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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Appellate side _____ Cr. Appeal No _____-P/2023

District	Date of Filing petition	Whether filed by petitioner in person or by pleader or agent	Stamp on Petition/ appeal
Newshehra	17-05-2023	Shabbir Hussain Gigyani Advocate, Peshawar	Nil

Yasir S/O ZarUllah

R/O Usman Khel Newshehra Kalan.....**A**ppellant

Versus

1. Shah Said S/O Gul Rehan
R/O Nawan Kalay Newshehra Kalan

2. The State.....**R**espondents

**Appeal U/S. 410 Cr.P.C. r/w
16(7) of KP CP Act, 2010
from the order of:**

Dated:

11-05-2023

Charged U/S:

302/376 PPC r/w 50/53 CPWA, 2010

(FIR#1157, Dated 28-12-2018 PS Newshehra Kalan)

Sentence:

U/S: 302 (b) PPC: Life which compensation of 01 million U/S. 544-A Cr.P.C. recoverable as arrears of land revenue or from person or estate of the accused.

U/S: 376 PPC: Death with fine of Rupees 01 million or in default 06 months SI.

U/S: 50 CPA: 07 years R.I. with fine of Rupees 01 million or in default 06 months SI.

U/S: 53 CPA: 14 years R.I. with fine of Rupees 01 million or in default 06 months SI.

All the sentences to run concurrently with benefit of section 382-B Cr.P.C.

Prayer-in-Petition

On acceptance of this appeal, the impugned judgment of the learned trial Court dated 11-05-2023 may graciously be set-aside and the appellant be acquitted of the charges of the prosecution.

GROUND ARE ATTACHED

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR

(Judicial Department)

Criminal Appeal No. 924-P/2023

with Murder Reference No. 09-P of 2023.

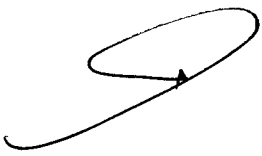
Date of hearing: 17.01.2024.

Mr. Shabbir Hussain Gigyani, advocate for the appellant.

Syed Shahid Mehboob, Addl. AG for the State.

Barrister Sarwar Muzafar Shah for complainant.

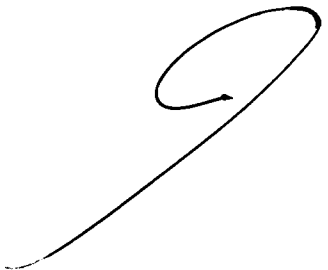
JUDGMENT



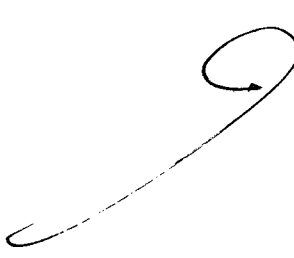
SAHIBZADA ASADULLAH, J.- This criminal appeal calls into question the judgment dated 11.05.2023, passed by the learned Judge, Child Protection Court / ASJ-VI, Nowshera, in case FIR No. 1157 dated 28.12.2018 under sections 302/376 PPC read with sections 50/53 of the Khyber Pakhtunkhwa Child Protection & Welfare Act, 2010, registered at Police Station Nowshera Kalan, district Nowshera. The operative part of the judgment, whereunder the appellant has been convicted and sentenced is reproduced as under:-

- i. U/s 302(b) PPC to death to be hanged by the neck till he is dead subject to confirmation of sentence by Hon'ble Peshawar High, Peshawar and would also pay compensation amount of Rs. 10,00,000/- (rupees one million) in respect of deceased to her respective legal heirs under section 544-A Cr.PC. In case of default in

payment of compensation, the same shall be recovered as arrears of land revenue from the person and estate of accused facing trial.

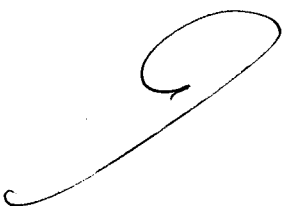
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- ii. U/s 376 PPC, to death to be hanged by the neck till he is dead subject to confirmation of sentence by Hon'ble Peshawar High Court, Peshawar and is also fined with amount of Rs. 100,000/- (rupees one lac) and in default of payment of fine amount, he shall further undergo with simple imprisonment of six months.
 - iii. U/s 50 of the KP Child Protection & Welfare Act, 2010, and awarded with the sentence for the rigorous imprisonment of seven (07) years alongwith fine of Rs. 1,000,000/- (rupees one million) and in default of payment of fine amount, he shall undergo with simple imprisonment of six months.
 - iv. U/s 53 of the KP Child Protection & Welfare Act, 2010, and awarded with the sentence for the rigorous imprisonment of fourteen (14) years alongwith fine of Rs. 1,000,000/- (rupees one million) and in default of payment of fine amount, he shall further undergo with simple imprisonment of six months.

2. Brief facts, as divulges from the FIR, are that on 28.12.2018, (PW-1) Baz Muhammad ASI, on receiving information to the effect that a dead body of a minor girl is lying at Bajuriyan graveyard, rushed to the spot where he found the dead body of minor girl aged about 8/9 years, done to death by unknown accused. On the spot, Shah Said, father of the deceased was present, who reported the matter that

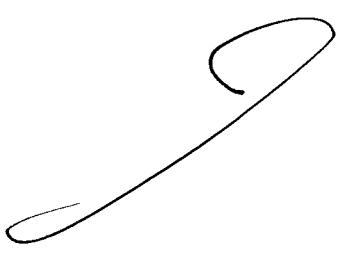


deceased is his daughter, who was the student of Brain Maker Private School in grade three, and at Asar Vela goes to Madrassa at Nawan Kaley. On 27.12.2018, as usual she went for Madrassa at about 1500 hours but, did not return till *Esha* time. On this she was searched but could not be found and a report to that effect was lodged in the police post for her missing. Today he received information that his daughter was murdered by unknown accused due to violence and her dead body was thrown in the graveyard, and when reached there, found her dead body. The complainant further reported that they have no enmity with anyone and charged un-known accused for commission of the offence. The report was recorded in the shape of *Murasila* (Ex.PA/1) on the basis whereof the case FIR (Ex.PA) was registered against unknown accused. Later on during investigation, the appellant was arrested for commission of the offence and charged by the complainant in his statement recorded u/s 164 Cr.PC, hence, the instant appeal.

3. On conclusion of the investigation, challan was submitted before the learned Judge Anti-Terrorism Court, Matta (Swat) at Central Prison Mardan, where the appellant was summoned and provided copies of



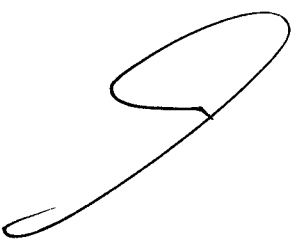
the relevant documents u/s 265-C Cr.PC, and thereafter, he was formally charge sheeted, to which he pleaded not guilty and claimed trial. After commencement of the trial, the prosecution produced as many as 16 witnesses. The statement of accused-appellant was recorded under section 342 Cr.PC, wherein he professed his innocence, however, neither opted to produce defence evidence nor to be examined u/s 340(2) Cr.PC. On conclusion of the trial, when the case was fixed for final arguments, the learned Judge Anti-Terrorism Court, deleted section 7 ATA, and sent the case file to the Court of learned District & Sessions Judge, Nowshera for trial, where the same was entrusted to the Court of learned Sessions Judge-III / Model Criminal Trial Court, Nowshera. The learned trial Court framed fresh charge against the appellant u/s 302/376 PPC read with sections 50/53 of the Child Protection Act, 2010, and vide order sheet dated 12.06.2021, learned counsel for the parties recorded their joint statement to the effect that they rely on the evidence and statement of accused already recorded before the learned Judge Anti-Terrorism Court, and the case was fixed before hearing.



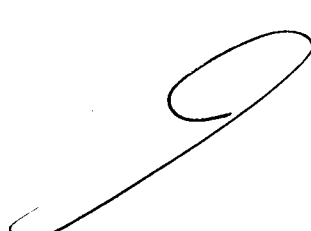
4. On 17.07.2021, the learned Additional Sessions Judge-III / Model Criminal Trial Court, convicted and sentenced the appellant to life imprisonment. Felt aggrieved, the appellant as well as complainant filed Criminal Appeal bearing No. 750-P of 2021 and Criminal Revision No. 149-P 2021 respectively before this Court. The ibid cases came up for its hearing before this Court, on 06.04.2023, and this Court was pleased to set aside the judgment dated 17.07.2021, and remanded the matter to the Child Protection Court / ASJ-VI, Nowshera for re-writing of the judgment. The learned Child Protection, heard the arguments of learned counsel for the parties and vide impugned judgment dated 11.05.2023, convicted and sentenced the appellant in the manner as referred to above.

5. The learned counsel for the parties heard at length alongwith learned Addl. AG and with their valuable assistance the record was scanned through.

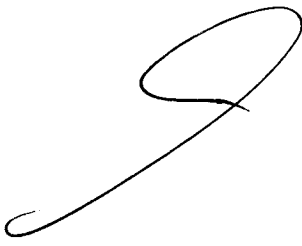
6. The record tells that the deceased went missing on 27.12.2018, and in that respect the father of the deceased conveyed information to the local police, which was penned down in the shape of Naqal Mad-9 dated 27.12.2018 and search for the deceased was started. It was on the very next day i.e. on 28.12.2018 that the dead body of the deceased was noticed in the



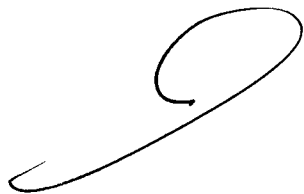
graveyard, known as Bajurian, situated at Khwishgi road. The local police informed the complainant, who came to the spot and he reported the matter regarding the murder of his daughter and as such the report of the complainant was penned down in the shape of *Murasila*, which was later on incorporated into FIR No. 1157 dated 28.12.2018 u/s 302/376 PPC read with sections 50/53 of the Child Protection and Welfare Act, 2010. The dead body of the deceased was sent for the postmortem examination, and as such the dead body was examined by the doctor and after examination of the dead body the postmortem report was prepared containing the details of injuries found on the dead body of the deceased. The doctor also collected vaginal and rectal swabs. It is also pertinent to mention that the doctor also collected some specimen from the dead body of the deceased which would be useful for determination as to whether she was subjected to rape, and that by whom. When the investigation officer visited the spot, he on the pointation of the complainant prepared the site plan and from the place of the unfortunate deceased, some blood stained earth was taken into possession. Apart from the above recovery, he also took into possession one stone containing blood drop, which was sealed



into parcel. During the spot inspection, the investigating officer collected plastic shoes of the deceased and the same were taken into possession. The investigating officer also received blood stained garments of the deceased and two sticks containing swabs, sent by the doctor from the hospital through constable Mansoor No. 333. It is pertinent to mention that during spot inspection the investigating officer also recovered a plastic shopper having blood stained tissue papers and two number of condoms from which two samples of swabs were secured in sticks by the doctor in the hospital and the same were sealed into parcel. The investigating officer produced the blood stained tissue papers and two condoms before the doctor for obtaining swabs for the purpose of DNA, and thereafter all the collected materials, either from the spot or sent by the doctor, were sent to the Punjab Forensic Science Agency, Lahore, Punjab (PSFA) for the purpose of DNA. The incriminating articles were received to the laboratory, the same were put to chemical analysis and thereafter a comprehensive report was prepared regarding the presence or non-presence of semen or spermatozoa over the same and interestingly, after the arrest of the accused / appellant, his blood sample was collected for the

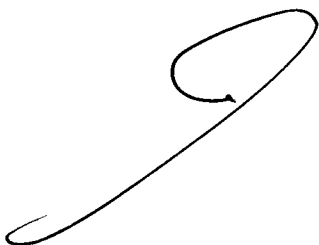


same purpose and it was also examined by the PFSA, Lahore Punjab, and the same was tested to find similarity between the one collected from the deceased or the spot and the blood of the accused / appellant. The DNA report is comprehensive in all respect as it contains the details of the tests conducted and the conclusion drawn, by the relevant expert. It is pertinent to mention that initially, the accused / appellant was not known and the matter was reported by the complainant against the unknown accused, so the local police was in hot pursuit of the accused and it was on 30.12.2018 when PW-12 Masood Khan (SHO), visited the local area and received a clue regarding the involvement of the accused / appellant in the unfortunate incident. The accused was arrested on 31.12.2018 and he confessed before the police that it was he who committed the offence. The accused / appellant pointed out the place of the recovery of the dead body to the investigating officer and the process of pointation was witnessed by independent witnesses including, PW-4, who was examined by the learned trial Court in that respect. It was during investigation that the accused / appellant was produced before the doctor, who after examination found him capable to



commit sexual intercourse and his age was determined as 30 years. The blood samples of the accused / appellant were collected for the purpose of DNA, and it was on 04.01.2019 that the appellant opted to confess his guilt and as such he was produced before the Court of competent jurisdiction, for recording his statement. The accused / appellant faced the trial and on conclusion of the trial was convicted and sentenced vide the impugned judgment.

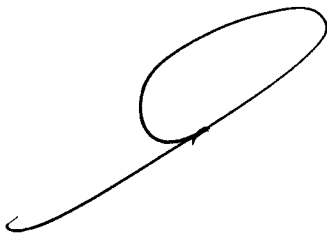
7. The learned trial Court took into consideration the available evidence on file and also the statements of the witnesses, which convinced it regarding the involvement of the appellant in the tragic incident. The learned trial judge appreciated the circumstances of the case, he also appreciated the medical evidence and the manner in which the appellant confessed his guilt. True that the prosecution case is hinging upon the circumstantial evidence and equally true that in case of circumstantial evidence the prosecution must create a chain which would touch the body of the deceased on one hand and on the other neck of the accused. As in this particular case, on one hand we have the confessional statement of the appellant, and the medical evidence, in the shape of DNA, which



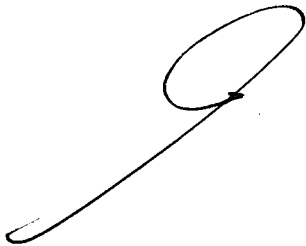
point towards the guilt of the appellant, whereas on the other no eye witness account is available to tell that it was the appellant who committed the murder of the deceased. When such situation emerges, then it is obligatory for the trial Court as well as this Court to apply its judicial mind, to weigh the collected evidence with care and caution, so that miscarriage of justice could be avoided. True that the learned trial Court awarded death sentence to the appellant on the basis of evidence on file, but equally true that this Court feels it its obligation to reassess and reconsider the assessed and considered evidence, so that a definite conclusion could be drawn regarding the innocence or guilt of the appellant.

8. The points for determination before this Court are, as to whether the incident accord in the mode and manner and at the stated time; as to whether it was the appellant who killed the deceased after satisfying his lust: as to whether the confessional statement recorded is voluntary true and confidence inspiring and as to whether the prosecution succeeded in bringing home guilt the accused/appellant.

9. As the complainant is not the eye witness of the incident, so this Court is to see as to how the prosecution came to know regarding the involvement

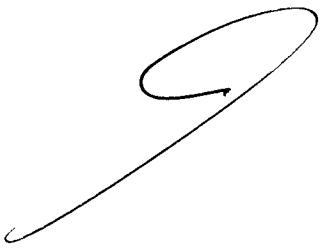


of the appellant in the incident and that how the appellant surfaced. It is pertinent to mention that the complainant approached the local police regarding missing of his daughter and that the information was put into writing in the shape of Naqal Mad-9 dated 27.12.2018, where neither the death of the deceased was known nor the accused / appellant. It was during search for the missing girl when the local police received information regarding the presence of a dead body in the graveyard. The police went to the spot and also the father of the deceased arrived, who confirmed that the dead body was that of his missing daughter. As during investigation the investigating officer took into possession different incriminating articles from the spot and during postmortem examination the doctor also collected vaginal and rectal swabs, from the dead body of the deceased, so these important pieces of the evidence were collected and preserved. As the local police was still in hot pursuit of the accused / appellant, so it was on 30.12.2018, when the SHO of the concerned police station heard about the involvement of the appellant in the tragic incident, and as such the appellant was arrested on 31.12.2018. It is also pertinent to mention that the complainant had no mala fide to charge, had



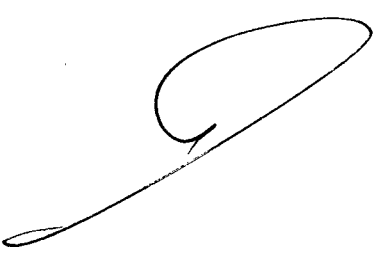
he any mala fide, then on the very next day, when the dead body of the deceased was recovered, he would have singled out the accused / appellant, but he did not, rather he waited till the involvement of the appellant was confirmed, that too, by the appellant when he confessed his guilt before the competent Court of jurisdiction. It is pertinent to mention that the appellant confessed his guilt on 04.01.2019, but even then the complainant waited for his personal satisfaction, and it was on 08.01.2019, when he appeared before the Court of competent jurisdiction and charged the appellant for the murder of the deceased. When the evidence collected by the prosecution is taken into consideration with the medical evidence and with the confessional statement of the appellant, no ambiguity is left regarding the involvement of the accused / appellant in the tragic incident and no ambiguity is left in holding that it was after due satisfaction that the appellant was charged and arrested. There is nothing on record to tell that the complainant had previous grudges with the appellant and even the record is silent that complainant and the accused / appellant had ever enjoyed bad relationship, despite the fact that the complainant was a contractor whereas the appellant

was working with him as laborer. There is no denial to this fact that both the complainant and the appellant were known to each other but the complainant till 08.01.2019 was constantly trying to satisfy himself regarding the involvement of the appellant and that it was after due satisfaction that he raised his finger towards the accused / appellant and he held him responsible for the tragic death of his daughter.



10. As in the instant case, the prosecution is in possession of the circumstantial evidence, so this Court is to see as to whether the evidence so collected is linked together and this Court is further to see as to whether any link was missing. In order to answer this question we deem it essential to see the circumstances in which the dead body was recovered and to see the circumstances in which the appellant was arrested. Admittedly, the complainant was not sure regarding the involvement of the accused / appellant in the tragic incident, so he did not charge, but the moment he got satisfied, he went to the court of competent jurisdiction and recorded his statement u/s 164 Cr.PC, where he charged the accused / appellant for the tragic death of the deceased.

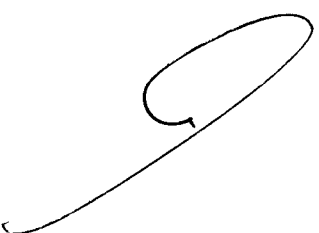
11. As the appellant was arrested by the SHO of the concerned Police Station on 31.12.2018, so he



was constantly investigated and he confessed his guilt before the investigating officer and also led the investigating officer to the place from where the dead body was recovered. The appellant was produced before the doctor, where on one hand his capability for committing sexual activity was confirmed and also his age was determined as 30 years. The accused was produced before another doctor and his blood sample was collected for DNA. It is pertinent to mention that when the blood sample of the appellant was sent alongwith the samples collected from the dead body of the deceased, containing the portions of her shalwar, a report was received, where the DNA of the appellant matched with the shalwar of the deceased and in that respect a detailed report was received by the investigating officer and the same was taken into consideration by the learned trial Court. In the very report, the details of the items received to the laboratory is given, where two cotton plugs are shown as item No.4 and item No.5, whereas, the shalwar of the deceased is item No.16, Qamees item No.17 and the blood sample of the accused/appellant as SI. The relevant portion from the Result and Conclusion is reproduced as;

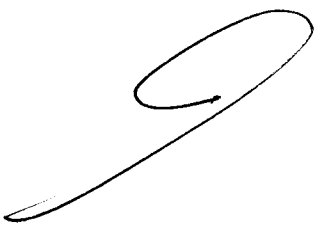
"The DNA profile obtained from the epithelial fraction of (item # SI) and source of DNA

obtained from item # 17.2 cannot be excluded as being contributors to the DNA obtained from the epithelial fraction of item # 4. The probability finding an unrelated at random in the population as being a possible contributor to the DNA obtained from the epithelial fraction of item # 4 is approximately one in 8 million in Caucasians. The genetic locus D7S820 was not used for frequency calculations."



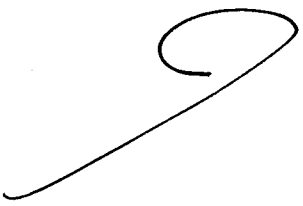
The DNA report is conclusive and as the relevant items i.e. the two cotton plugs mention as items No.4 and 5, the shalwar and the stains section taken from the Qameez of the deceased finds mentioned at Serial No.17.2, does match with the blood sample of the appellant which finds mention as item No.SI in the report, the same confirms that it was the appellant who went in touch with the deceased and that it was the appellant who committed the murder of the deceased.

12. The learned counsel for the appellant wanted to convince that mere DNA report would hardly be a ground to single out the appellant, as the culprit; and that the prosecution was under the obligation to collect more evidence, so that the appellant could be held responsible for the tragic death of the deceased, but we are not convinced from what the learned counsel for the appellant submitted, as DNA report was received from a competent source and that no mala fide was alleged to any of the official working in the laboratory. As both, the



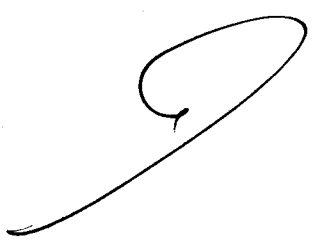
appellant and the complainant are belonging to a poor family, so it was hard for the complainant to influence, those working in the laboratory and to receive a report of his choice. As no malafide was attributed to the complainant, so it cannot be presumed that the complainant had ulterior motives when charging the appellant. Neither the defence could ask the learned trial Court, for summoning the relevant witnesses from the laboratory nor, anything was brought on record which could confirm that the report was not genuine. As the manner in which the accused was arrested, investigated, the blood samples were collected, excludes the possibility that either the police or the complainant was with a predetermined mind to implicate the accused in the tragic death of the deceased.

13. As the medical evidence is based on the samples collected from the body of the deceased and the stains present on the garments of the deceased, so we cannot hold that these pieces of evidence were fabricated and not collected, either from the deceased or from around the place, where the dead body was lying. The doctor, who collected blood samples of the deceased, was examined as PW-14, who admitted before the Court that on 31.12.2018 the appellant was produced and he obtained blood samples for the purpose of conducting



DNA. When the doctor admitted the collection of blood samples from the appellant and when the defence could not question his veracity, so in our understanding the laboratory report is positive, convincing and up to the mark. As the defence never ever agitated the genuineness or the impartiality of the officials of the laboratory, before the learned trial Court, so at this juncture we by ourselves cannot make an opinion regarding the credibility or otherwise of all related. The medical evidence in the shape of DNA report has advanced the cause of the prosecution and it was because of this modern scientific invention that the prosecution easily reached to the culprit. The importance of the DNA test was rightly discussed by the apex court in case titled **Ali Haider alias Papu Vs. Jameel Hussain & others**, reported as (PLD 2021 SC 362) which reads as follows:-

“Criminal justice system is in search for the truth. The development of DNA technology furthers the search for truth by helping police and prosecutors in the fight against violent crimes. Through the use of DNA evidence, prosecutors can establish the guilt of accused and at the same time, DNA aids the search for truth by exonerating the innocent.”⁴



The matter does not end here, rather the miseries of the appellant further increased, when the dead body of the deceased was brought before the doctor, when the postmortem was conducted and when a comprehensive report was prepared in that respect. The doctor highlighted the injuries found on the dead body of the deceased, we read the same and we were shocked to note that the deceased had lost her virginity, as her hymen was ruptured and even she had received serious injuries on the remaining parts of her body, when the accused/appellant wanted to satisfy his lust. The injuries found on the dead body of the deceased do suggest that the appellant went to the extreme while satisfying his lust and the marks of violence on the dead body of the deceased will ever keep its' print over the mind of the complainant and the unfortunate mother of the deceased, for all times to come. In order to clarify this particular aspect of the case, more particularly, the injuries caused to the victim, we deem it essential to reproduce the injuries noted by the doctor and the relevant portion from her statement, which reads as follows;

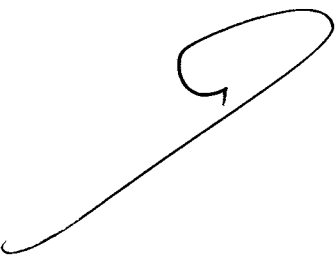
INJURIES:

1. Lacerated wound size 3x4 inch on right side of frontal skull (which was fractured) with clotted blood and brain tissue was exposed.

2. Eccymosis (big bruise) present on frontal chest.
3. Bruises on supra public region.
4. Bruises marks on frontal neck and submandibular bilateral region.
5. Black right eye.
6. Hymen was found absent on vaginal examination.
7. Anal sphinter was ruptured and dilated and soiled with stool.

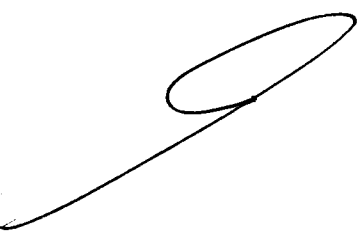
MUSCLES, BONES AND JOINTS:

Scalp and skull (frontal bone) were fractured. Brain tissue was damaged and spinal cord was intact.

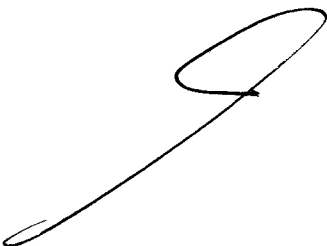


The DNA report and the injuries mentioned and confirmed by the doctor, are sufficient factors which confirm the involvement of the appellant and his brutality to which the deceased was subjected.

14. Apart from the medical evidence, we have before us the confessional statement of the appellant, where he confessed his guilt before the Court of competent jurisdiction. The learned counsel for the appellant wanted to convince that the appellant was tortured and that it was because of the torture that he made a confession, which under no circumstance can be held voluntary, true and reliable. In order to redress the grievance of the learned counsel on this particular aspect of the case, we deem it essential to go through the confessional statement of the appellant and also to re-visit the statement of the learned Judge, before whom the confession was made. The confessional statement of the appellant confirms that the appellant narrated the events

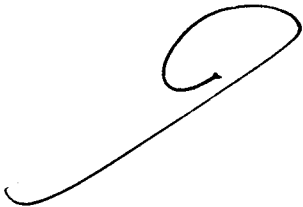


as it occurred and that the sequence of events suggests that the same was spontaneous. In order to understand as to whether the legal requirements were fulfilled, when the confessional statement of the appellant was recorded and as to whether the appellant was given an opportunity to compose himself, the concerned Judicial Magistrate was examined as P.W-8, who disclosed the circumstances in which the appellant was brought before him and he also explained the necessary steps were taken, before the statement was recorded. We did consider the questionnaire and we found that the relevant questions were put to the accused/appellant and that the same find mention in the relevant record. The learned Judicial Magistrate was examined on material aspects of the case, where he explained the minute details, before and after the statement was recorded, and he confirmed that no irregularity was committed in recording the same. When the legal formalities were complied with, when the accused/appellant opted to confess his guilt and when the learned Judicial Magistrate explained and confirmed the behavior of the accused at the time of recording his statement, then we lurk no doubt in mind that not only the legal requirements were adhered to, but also the appellant was given an opportunity to think, to compose himself and to decide, to



confess or not. When such an atmosphere was created for the appellant, then under no circumstances, we would believe that the confessional statement is the outcome of torture, influence or coercion. In our understanding the confession is not only true, but voluntary as well. When the confessional statement of the appellant is taken into consideration with the medical evidence, the positive DNA report and the injuries on the dead body of the deceased, no ambiguity is left that it was the appellant who killed the deceased and who subjected her to physical violence, to satisfy his lust. We are benefited from the observations rendered by the Apex Court in case titled **"MUHAMMAD TALHA HUSSAIN alias NOMAN and another Versus the STATE, (PLD 2008 Supreme Court 115)**, which is reproduced herein below:-

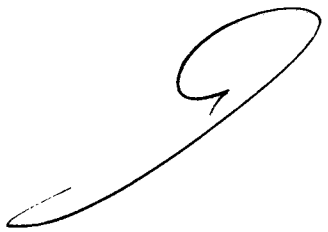
"In the confessional statements the petitioners have also disclosed their motives i.e. killing of deceased Syed Zafar Hussain for sectarian reason, which clearly goes to indicate that they had made confession voluntarily and true. So far as delay of 10 days in recording of confessional statement is concerned, it would not be fatal in view of the facts and circumstances of the case because, per se, for this reason, confessional statement cannot be discarded."



The circumstances so collected and brought on record are sufficient to tell that every individual event is so connected that it formed an organic whole and also a compact chain. We are confirmed that the links are linked together and we despite efforts could not come across any missing link. In our understanding the prosecution succeeded in creating a chain and we are confident in holding that it's one end has touched the dead body of the deceased and the other the neck of the appellant. The situation in hand is answered by the apex court in case titled **Ali Haider alias Papu Vs. Jameel Hussain & others, (PLD 2021 SC 362)**, which reads as follows:-

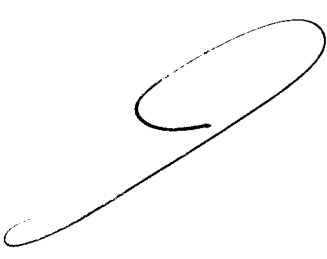
"The chain of circumstantial evidence is firm and continuous, leaving no margin for the hypothesis of innocence of the petitioner. The rope of circumstantial evidence, adduced by the prosecution, ties the dead body of the deceased with the neck of the petitioner. The prosecution has thus proved its case against the petitioner beyond reasonable doubt. Therefore, we are not persuaded to espouse a view different from that given by the trial court and confirmed by the High Court as to the convictions and sentences of the petitioner. Accordingly, leave is refused and this petition is dismissed."

True that the prosecution case is hinging upon the circumstantial evidence, but equally true that the



investigating agency made efforts to collect the most reliable pieces of evidence, that too, without having any malice or malafide against the appellant. The witnesses right from the beginning till the end remained consistent in respect of their individual roles and the conduct of the complainant has blessed the same with veracity and it was the bonafide of the complainant which persuaded this Court, that not only the prosecution, but the complainant as well, travelled with no malice and with no malafide. As the appellant was charged by the complainant after he confessed his guilt and after the medical evidence confirmed his involvement in the tragic incident, so we ourselves are convinced that the prosecution story is natural, trustworthy and confidence inspiring.

15. As the appellant has been convicted and sentenced to death along with other charges, so we deem it essential to reconsider the evidence on file and to see as to whether the learned trial court was justified to award him death sentence. There is no denial of this fact that the unfortunate victim was raped and thereafter was done to death, with her no fault. The manner in which the appellant satisfied his lust finds no parallel in history. The poor girl left for Madrassa, but she could not come back as she fell a prey to the appellant, she was



taken to a graveyard where she was raped and butchered, she would have cried, but there was no one to hear. She would have resisted but she could not postpone his evil designs. What a tragedy this was, that a screaming girl could not rescue herself from a beast and what a heart he had that after committing rape he mutilated her body. We are shocked to the core that with each passing day every other child falls a victim and the tragic stories are repeated. Every new sunshine brings a new sad story with the same rogues and the same victims. We are still haunted by the departed souls of Zainab, Manahil and many more, who fell a prey to the like monsters. They still ask their fault, but neither we nor your could answer, the terrifying memories are haunting their parents. Their muffled faces still visit their homes, a constant nightmare for the most unfortunate mothers. We are struggling to know that what pushed us from grace to disgrace. We are still anxious to know, that why are we cursed? To our understanding the fault lies in us, we happily permitted our transformation from human to inhuman, by surrendering to the devil living in us. We were the chosen, but chosen for the noblest task. What a healthy debate that was when Allah Almighty decided to create, the conversation with angles is still echoing in the

ears, what a decision that was when the angels were addressed as such.

“And [mention, O Muhammad] when your Lord said to the angles, ‘Indeed, I will make upon the earth a successive authority.’ They said, ‘will you place upon it one who causes corruption therein and sheds blood, while we declare your praise and sanctity you?’ Allah said, ‘Indeed, I know that which you do not know’.”

[Al-Baqarah Aya 30]

Though created with a noble soul and for a noble cause, but we went on changing and changing till we lost the inner nobility and till we lost our character. It is the loss of character that took us to rape and kill. What a heart this monster had, while butchering the noblest soul. What leniency can be shown to the one who himself was not lenient. He deserves the treatment he treated Manahil. He must receive what he gave, he killed and he must be, provided the law permits. As from beginning to the end he is shown connected and as the collected evidence speaks of his guilt, so we subscribe to the conclusion drawn by the learned court below.

In the like circumstances guidance is drawn from case titled Hamid Mehmood and another Vs. The State (2013 SCMR 1314), which reads as follows:-

“25. In the facts and circumstances of the case, the considerations pertaining to quantum of sentence, have been examined. The reasons for the award of the death penalty far out weight the considerations for the award of lesser sentence. The tender age of the minor, the brutal and heinous nature of the crime and pre-mediation persuades us to agree with the sentence awarded by the learned trial Court as well as the learned High Court. The deterrent aspect of the sentence cannot be lost sight of either as it was a crime of kidnapping for ransom of minor, followed by murder. In such an eventuality, the normal sentence of death should be awarded and the Court should neither hesitate nor search for laboured pretexts to award a lesser sentence, as has been held by this Court, in the case, reported as Muhammad Sharif (Supra).”

The instant criminal appeal, being bereft of merit, is hereby dismissed.

17. As the conviction and sentence awarded to the appellant is maintained, so the murder reference is answered in positive.

Announced
17.01.2024.

A.K.KHAN, S.C.

SENIOR PUISNE JUDGE

JUDGE