

2019 S C M R 1224**[Supreme Court of Pakistan]****Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ****IFTIKHAR AHMAD---Appellant****Versus****The STATE---Respondent**

Criminal Appeal No. 122-L of 2017, decided on 16th May, 2019.

(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)

(a) Penal Code (XLV of 1860)---

---Ss. 302(b) & 365-A---Anti-Terrorism Act (XXVII of 1997), S. 7(e)--- Qatl-i-amd, kidnapping or abduction for extorting property, valuable security etc., acts of terrorism---Reappraisal of evidence---Prosecution's case was primarily structured upon the statement of witness who last saw the deceased-victim in company of accused---Said witness shared information with the complainant on the following day and it was on this disclosure that the accused was framed as a suspect---Evidence of said witness was corroborated with the statement of another witness, who saw the accused dumping the corpse---Both said witnesses identified the accused under magisterial supervision---Defence had not been able to impeach credibility of said witnesses, and they had no axe to grind against the accused---Evidence of the last seen was well within the remit of proximity of time and space--Recovery of articles belonging to the victim on the pointation of accused, including school bag and stationery items, constituted another strong piece of evidence against the accused---Recovery of SIM (Subscriber Identity Module), cell phone and generation of calls therefrom, received by the complainant, was confirmed by cell phone data, which presented a strong piece of evidence, immune from foreign interference---Investigative process and conclusion thereof inexorably pointed towards the accused's culpability---Accused had been rightly convicted by the courts below.

(b) Penal Code (XLV of 1860)---

---Ss. 302(b) & 365-A---Anti-Terrorism Act (XXVII of 1997), S. 7(e)---Qatl-i-amd, kidnapping or abduction for extorting property, valuable security etc., acts of terrorism---Reappraisal of evidence---Sentence, reduction in---No DNA identification of swabs carried out---Prosecution's failure to carry out DNA profile generation of rectal and vaginal swabs was a most grievous lapse that in retrospect made out a case to revisit the sentence of accused---Death penalty awarded to accused on all counts was altered to imprisonment for life on each count---Appeal was allowed accordingly.

Ch. Nisar Ahmed Kausar, Advocate Supreme Court for Appellant.

Muhammad Ozair Chughtai, Advocate Supreme Court/Advocate-on-Record for the Complainant.

Mazhar Sher Awan, Additional Prosecutor-General, Punjab with Furqan, SI for the State.

Date of hearing: 16th May, 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 strangled 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 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.

MWA/I-4/SC Order accordingly.

;