

THE ANTI-TERRORISM COURT NO.XVII, KARACHI.
BEFORE: (NASEEM AKHTAR, JUDGE.)

SPECIAL CASE NO. 1021/2018

The State

Versus

Syed Altaf Hussain Shah & OthersACCUSED

FIR NO. 389/2018

U/S 302/376(1)/34 PPC

R/W Section 7 of ATA, 1997.

P/S. Sachal, Karachi.

Miss. Hina APG, for the State

Mr. Abid Zaman, advocate for all accused.

J U D G M E N T

1 5 . 0 6 . 2 0 1 9

Accused Syed Altaf Hussain Shah s/o Syed Sikander Ali Shah, Syed Haider Ali Shah @ Zain, Syed Muhammad Arif Shah both sons of Syed Altaf Hussain Shah and Shahid Mehmood s/o Muhammad Ali were sent to stand their trial in the above Special case crime No. 389/2018 u/s 302/376(1)/34 PPC r/w Section 7 ATA, 1997 lodged by the Complainant Soomar Shah at PS Sachal, Karachi.

SIP Zameer Hussain of PS Sachal recorded statement u/s 154 Cr.P.C of complainant Soomar Shah on 01.08.2018 at about 1750 hours at PS Sachal wherein he has stated as under :-

TRUE COPY

"That he resides in village of Ganhwar Lahbor, Taluka Naseer Abad District Kambar Shahdadkot, holding CNIC No. 43403-0356808-5 and having mobile No. 0344-0139920 and engaged labour work. His younger sister "Kainaat" aged about 6-7 years used to live in Karachi with her elder sister namely Reshma wife of Arif Shah since last one year. His father Syed Hussain Shah has died. He received information through phone from PS Sachal that his younger sister "Kainaat" has been killed. On such information he along with his mohalla peoples namely Abdul Waheed Dero, Abdul Samad Dero and Pervaiz Ahmed came at PS Sachal and then went to the house of his sister Rukhsana at Bhitai Abad and she disclosed that yesterday

place of incident at Ex.4/B, memo of arrest and recovery and seized at Ex.4/C & Ex.4/D, Superdginama of dead body at Ex.4/E. PW-02 HC Ali Murad at Ex.05 he produced inquest report at Ex. 5/A, memo of inspection of dead body at Ex.5/B, memo of seizure of clothes of deceased at Ex.05/C. PW-3 SIP Zameer Hussain at Ex.06 he produced entry No.38 at Ex. 6/A, application to MLO at Ex.6/B, photographs of deceased at Ex.6/C, letter at Ex.6/D, photographs at Ex.6/E & Ex.6/F, entries at Ex.6/G & Ex.6/H, FIR & entry at Ex.6/I & Ex.6/J, PW-4 Dr. Zakia Khursheed at Ex.07 she produced postmortem report at Ex. 7/A, death certificate at Ex.7/B. P.W-05 Dr Muhammad Khalid at Ex. 08, he produced letter for DNA sample and examination at Ex.8/A, MLCs regarding Potency reports at Ex.8/B to Ex.8/E. PW-06 Civil Judge & Judicial Magistrate Mr. Sher Muhammad at Ex.09 he produced the envelope at Ex.09/A, letter of I.O. at Ex.9/B, and confessional statement at Ex.9/C. PW-7 SI Haji Imtiaz Ali at Ex.10, he produced memo of seizing clothes of deceased at Ex.10/A. PW-08 SIP Syed Ahmed Ali Shah at Ex.11, he produced entries No.28, 42, 48, 49, 51 at Ex.11/A to Ex. 11/D, letter to Incharge Forensic laboratory of LUMHS at Ex. 11/E, TCS receipt at Ex.11/F, Letter to Incharge Cheepa Mortuary at Ex.,11/G, PW-9 Inspector Mehboob Ellahi at Ex.12, he produced order of assigning investigation at Ex. 12/A, entry No.32 at Ex.12/B, letter to Forensic lab for DNA to LUMHS at Ex.12/C & receiving letter at Ex.12/D. PW-10 Inspector Jan Muhammad Ahmandani at Ex.13 and produced DNA report from LUMHS laboratory bearing No. LUMHS/FML-493/18 at Ex.13/A. PW-11 Inspector Mumtaz Ali Bugti at Ex.14, he produced entry No.41 at Ex.14/A, entry No. 42 at Ex.14/B.

Statement submitted by APG for closing the side of prosecution at Ex.15.

Statement of accused Syed Altaf Hussain Shah recorded u/s 342 Cr.P.C at Ex. 16 to which he denied the prosecution case and attributed the false implication at the hands of police and also stated

Gulshan-e-Iqbal as security Incharge. After 2030 hours some personnels in civil dress came there and inquired about Haider Ali Shah who is employee in the valet parking. He then brought the police in parking area, the police personals meet with Haider Ali Shah after talking with him they took him and went away.

During Cross-examination he has stated that :-

Brother of Haider Ali Shah namely Arif Shah is the security guard in ASF security. We use to get bodily search of valet parking employees whenever they go out from the mall and when they come back due to security purpose. We do not make any entry in the register about the movement of valet employees. I have not inquired from the police personnels to why Haider is going with them. I presumed that they have some friendly terms with him, therefore, I have not inquired. It is incorrect to suggest that I am deposing in favour of accused as his brother is employees of ASF security.



CERTIFIED TRUE COPY

Statement of Defense Witness No. 02 Yarmul Haq s/o Gul Faraz recorded at Ex. 21, wherein he has stated that on 01.08.2018 Shahid Mehmood came in his Rickshaw and informed him that last night police has come and arrested his brother Sajjad and then Shahid Mehmood went in search of his brother to PS Gulzar-e-Hijri and Sohrab Goth but no any clue was found there he went to PS Sachal where his brother was arrested and confined at PS lockup then police party arrested Shahid Mehmood and got him sit in the lockup and released his brother Sajjad.

During Cross Examination He Has Stated That :-

I did not accompany Shahid Mehmood to different police stations but I came to know through some other persons that police has released Sajjad but arrested Shahid Mehmood.

about 7/8 years and in the commission of the offence committed her murder by strangulating her Neck?

POINT NO.03.

Whether the above act of accused created sense of fear, panic and insecurity in the minds of public at large as well as family of the deceased?

POINT NO.04.

What offence, if any, has been committed by the accused?

FINDINGS

Point No.01.....Accordingly

Point No.02& 03.....Affirmative

Point No.4.As under.

REASONS

POINT NO.01.

In order to prove its case the prosecution examined Dr. Zakia Khursheed of JPMC at Ex.7 and during evidence she has stated that on 31.07.2018 a dead body of minor girl Kainaat D/o Syed Husain aged about 7/8 years brought by SI Zameer Hussain through his letter at 1830 hours and also stated that she started the postmortem of dead body at about 1900 hours and finished at 2000 hours and on general examination she has mentioned as under:-

- i. She was female of approximately 7 to 8 years
She was wearing pink embroidered Kameez and Shalwar.
- ii. Her body was fresh.
- iii. Old burn marks of cigarettes all over the body.
- iv. Her face was identifiable. No sign of de-composition.
- v. PML was developed and fixed over dependent parts.
- vi. Tongue inside mouth. Pupil dilated and fixed. No oozing from mouth and nose.

About Surface wounds and injuries she has stated as under:-.

- a. Deep blue bruises of fingers over both side of neck in irregular shape very difficult to identify as fingers 3.4 cm in length and 2.3 cm in breadth.



VED TRUE COPY

where he came to know that his minor sister Kainaat has been raped and was killed by strangulation. Then he asked the police officials that he want to meet with his sister Ruksana and went to her house and she informed him that she has suspicion on her uncle Syed Altaf Shah, Syed Arif Shah s/o Altaf Shah, Zain Shah s/o Altaf Shah and one Mehmood that they have raped and killed their minor sister Kainaat. He then came back to PS where he recorded his u/s 154 Cr.P.C statement. Thereafter police party came with him at the house of his paternal uncle Syed Altaf Shah and inspected the house and prepared such memo in his presence and obtained his signatures. He has also stated that on 02.08.2018 at about 0030 hours he received some mobile call on his mobile number that the accused Altaf Shah along with his two sons namely Zain Shah and Arif Shah is available at Punjab Bus Stand and then he immediately informed the police and police party took him and they proceeded to the Punjab Bus Adda and arrested the accused persons in his presence under the memo and brought the accused persons at PS and interrogated them in his presence and they disclosed that Mehmood was also with them in the commission of offence and then the police party took him and accused Altaf Shah and proceeded to the Mohalla where the house of Altaf Shah is situated and in the Gali where accused Altaf Shah has pointed out one person as accused, police apprehend him who disclosed his name as Shahid Mehmood and such memo of arrest of accused was prepared in his presence. He has also stated that his 161 Cr.P.C statement was recorded by the police. He has also stated that he received dead body of his sister Kainaat on 02.08.2018. He has stated that the accused persons present in the Court are same.

During Cross examination he has stated as under:-

It is incorrect to suggest that the accused persons Altaf Shah and his sons were not arrested from Punjab Bus Stand. It is incorrect to suggest that Ex.4/C is forged and manipulated

document. It is incorrect to suggest that the accused Altaf Shah and his two sons co-accused Arif Shah and Zain Shah were arrested Darul-Sehat Hospital. It is correct to suggest at Punjab Bus Stand is rushing area due to public transport. It is correct to suggest that I am not residing in Karachi. Police party took me in the police mobile when we went to Punjab Bus Adda. It is correct to suggest that I have not mentioned in 154 Cr.P.C statement that I was informed from my village about the death of my sister Kainaat. It is incorrect to suggest that I want to usurp the plot of accused Altaf at Jacobabad. It is incorrect to suggest that I involved the accused falsely in order to obtain the plot from them. It is incorrect to suggest that after consultation of family members I have lodged the FIR.

Prosecution examined SIP Zameer Hussainat Ex.6, during examination in chief he has stated that on 31.07.2018 he was duty officer at PS Sachal when at about 1810 hours he was informed by Head Moharar H.C Iqbal that one dead body of minor girl was brought at Darul-Sehat Hospital Gulistan-e-Johar Block 15 and asked him for conducting legal formalities of the dead body. Then he recorded such entry in the roznamcha as entry No.38 at about 1810 hours and proceeded to Darul-Sehat Hospital and reached at the hospital within 15 minutes and H.C Ali Murad and one Arif Shah who is one of the accused was present in the hospital and came to know from hospital authorities that one tortured dead body of minor girl aged about 7/8 years namely Kainaat is lying there and he immediately shifted the dead body to JPMC for postmortem and moved application to MLO Lady Dr. Zakia Khursheed for conducting postmortem of the deceased and also prepared inquest report and memo of inspection of dead body in the presence of ASI Main Ahmed and H.C Ali Murad. During the evidence he has also stated that he has took the photographs of the dead body of the deceased



TRUE COPY

that in my statement u/s 161 Cr.P.C it is not mentioned that the sister of the deceased handed over the cloth of deceased. It is correct to suggest that in my 161 Cr.P.C and in memos I have not mentioned about taking the photographs of deceased and place of incident. It is correct to suggest that WMLO informed me verbally rape has been committed on the deceased. It is correct to suggest that I have not disclosed name of the source from where I came to know that the deceased was wearing some other cloths at the time of incident.

Prosecution examined H.C Ali Murad at Ex. 05, during examination in chief has stated that on 31.07.2018 he was available on his duty at Bhitai Abad Police Chowki when ASI Muhammad Iqbal informed him through mobile phone that one minor girl has been brought in injured condition at Darul-Sehat Hospital and directed him to proceed there for further information. On such information he reached there and inquired from the hospital authorities who informed him that a minor girl namely Kainaat has been brought by her brother-in-law namely Arif Shah and also informed him that she has been expired. He then immediately informed ASI Riaz Gujjar police Chowki Incharge and so also informed to Muhammad Iqbal at PS. In the meantime SIP Zameer Hussain and ASI Mian Ahmed reached at the hospital and received the dead body of the minor girl and brought at JPMC for necessary proceedings. SIP Zameer Hussain conducted 174 Cr.P.C proceedings of the dead body and so also prepared memo of inspection of dead body of deceased in his presence and in presence of ASI Mian Ahmed at about 1900 hours. Thereafter from JPMC they proceeded to place of incident with SIP Zameer Hussain i.e. Gali No.16, house No. D/168 Bhitai Abad at about 2100 hours where the sister of the deceased handed over the cloths of deceased minor Kainaat which she was wearing at the time of incident. SIP Zameer Hussain prepared such memo of seizure of

TRUE COPY



ASJ Dishaad

the police party, accused Altaf Shah and complainant and as per entry 49 proceeded to the pointed place i.e. Gali No.16 of Bhitai Abad at about 0435 hours and on the pointation of accused Altaf shah arrested nominated accused Shahid Mehmood under the memo who brought at PS. He has also state that on the same day i.e. 02.08.2018 he took the accused person to Abbasi Shaheed Hospital along with his letter for taking blood sample for DNA and for medical examination of the accused persons where MLO conducted the medical examination of accused persons and issued such MLCs and so also took the blood sample of the accused persons for DNA. Then he received the blood samples from MLO and sent the same to forensic laboratory for DNA testing at LUMHS Jamshoro through TCS. Thereafter he handed over dead body of minor deceased Kainaat through letter from Cheepa mortuary to complainant.

During cross examination he has stated as under:-

It is correct to say that during investigation I have not recorded statement of Ruksana sister of complainant and of deceased. It is correct to suggest that during investigation I have not inquired as to how many and who were available in the house at the time of incident. Lady Constable Irshad was with us when I inspected place of incident. At the time of inspection I have not found any inmates of the family. When we inspected the place of incident a number of people of locality were available outside the house. I have tried to record the statement of locality people but none has recorded the statement. It is incorrect to suggest that I arrested the accused Haider Ali from Lucky one shopping mall Gulshan-e-Iqbal. It is also incorrect to suggest that I arrested accused Shahid Mehmood from Ayoub Goth. It is incorrect to suggest that accused Arif Shah and Altaf Shah were arrested from Darul-Sehat Hospital.



TRUE COPY

investigation of this case crime and the previous I.O Inspector Mehboob Ellahi has conducted the investigation and submitted interim challan as the DNA test reports were awaited with concerned department of LUMHS. During the evidence he has stated that on 19.10.2018 he received the DNA report and so also received the case property viz. parchajaat by hand from Forensic & Molecular Biology laboratory LUMHS Jamshoro, vide report No. LUMHS/FML/493/18 dated 18.10.2018. After that he submitted the final challan before the Court of law on 01.11.2018.

I have gone through the entire evidence which is discussed above in this case. As per evidence of HC Ali Murad who has stated that on 31.07.2018 while he was performing duty at PS Sachal Bhitai Abad Police Chowki was informed by HC Iqbal on mobile phone that one minor girl has been brought at hospital in injured condition and directed him to proceed there for information. As per his evidence he reached there he came to know that one minor girl Kainaat was brought at hospital by her brother Syed Arif Shah and also came to know from the hospital that she has been expired and then he informed ASI Riaz Gujjar Police Chowki Incharge and ASI Muhammad Iqbal and in the meantime SIP Zameer Hussain and ASI Mian Ahmed reached at the hospital. AS per evidence of SIP Zameer he has stated that as per entry No. 38 at about 1810 hours he proceeded for Darul-Sehat hospital and shifted the dead body to JPMC and moved application for conducting postmortem of the deceased and so also prepared inquest report and inspection of dead body wherein he has mentioned that marks of torture are there on the body and Neck was pressed. Senior WMLO Dr. Zakiya Khursheed conducted postmortem and so also issued such PM certificate and cause of death certificate that the minor girl Kainaat d/o Syed Husain Shah, aged about 7 to 8 years firstly raped and then tortured and marks of torture and strangulation were on the body and so also the Senior WMLO in the postmortem report and during

THE COPY

cloths of minor which were recovered by SI Zameer Hussain under the memo Ex.5/C and so also the cloths of accused persons as per memo Ex.10/A to same laboratory Forensic and Molecular Biology laboratory for DNA testing LUMHS Jamshoro through his letter Ex.12/C and obtained receiving Ex.12/D. The DNA report was received by I.O. Jan Muhammad Ahmandani which he has produced at Ex.13/A is issued by Forensic and Molecular Biology laboratory for DNA testing LUMHS Jamshoro which shows that the Deoxyribonucleic acid (DNA) were expected from the items viz. blood samples of all accused cloths of minor and of accused Arif Shah by Organic Extraction procedure and in the conclusion found as under:-

The accused Arif Shah S/o Altaf Shah (Item 6.0) is the contributor of Male DNA/Sperm fractions found on vaginal swab sample & cloths of deceased Kainat D/o Syed Hussain Shah (Item 1.0 & Item 3.0) and the Haider Ali S/o Altaf Shah, Altaf Shah s/o Sikander Shah and Shahid Mehmood s/o Mohammad Ali (Item 4.0, 5.0 and 7.0) are the contributors of alleles / Male DNA/ Sperm fractions found on vaginal swab sample & Cloths of deceased Kainat D/O Syed Hussain Shah (Item 1.0 & Item 3.0).

The deceased Kainat Shah D/O Syed Hussain Shah (Item 1.0) is the donor of vaginal secretions/Human Blood found on cloths of accused Arif Shah S/O Altaf Shah (Item 6.0).

From the DNA test which is performed at Forensic and Molecular Biology laboratory for DNA testing LUMHS Jamshoro connects all the four accused persons for committing rape upon the minor girl Kainat aged about 7/8 years.

In this case one of the accused Arif Shah has also recorded his confessional statement on 08.08.2018 before learned Civil Judge and Judicial Magistrate District Malir but in his statement u/s 342 Cr.P.C he has state that police has forced him to record confession and then under pressure and duress of police he recorded the confession before the magistrate. In this case it is admitted position that there is



ED TRUE COPY

fine of Rs.1,00,000/- each and in default thereof, shall undergo S.I. for six months.

The death sentence shall be subject to confirmation from the Hon'ble high Court as required u/s 374 CR.PC and reference is made.

The accused persons are produced by the jail authority are remanded back to jail along with conviction warrant to serve out the sentences in accordance with law.

Announced in the open Court.

Given under my hand and seal of this Court.
This the 15th day of June, 2019.

Sd/-15-06-2019
(NASEEM AKHTAR)
JUDGE
ANTI-TERRORISM COURT NO.XVII,
KARACHI.



DIRECTION FOR OFFICE.

The office is directed that after proper paging and indexing the record of this case be sent to the Hon'ble High Court of Sindh, Karachi in compliance of Section 25(2) of ATA, 1997.

Sd/-15-06-2019
(NASEEM AKHTAR)
JUDGE
ANTI-TERRORISM COURT NO.XVII,
KARACHI.

VERIFIED TRUE COPY

PROPERTY ORDERS

As per challan the parchajaat /cloths of deceased and of the accused persons are disposed off in accordance with law after expiry of appeal period.

Sd/-15-06-2019
(NASEEM AKHTAR)
JUDGE
ANTI-TERRORISM COURT NO.XVII,
KARACHI.

8/7/2019

Applied On..... 9/7/19
 Post Estimated On..... 9/7/2019
 Post Deposited On..... 9/7/2019
 Copy Made Ready On..... 9/7/2019
 Copy Delivered On..... 9/7/2019
 Copy Certified On..... 9/7/2019
 Copy Delivered By..... 9/7/2019

Prepared By..... Prepared By
 ATC-XVII ATC-XVII

no any direct eye witness of the incident but this fact cannot denied that the minor girl Kainaat aged about 7/8 years who was physically and sexually tortured and then killed by strangulation as per medical evidence which has not been shaken even in the cross examination and the DNA test has also cleared the position that the accused persons named above are the real culprits as they have committed rape upon her. On the other hand the defense witness Mst. Roshna wife of accused Altaf Shah has stated that the minor Kainaat was beaten by her elder sister and then when brought at hospital she was expired . This evidence has no any value and support in the eyes of law as the medical evidence has cleared the position that the minor was physically as well as sexually tortured and then killed by throttling /strangulation. In the presence of medical evidence, the evidence of Mst. Roshna cannot be relied upon.

According to the prosecution case accused Arif Shah, Haider Shah and Altaf Shah were arrested under the memo from Punjab Bus Adda as per Ex.4/C which is a documentary proof whereas DW Shahid has stated in his evidence that the police party came at lucky shopping mall and after talking with Haider Shah took him away which does not show that he was legally arrested from lucky shopping Mall. According to the prosecution accused Shahid Mehmood was arrested on the pointation of accused Altaf shah on 02.08.2018 at about 0520 hours as per Ex.04/D from Bhitai Abad gali No.16 where house of Altaf Shah is situated which is documentary proof whereas DW Yarmul Haq has stated that he came to know through some other persons that police got arrested accused Shahid Mehmood which has no any force of law as he was not arrested in the presence of this witness.

From the above discussion on the entire evidence of the prosecution witnesses I am of the humble view that the medical evidence is supporting the ocular account of the complainant that deceased minor girl Kainaat aged about 7/8 years has died un-

natural death due to throttling / strangulation after committing rape upon her. The DNA report has also proved that the accused persons named above have committed rape upon her. On the other hand though the accused persons have denied the prosecution case u/s 342 Cr.P.C statements but the prosecution has succeeded to prove its case against the accused persons beyond any shadow of doubt through medical evidence and DNA test reports. The accused persons who were closed relatives of the orphan minor girl Kinaat have committed such a brutal act which openly shakes the belief and trust on blood relations and definitely this brutal act of the accused persons created sense of fear and insecurity not only among the general public but particularly among the blood relations also. I therefore, decide Point No. 02 & 03 in affirmative / proved.

POINT No.04.

In view of my findings on the above points 1,2 &3, I am of the humble opinion that the prosecution has proved its case against the accused persons namely Syed Altaf Hussain Shah s/o Syed Sikander Ali Shah, Syed Haider Ali Shah @ Zain, Syed Muhammad Arif Shah both sons of Syed Altaf Hussain Shah and Shahid Mehmood s/o Muhammad Ali, I therefore convict them u/s 265-H(2) Cr.P.C and sentence them as under:-

Under Section 302(b)/34 P.P.C each & sentenced to death as (Tazir). Accused persons be hanged with their Neck till their death subject to confirmation, with directions to pay fine of Rs.1,00,000/- each and in default of payment thereof, shall undergo S.I. for six months more.

Under Section 376 PPC each & sentenced to death. Accused persons be hanged with their Neck till their death subject to confirmation, with directions to pay fine of Rs.1,00,000/- each and in default of payment thereof, shall undergo S.I. for six months more.

Under Section 7(a) of Anti-Terrorism Act, 1997 each and sentenced to Death. Accused be hanged with the neck till their death with directions to pay



CERTIFIED TRUE COPY

her evidence has also mentioned that irregular marks of nail scratches were found on the face and Neck and so also there were old Burn marks of cigarettes all over the body of the deceased. Senior WMLO has taken vaginal slide and swabs for DNA. The complainant on 01.08.2018 came from Panjgor Balochistan after coming to know about death of his minor sister Kainaat. In the FIR and so also in the evidence has mentioned that his minor sister Kainaat and Reshma were residing with elder sister Rukhsana in the house of their paternal uncle Syed Altaf Shah and also mentioned that Rukhsana is wife of Arif shah who is son of Syed Altaf Shah. He has also mentioned that he went to his sister Rukhsana and she showed her suspicion over the above named accused persons that they have raped and killed minor. Complainant has also stated in his 154 Cr.PC statement which he recorded on 01.08.2018 at about 1750 hours he has mentioned that from the entire proceedings uptill now he came to know that the above accused persons have committed rape and killed his minor sister. It is pertinent to mention here that SIP Zameer Hussain on 31.07.2018 at about 2130 hours got seized the cloths which she was wearing at the time of incident from Mst. Rukhsana elder sister of deceased which is already discussed above in the evidence of SIP Zameer Hussain. During investigation accused persons were arrested by SIP Syed Ahmed Ali Shah as already discussed above and then they were brought before MLO Muhammad Khalid of Abbas Shaheed Hospital where their blood samples were obtained and so also potency test was taken and they declared as fit to perform sex. Thereafter the IO/Ahmed Ali Shah has sent the blood samples of the accused and vaginal swabs samples of the deceased to Forensic and Molecular Biology laboratory for DNA testing LUMHS Jamshoro on 02.08.2018. Lateron during investigation the I.O. Mumtaz Ali Bugti has secured and seized the cloths from the accused persons which they wearing at the time of incident as per memo Ex.10/A. Lateron the I.O. Mehboob Ellahi on 13.08.2018 after receiving investigation sent the sealed parcel of



VED TRUE COPY

Prosecution examined Dr. Muhammad Khalid MLO of Abbasi Shaheed Hospital who stated that on 02.08.2018 at about 1.10 p.m. The accused persons were brought by I.O./Inspector Syed Ahmed Ali with letter for examination and DNA report in case of rape. He has examined each accused and opined that they capable to perform sex in ordinary course of nature and so also took the blood sample for DNA and issued such medico-legal certificate of each accused which he has produced at Ex.8/B to Ex.08/E.

Prosecution examined SIO/Inspector Mumtaz Ali Bugti at Ex.14, during examination in chief he has stated that on 03.08.2018 he received investigation of this case from the previous I.O. Sub-Inspector Ahmed Ali. He has also state that on 04.08.2018 he got PC remand of the accused persons from the Court of law and also stated that on 07.08.2018 as per entry 41 at about 2010 hours he took out the accused persons from the lockup of PS and interrogated them about their cloths which they were wearing at the time of incident on which they disclosed that those cloths which they were wearing on the day of incident are available in the lockup. All the four accused persons were produced their cloths in separate shopper and he then sealed the cloths of each accused separately under the memo in the presence of SIP Mumtaz Amir and SIP Haji Imtiaz. He has also stated that on 08.08.2018 he produced the accused before the Court of VIIIth Civil Judge and Judicial Magistrate District Malir, where accused recorded confessional statement u/s 164 Cr.P.C. and then accused was remanded to judicial custody.

During Cross-examination he has stated that:-

I do not remember who has come to meet with the accused persons in the lockup. It is incorrect to suggest that I have managed the cloths of accused persons and they have not handed over to me the same. It is incorrect to suggest that I forced the accused to record his confessional statement before the Magistrate. It is incorrect

bound to make confessional statement if he makes same he will be taken down in writing and the same shall be used against him. During the evidence learned Magistrate stated that the accused was allotted reflection time from 11.00 am to 1155 am approximately 45 minutes after that accused again asked whether he is ready to make confessional statement of his own free will and wish. He replied affirmative. Thereafter in compliance of Section 164 Cr.P.C and Section 364 Cr.P.C necessary questions (on printed proforma) were asked and the replied were obtained and also obtained the signature of accused on each reply. After satisfaction his confessional statement was recorded in Sindhi language as per his verbatim. He further stated that in the last the memorandum/ certificate is also written in his own hand writing with his signature and so also signatures of accused were obtained. Learned Magistrate has produced sealed envelope of confessional statement of the accused which were de-sealed and confessional statement were produced at Ex.09/C.

Prosecution examined IO Mehboob Ellahi at Ex.12, during examination in chief he has stated that on 08.08.2018 he was posted as SIO at PS Sohrab Goth. He received investigation of this case crime on the orders of SSP investigation-II East Zone. He interrogated the accused persons and produced them before the Court of law and obtained their PC remand. On 13.08.2018 he deposited five sealed bundles of cloths of deceased and accused persons for DNA to Forensic and molecular Biological laboratory LUMHS Jamshoro through his letter. DNA report was not received and he submitted interim challan and in the meantime he was suspended and the investigation was entrusted to Inspector Jan Muhammad Ahmadani.

Prosecution examined SIO/Inspector Jan Muhammad Ahmadani at Ex. 13, during examination in chief he has stated that he was posed as SIO PS at PS Sohrab Goth and received the



TRUE COPY

investig
Mehboob
interim chall
department

C of Abbasi
out 1:10 p.m.
ed Ahmed Ali

-: 19 :-

to suggest I have involved the accused persons in this case at the pressure of high ups and media. It is incorrect to suggest that I am deposing falsely..

Prosecution examined Sub Inspector Haji Imtiaz Ali at Ex.10, during examination in chief he has stated that on 01.08.2018 he along with SIO Ahmed Ai Shah and complainant proceeded towards the place of incident i.e. Bhitai Abad Gali No.16 House No.D-168. On the pointation of complainant I.O prepared such memo and he acted as one of the mashir. He has also stated that on 07.08.2018 Inspector Mumtaz Ali Bugti who took out the accused persons from the lockup and interrogated them and demanded their clothes they were wearing at the time of incident. On that all the four accused persons got produced their cloths in separate shoppers and I.O. sealed the cloths and prepared such memo in his presence. He has also state that his 161 Cr.P.C was also recorded.



NOTIFIED TRUE COPY

During cross examination he has stated that:-

The place of incident/house was pointed out by the complainant and at that time the inmates were not present in the house but house hold articles were lying there. Nothing was secured from the place of incident by the I.O. The complainant has pointed out the place of incident/house and at that time there was no any lock on the door..

Prosecution examined Mr. Sher Muhammad, Civil Judge and Judicial Magistrate District Malir Karachi at Ex.9, during examination in chief he has stated that on 08.08.2018 Inspector Mumtaz Ali Bugti of PS Sachal came and moved an application for recording confessional statement of arrested accused Arif Shah @ Jamshed Shah s/o Altaf Shah and so also produced the accused before him. During the evidence he has stated that custody of the accused was taken from police and police personnels were directed to leave the Court premises and there after warned the accused that he is not

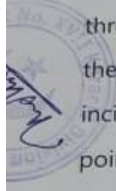
cloths of deceased in his presence and in the presence of ASI Dilshad at about 2130 hours under the memo.

During Cross examination he has stated as under:-

It is correct to suggest that in my 161 Cr.P.C statement it is not mentioned that sister of deceased handed over the cloths to the police. It is correct to suggest that accused Arif Shah was present at Darul Sehat Hospital. I do not know whether electronic media personnels have made coverage at Darul Sehat hospital..

Prosecution examined I.O/Sub-Inspector Syed Ahmed Ali Shah at Ex.11 during examination in chief he has stated that on 01.08.2018 he was posted at PS Sachal and received investigation of this case and complainant was also present at PS. He received copy of the FIR through its contents as per entry No.28 at about 1900 hours he took the complainant and police party and proceeded to the place of incident viz. Bhitai Abad Gali No.16 House No. D-168 on the pointation of complainant and inspected the place of incident and prepared such memo in the presence of complainant and SIP Haji Imtiaz. During the inspection of the place of incident the complainant informed him that someone has informed him on mobile phone that accused persons are trying to run away and are available at new Punjab Bus Adda near Sohrab Goth, then they immediately with the complainant rushed towards the bus stand adda where the complainant pointed out the three accused persons who were apprehended by the police party and on inquiry they disclosed their names Altaf Shah s/o Sikander, Arif Shah s/o Altaf Shah, Haider Shah s/o Altaf Shah and under the memo they have arrested at about 0030 hours and brought them at PS and during interrogation accused Altaf Shah disclosed that another nominated accused Shahid Mehmood is residing in the same street of place of incident and he can help for his arrest then he recorded such entry in the roznamcha as entry No.48 at about 0400 hours and as such took

the p
entry 48
Abad at al
shah arreste



TRUE COPY

and also stated that WMLO DR Zakia Khursheed conducted postmortem of the deceased and issued such postmortem report and informed him that the minor girl has been rapped and then tortured to death as marks of torture and strangulation were on the body. Then WMLO handed over him sealed parcel of last wearing cloths of the deceased and so also sealed parcel of slide of swabs for DNA test. He has also received dead body and sent it to cold mortuary of Cheepa. During the evidence he has also stated that from some resources he came to know that the last wearing cloths which were taken from the dead body at the time of postmortem were not the same which were wearing by the deceased at the time of incident. Then he directly from JPMC proceeded to the house of deceased i.e. Gali 16, House No.D-168 at Bhitai Abad and inquired from the elder sister of the minor who handed over him the cloths which were consisting upon Shalwar of yellow colour and printed shirt of the minor girl Kainaat and sealed the same under the memo in the presence of ASI Dilshad and H.C Ali Murad. He has also stated that he took the photographs of the place of incident. Thereafter he came back to PS and recorded such entry in the roznamcha as entry No.46 at about 2230 hours. During evidence he has also stated that on 01.08.2018 when he was present on his duty at PS brother of the deceased namely Soomar Shah s/o Hussain Shah came at PS and he recorded his 154 Cr.P.C statement at about 1750 hours and being duty officer incorporated the same in FIR book as Crime No.389 of 2018 at about 1800 hours. Thereafter he handed over the case property and police file to the SIO.

During cross examination he has stated as under:-

It is correct to suggest that in the inquest report at Ex.5/A I have not mentioned about committing of rape upon minor. Firstly I prepared inquest report then postmortem was conducted by Senior WMLO. I have prepared only mashirnama at JPMC hospital as Ex.5/B. It is correct to say

- b. Irregular mark of nail scratches over face neck was different in sizes.
- c. Face was cyanosed over tip of nose and face Swollen.
- d. Lips were blackish in color.
- e. Tongue was bitten between the teeth.
- f. No petechial Hemorrhage over the face.
- g. Inner aspect of lower lip abraded.
- h. Nails were cyanosed

Deep blue bruise whole interior aspect of lower abdomen from umbilical area up till the genital.

Inner aspect of both upper part of right and left thigh was cyanosed. Separation of Skin from coccyx bone about 4 Cm in length and 4.5 in breadth bone was intact. All above injuries were anti-mortem.

On Internal Examination of the dead body she has stated that:-

Head:- head was intact and no injuries.

Neck:- Upon opening the neck muscles beneath the bruise mark was white parchment like. It was broken. Trachea was intact but lost its anatomical position. Hyoid Cartilage was broken over left side.

Thorax:- thorax was intact no injuries.

Abdomen:- Abdomen was intact upon the separation of skin from abdomen haematoma was removed.

Upon opening abdominal cavity all the viscera's were intact but congested. No free blood inside.

Pelvic Examination

Deep blue bruise involved whole labia majora and minora and inner aspect upper part of both thighs.

Vagina was intact and tear extends from anterior aspect of Vagina up till mid of perineum.

Anus was intact Sexual assault has been committed on her but no act of sexual assault per anus.

OPINION

Asphyxia:- Leading to irreversible shock and cardio respiratory failure due to constriction of neck and obstruction of respiratory passage with fingers of hands i.e. throttling.

During the evidence she has also stated that she issued such postmortem report bearing No.334/2018, which she has produced at Ex.7/A and also stated that she issued cause of death certificate which she has produced at Ex.7/B and also stated that she sealed last wearing cloth of deceased and so also took the vaginal slide and swabs for chemical and DNA examination and handed over the same to SI Zameer Hussain.

During cross examination she stated as under.

*I handed over the dead body to the police at 8:00 pm.
The marks of cigarettes on the body of deceased were old
one may be ¾ months old.*

From the above discussion of the evidence of WMLO it is clear that the minor girl Kainaat aged about 7/8 years was died unnatural death as firstly rape was committed upon her and then she was killed by strangulation / throttling. Therefore I, decide this point No. 1 as accordingly.

POINT NO.02&03.

Both the points are interconnected and I discuss both the points together in order to avoid repetition.

In order to prove its case prosecution examined complainant Soomar Shah at Ex.04 who has stated in his examination in chief that on 31.07.2018 he was working as laborer at Panjgour in the Province of Balochistan and was informed on mobile phone by his friends of Dero community from his village that his youngest sister namely Kainaat has died at Karachi. He has also stated in his evidence that his sister Rukhsana wife of Syed Arif Shah s/o Altaf Shah along with his two other sisters Kainaat and Reshma were residing with paternal uncle Syed Altaf Shah at his house at Bhitai Abad Karachi. He has also stated that on receiving such call he immediately rushed to Karachi and reached here on 01.08.2018 and went to PS Sack



VERIFIED TRUE COPY

take rest. On 31.07.2018 after taking medicine I went to sleep in the room. It is correct to suggest that when I was in rest in my room I have not observed that what has happened outside the room and I also cannot say who has come and went at that time but usually no one use to come in our house even my sisters do not use to come. I have heard the cries of Kainaat perhaps after half an hour of my rest in my room. It is correct to suggest that I have not made any complaint against Must Ruksana and Mst. Reshma before the police that they have beaten me and abused me with filthy language when I tried to rescues minor girl Kainaat. Arif Shah went alone while taking minor girl Kainaat to the hospital. It is incorrect to suggest that I have deposed falsely before the court only to save brother Shahid Mehmood and Husband Altaf Shah and his family.



I have heard learned APG for State and learned counsel for accused and perused the evidence and material available on the record.

The points for determination are as under:-

POINT NO.01.

Whether the minor girl Kainaat aged about 7/8 years was raped and killed by strangulation and her death is declared as un-natural?

POINT NO.02.

Whether on 31.07.2018 at about 1600 hours in the House No. D-168 situated in Katchi Abadi, Street No. 16, Bhitai Abad the above named accused persons in furtherance of their common intention committed rape upon minor girl namely Kainaat d/o Syed Hussain Shah aged

Statement of Defense Witness No.03 Roshna wife of accused Syed Altaf Hussain recorded at Ex. 22, wherein she has stated that on 31.07.2018 she was present in her house at Bhitai-Abad House No. D-168 Gali No. 16, Bhitai-Abad. She after completing home chores went to her room and took medicines. Whereas wife of Arif Shah namely Ruksana along with two minor sons and sisters Reshma and Kainaat were watching television in another room. In between 1500 to 1600 hours she heard the noise of cries of Kainaat. She tried to save her from beating but Ruksana asked her to go away and then she came to her room and again she heard the cries and saw that girl Kainaat was lying unconscious and blood was oozing from her mouth and her teeth were also broken. She has also stated that she informed her husband Altaf Shah on mobile phone who directed her to ask Arif Shah to take her to the hospital. She has also stated that Ruksana changed the cloths of Kainaat after getting her bath. She has also stated that she called Arif Shah from the room who took her minor sister to the hospital Darul-Sehat Hospital.

During Cross Examination He Has Stated That

My marriage took place with the Altaf Shah about ¾ years back. My steps son Arif Shah along with his family and Haider Shah were residing in Jacobabad came to Karachi and started residing with me in the above mentioned house about one years prior to this incident. The behavior of Ruksana w/o of Arif Shah was good with me from very first day when they started residing with me in the above mentioned house. The Minor girl Kainaat and Reshma were also come with Ruksana and Arif Shah to Karachi. My husband Altaf Shah is school teacher in Jacobabad and use to come in Karachi in vacations. I am suffering from blood pressure and sugar for the last one year. After taking the medicine of blood pressure I use to



ED TRUE COPY

- 5 -

that he was not arrested from Punjab Bus Adda but he was arrested from Darul-Sehat Hospital and produced copy of the Newspaper Daily "Ummat" dated 1st August, 2018 at Ex.16/A. He has not examine himself on oath but he has stated that he shall examine DWs namely Rab Nawaz, Yarmul Haq, Sajid Hussain, Roshna Bibi and two security guards of lucky shopping Mall.

Statement of accused Syed Haider Ali Shah recorded u/s 342 Cr.P.C at Ex. 17 to which he denied the prosecution case and attributed false implication at the hands of police and also stated that he was arrested from lucky one Shopping Mall when he was performing his duty as helper at parking area. Accused was not recorded his statement on oath. He has stated that names of Defense witnesses has already been given by the accused Altaf Shah are his witnesses also.

Statement of accused Syed Arif Shah recorded u/s 342 Cr.P.C at Ex. 18 to which he denied the prosecution case and attributed false implication at the hands of police and also stated that he was arrested from Darul-Sehat Hospital. He has not examined himself on oath but he has stated that he shall examine DWs namely Rab Nawaz, Yarmul Haq, Sajid Hussain, Roshna Bibi and two security guards of lucky shopping Mall.

Statement of accused Shahid Mehmood recorded u/s 342 Cr.P.C at Ex. 19 to which he denied the prosecution case and attributed the false implication at the hands of police and also stated that he was not arrested from Bhitai Abad but voluntarily surrendered before the police. He has not examined himself on Oath. He has stated that names of Defense witnesses has already been given by the accused Altaf Shah are his witnesses also.

Statement of Defense Witness No. 01 Muhammad Shahid s/o Ghulam Muhammad recorded at Ex. 20, wherein he has stated that on 31.07.2018 he was performing his duty at lucky shopping mall

on 31.07.2018 at about 1600 hours suddenly Kainaat was become ill on that Arif Shah immediately took her to the hospital where it was informed that she has been expired. On reaching at PS he came to know that Kainaat has been raped and then killed by strangulation. From the spot enquiry he came to know that accused persons namely 01. Shahid Mehmood s/o Muhammad Ali, 02. Altaf Shah s/o Sikander Shah, 03. Arif Shah @ Jamshed s/o Altaf Shah and 04. Haider Shah @ Zain Shah s/o Altaf Shah have committed Zina upon Kainaat and then killed by throttling her Neck. He claimed against the above named accused persons for committing rape upon his minor sister Kainaat and then murdering her by throttling her Neck.

SIP Zameer Hussain of PS Sachal incorporated the statement u/s 154 Cr.P.C in FIR book as Crime No. 389/2018 on the same day i.e. on 01.08.2018 at about 1800 hours at PS Sachal for the offence u/s 302/376(1)/34 PPC.



VERIFIED TRUE COPY

According to the challan on 31.07.2018 the duty officer SIP Zameer Hussain as per entry No. 38 at about 1810 hours reached at the Darul-Sehat Hospital and received the tortured dead body of minor girl aged about 7-8 years d/o Syed Hussain Shah and shifted the dead body to JPMC for postmortem and so also prepared memo of inspection of dead body and inquest report. WMLD issued postmortem report and informed that the minor girl Kainaat has been raped and then tortured to death as marks of tortured and strangulation were on the body and also received the sealed parcel of last wearing Cloths of the deceased and so also sealed parcel of slide of swabs for DNA test. He has also received the dead body of the deceased and sent the same to cold mortuary of Cheepa. He has also gone to the house of deceased and seized and sealed the last wearing cloths of the deceased under the memo.

The investigation was being entrusted to SIP Syed Ahmed Ali Shah who visited the place of incident and prepared the memo and recorded statements of the witnesses and so also produced the

accused persons before MLO for potency test who issued such certificates and so also took blood samples of each accused and then sent the sealed parcels of cloths of the minor, which were sealed by WMLO at the time of postmortem and blood samples of the accused persons and sealed vaginal swab slides of deceased were sent to Forensic Laboratory of LUMS. He also brought the accused persons before the concerned magistrate who returned the remand paper with order that offences are covered by section 6(1)(b) of ATA, 1997 and thereafter section 7 ATA, 1997 was added and the investigation was handed over to PI/SIO Mumtaz Ali Bugti, who interrogated the accused persons and seized and sealed the cloths of accused under the memo and so also produced the accused Arif Shah before the concerned Magistrate where accused recorded his confessional statement. Thereafter the investigation was transferred to SIO/PI Mehboob Ellahi of PS Sohrab Goth who sent the sealed parcel of cloths of minor which she was wearing at the time of incident and so also the cloths of the accused to Forensic laboratory for DNA LUMHS Jamshoro.

Thereafter the investigation was handed over to SIO/Inspector Jan Muhammad Ahamdani as previous I.O was suspended and he received the positive DNA report from Forensic Laboratory of LUMHS Jamshoro and produced final challan against the accused persons before the court of law.

The matter was received on the file of this Court by way of transfer. Oath as prescribed u/s 16 of ATA, 1997 was taken by this Court at Ex. 01. The case papers were supplied to the accused persons as required u/s 265-C Cr.P.C. at Ex. 02.

Charge was framed against the accused persons at Ex.03 to which the accused persons claimed to be tried at Ex.03/A to Ex.03/D.

At the trial prosecution examined PW-01 Soomar Shah at Ex.04 he produced 154 Cr.P.C statement at Ex.4/A, memo of inspection of



ECOPY