opening; swabs bore seminal

traces without DNA identification. Trial before learned Special Judge, Anti Terrorism Court No.II culminated into appellant's conviction under Sections 302(b), 365-A of the Pakistan Penal Code, 1860 read with Section 7 (e) of Anti Terrorism Act, 1997. The learned High Court maintained the convictions.

As the investigation progressed, Iftikhar Rasool, Inspector, PW-17, with the help of cell phone data, tracked through IMEI number, arrested the appellant on 25.11.2011; upon his personal search, a cell phone hand set, P-8 with a sim (Subscriber Identity Module) bearing No.0308-4262290, P-9 with cash Rs.10,000 were recovered. The accused was lodged in judicial lockup with muffled face. He was presented before Muhammad Iqbal and Muhammad Ramzan, PWs, witnesses of last seen on 3.12.2011; they correctly identified him during the test identification parade; later, while taking the girl on motorbike and former, throwing a bag in the plot wherefrom the dead body was recovered. The appellant was remitted to police custody; pursuant to a disclosure he led to the recovery of various incriminatory articles that included a part of ransom amount; most importantly last belongings of the deceased. Learned trial Judge returned a guilty verdict; he stood convicted and sentenced as referred to above *vide* judgment dated 8.10.2012; his appeal before a learned division bench of Lahore High Court met with no better fate *vide* impugned judgment dated 10.2.2015.

2. Prosecution's case is primarily structured upon the statement of Muhammad Ramzan, PW; he is complainant's nephew and claims to have last seen the girl in appellant's company on 21.11.2011; he shared information with the complainant on the following day and it was on this disclosure that the appellant was framed as suspect. This piece of evidence is further corroborated with the statement of Muhammad Iqbal, PW-11 who saw the appellant dumping the corpse; both of them correctly identified the appellant under magisterial supervision, a process substantially flawless. Defence has not been able to impeach credibility of these witnesses; they have no axe to grind. Evidence of the last seen is well within the remit of proximity of

time and space. Recovery of articles constitutes an another strong link particularly last belongings including school bag as well as stationery items. Recovery of sim (Subscriber Identity Module) P-9 and generation of calls therefrom, received by the complainant, confirmed by cell phone data presents a formidable piece of evidence, based upon an automated system, immune from foreign interference. Investigative process and conclusion thereof inexorably points towards the appellant's culpability. Circumstances though few, nonetheless, are well synchronized, excluding every hypothesis of appellant's innocence. He has rightly been convicted by the learned Courts below, therefore, his appeal must fail. Prosecution's failure of DNA profile generation of rectal and vaginal swabs is a most grievous lapse that in retrospect makes out a case to visit the appellant with alternate penalty of imprisonment for life, therefore death penalty on all counts is altered to imprisonment for life on each; amounts of fine and compensation are kept intact. Sentences shall run concurrently with benefit of Section 382-B of the Code of Criminal Procedure. With the above modification, Criminal Appeal 122-L/2017 is allowed.

JUDGE

JUDGE

JUDGE

Lahore, the
16th of May, 2019
Ghulam Raza/*