

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Original No. 01 of 2017

The State

Versus

Maheen Zafar and another.

Petitioner's by : **Mr. Tariq Mehmood Jahangiri, Learned Advocate General for Islamabad. Malik Awais Haider, State Counsel. Muhammad Rafiq, Inspector. Raja Zahoor-ul-Hassan, Advocate for Complainant.**

Respondent's by : **Raja Muhammad Farooq, Advocate for accused/respondent No.1. Raja Rizwan Abbasi, Sohail Akhtar, Naila Noreen and Raaz Ali Shah, Advocates for accused/respondent No.2. Raja Khurram Ali Khan, accused/Respondent No.2 in person.**

Date of hearing : **26.03.2018**

AAMER FAROOQ, J. - Mst. Maheen Zafar and Raja Khurram

Ali Khan are imputed in case F.I.R. No.483/2016, dated 29.12.2016, under Sections 342, 506, 328-A, 201, 337-A(i), 337-F(i), 34 P.P.C., Police Station Industrial Area, Islamabad.

2. The case of the prosecution against the above mentioned accused persons is that they employed Mst. Tayyaba Bibi, aged less than 10 years at the relevant time as a maid servant in the house and used to hit her because of which she sustained injuries and also at the relevant time closed her quarter and used to lock her in a store near water tank.

3. The above mentioned accused persons were charged with the aforementioned offences on 16.05.2017. For the sake of brevity, the charges against the accused persons are reproduced and are as follows:-

"Firstly: That you accused persons wrongfully confined minor Tayyaba, in your House No.50, Street No.12, Sector I-8/1, Islamabad and she was recovered by the police, thus you both accused persons have committed an offence punishable u/s 342 P.P.C., which is triable by this Court.

Secondly: That you Mst. Maheen Zafar accused within the area of House No.50, Street No.12, Sector I-8/1, Islamabad caused injuries (multiple small healed wounds on cheek and below angle of mandible (contact burn) to minor Tayyaba, thus you have committed an offence punishable u/s 337-A(i) P.P.C., which is triable by this Court.

Thirdly: That you Mst. Maheen Zafar accused within the area of House No.50, Street No.12, Sector I-8/1, Islamabad caused injuries contact burn healed wounds on right arm, right wrist and right hand on left mid arm over deltoid area, dorsum of left index finger extended upto MP joint of left hand, left little finger and left lower arm, right thigh and right buttock to minor Tayyaba, thus you have committed an offence punishable u/s 337-F(i) P.P.C., which is triable by this Court.

Fourthly:- That you Mst. Maheen Zafar accused within the area of House No.50, Street No.12, Sector I-8/I, Islamabad extended threats of dire consequences to minor Tayyaba not to disclose her maltreatment to anyone, thus you have committed an offence punishable u/s 506(ii) P.P.C., which is within the cognizance of this Court.

Fifthly:- That you Mst. Maheen Zafar and Raja Khurram Ali Khan accused within the area of House No.50, Street No.12, Sector I-8/1, Islamabad willfully assaulted, ill-treated, neglected, abandoned, harmed and injured minor Tayyaba, who was under your care, thus you both have committed an offence punishable u/s 328-A P.P.C., which is within the cognizance of this Court.

Sixthly:- That you Raja Khurram Ali Khan accused within the area of House No.50, Street No.12, Sector I-8/1, Islamabad caused disappearance of minor Tayyaba in order to screen your co-accused Mst. Maheen Zafar from the legal consequences, thus you have committed an offence punishable u/s 201 P.P.C., which is within the cognizance of this Court.

AND I hereby direct that you be tried by this Court.

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4. The prosecution in support of their case produced Tayyaba Bibi as PW-1, Maria Hayat as PW-2, Naila Khizar as PW-3, Ms. Humaira Haroon as PW-4, Dr. Muhammad Naseer as PW-5, Dr. Tariq Iqbal as PW-6, Ms. Nishaa Ishtiaq as PW-7, Ghulam Hussain as PW-8, Muhammad Naseem as PW-9, Shakeel Ahmad as PW-10, Asghar Ali as PW-11, Guldaraz Khan as PW-12, Muhammad Azam as PW-13, Azhar Hussain as PW-14, Gulzar Ahmed as PW-15 and Khalid Mehmood Awan as PW-16. The prosecution also tendered in evidence various documents and articles.

5. The accused tendered their statements under Section 342 Cr.P.C and also produced documentary evidence by way of various orders which were passed by Raja Khurram Ali Khan as Additional District and Sessions Judge.

6. Learned Advocate General for Islamabad, *inter-alia*, contended that the prosecution has proved its case beyond reasonable doubt. In this behalf, learned Advocate General took the Court through the evidence tendered by the prosecution. It was also contended that the statements of Mst. Tayyaba Bibi, PW-1, as well as PW-2, PW-3 and PW-4 establishes clearly that the accused persons used to beat up Mst. Tayyaba Bibi and/or abandoned her by failing to take care of her by providing food and proper clothing. It was further contended that the medical report fully corroborate the ocular account that Mst. Tayyaba Bibi received injuries which squarely falls under Sections 337-A (i) and 337-F (i) P.P.C. It was further submitted that the defence has failed to cast doubt on the case of the prosecution which is un-impeached and the

accused persons are guilty of all the offences with which they have been charged.

7. Learned counsel for the accused, *inter-alia*, contended that the complaint on the basis of which F.I.R. was registered was not signed by Mst. Tayyaba Bibi, therefore, the F.I.R. registered has no sanctity under the law. Reliance was placed on cases reported as "*Dr. Baber Yaqoob Sheikh Vs. Haris Hafeez and 02 others*" (**2014 YLR 2176**), "*Director General EPA Vs. Messrs Sultan Industries Sialkot*" (**2017 CLD 1117**). It was also contended that during the course of evidence Mst. Tayyaba Bibi denied the contents of the F.I.R. thus it has lost its sanctity. Reliance was placed on cases reported as "*The State Vs. Syed Aamir Shabbir*" (**2016 P Cr. L J 286**), "*Ghulam Rasool and 2 others Vs. The State*" (**1988 P Cr. L J 995**). Learned counsel for the accused persons further contended that the prosecution has failed to prove its case. In this behalf, attention was drawn towards the cross-examination of Mst. Tayyaba Bibi, wherein, she said contrary to what she had deposed in examination in chief. It was contended that cross-examination is a more important part of statement of the witness. It was further contended that the statement of child witness is to be appraised with caution. Reliance was placed on cases reported as "*Allah Ditta and others Vs. The State and others*" (**2017 P Cr L J 789**), "*Muhammad Feroze Vs. The State*" (**NLR 2003 Criminal 474**) and "*Panchhi & others Vs State of U.P.*" (**AIR 1998 SC 2726**) as well as "*Mst. Saira Bibi Vs. Muhammad Asif and others*" (**2009 SCMR 946**). It was further contended that one of the prosecution witnesses i.e. Ms. Humaria Haroon (PW-4) made improvement inasmuch as her statement in examination-in-chief contains substance which was not in the statement under Section 161 Cr.P.C.,

hence, the same is not to be relied upon. Reliance was placed on cases reported as "*Noor Muhammad and others Vs. The State and others*" (**2017 P Cr. L J 479**) and "*Sarfraz Vs. The State*" (**2017 YLR Note 220**). It was further argued that the witnesses appearing on behalf of the prosecution in support of the medical report i.e. PW-5 and PW-6, have categorically stated that the injuries can be either accidental or homicidal; that burn marks are old. In this behalf, it was contended that the medical evidence is only corroborates or supports the ocular account and cannot form the basis for conviction solely. Reliance was placed on cases reported as "*Javed Iqbal and 2 others Vs. The State*" (**2014 YLR 529**) and "*Hashim Qasim and another Vs. The State*" (**2017 SCMR 986**). It was further submitted that the alleged occurrence is unseen inasmuch as no witness has deposed that the accused persons caused injuries to Mst. Tayyaba Bibi.

8. Learned counsel for the accused persons further contended that the alleged articles recovered to substantiate that they were used to cause injuries to Mst. Tayyaba Bibi cannot be relied upon in evidence inasmuch as they are not sealed. It was contended that the case against the accused persons is based on malafide and ulterior motives at the behest of the person against whom Raja Khurram Ali Khan passed various orders / judgments while adjudicating matters as Additional District & Sessions Judge, Islamabad. Learned counsel took the Court through the referred documents which have been tendered in evidence as exhibits. It was further contended that any matter which cast doubt has to be resolved in favour of the accused. Reliance was placed on cases reported as "*State Vs. Ali Asghar*" (**2017 P Cr. L J 349**), "*Saleh Muhammad and another Vs. The State and another*" (**2017 P Cr. L J**

1391) and "*Muhammad Akram Vs. The State*" (**2009 SCMR 230**). It was also argued that the media hype has also been created because of various non-governmental organizations and their nexus, and had the same not been done the case would not have been registered. It was further contended that the alleged statement of Mst. Tayyaba Bibi was recorded before Pw-7 without any justification or basis, when she had no authority, nor was she the duty judge in the case. Similarly, it was contended that the photographs of Mst. Tayyaba Bibi which became viral on social media cannot be said to have been proved in accordance with law.

9. Arguments advanced by the parties have been heard and the evidence examined with their able assistance.

10. Before proceeding to decide the merits of the case, since great emphasis was laid on the fact that the complaint which culminated into F.I.R. was not signed by the complainant i.e. Mst. Tayyaba Bibi, therefore, the F.I.R. was not validly registered, hence, the merits of the said arguments be determined. Under Section 154 of the Code of Criminal Procedure, 1898, every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer. In the instant case Mst. Tayyaba Bibi after being recovered by the police was brought to the office of Chief Commissioner, I.C.T, Islamabad and made a statement before Ms. Nishaa Ishtiaq (PW-7) who reduced the statement of Mst. Tayyaba Bibi and instead of taking

her signature or thumb impression signed the same herself (**Ex.PW-7/A**) on the basis of the referred statement/complaint the F.I.R. in question (F.I.R. No.483/2016, dated 29.12.2016)(**EX-PW-14/B**) was lodged. In this behalf, the complaint drafted by Shakeel Ahmed, ASI is PW-14/A. Learned counsel for the accused have placed reliance on case reported as "*Dr. Baber Yaqoob Sheikh Vs. Haris Hafeez and 02 others*" (**2014 YLR 2176**) to substantiate his arguments that if the complaint is not signed then it is defective. The referred case is not applicable in the facts and circumstances of the case inasmuch as in the same it was a complaint under Illegal Dispossession Act, 2005 and the Court was considering the essential requirements of a complaint under Section 200 Cr.P.C and it was observed that if it is not signed then the matter cannot be proceeded with. Likewise, the other judgment relied upon by the accused was "*Director General EPA Vs. Messrs Sultan Industries Sialkot*" (**2017 CLD 1117**). In the said case as well the Court was dealing with the complaint as envisaged under Punjab Environmental Protection Act, 1997. Likewise, another case relied upon by the accused i.e. "*The State Vs. Syed Aamir Shabbir*" (**2016 P Cr. L J 286**) is distinguishable in the facts and circumstances as in the same. Nature and scope of F.I.R. and the effect of not signing of the same has been elaborated in various pronouncements of our jurisdiction as well as from the jurisdiction across the border. In case reported as "*Mst. Razia Sultana Vs. Deputy Inspector General of Police and others*" (**1999 P Cr. L J 694**), the Hon'ble Lahore High Court observed that the F.I.R. recorded on complaint of minor daughter of owner of the house having not been cancelled, law could be set in motion according to version of complainant and affected family. Similarly, in the case reported as "*Ghulam Abbas and 03 others Vs. The State and another*" (**1997 P Cr. L J 2091**) the Hon'ble Lahore High

Court observed that the F.I.R. was not an encyclopedia so as to include each and every detail of the incident reported therein. Similar view was expressed by the Hon'ble Division Bench of Baluchistan High Court in "*Capt. Dr. Munir Ahmed Khan Vs. The State*" (**1997 P Cr. L J 348**) and it was observed that it is not an essential that each and every detail must be incorporated in the F.I.R. which is a simple device to set the law in motion. Similar view was expressed in "*Ghulam Abbas alias Mazhar Abbas Vs. The State*" (**1997 P Cr. L J 432**), "*Muhammad Ramzan Vs. The State*" (**1997 P Cr. L J 376**). In "*Muhammad Asif and others Vs. The State and others*" the Shariat Court of Azad Jammu and Kashmir in case reported as "**2006 P Cr. L J 1191**" observed that the mere defect in recording F.I.R. or even recording of F.I.R. after investigation, would not make the entire trial illegal as F.I.R. was not a substantive piece of evidence and even if an F.I.R. was recorded after commencing of formal investigation, it would not destroy the whole trial and it would not materially affect main case of prosecution.

11. In Criminal Appeal Nos.1492 and 1587 of 1983 titled "*Durab and others Vs. State of U.P.*" the High Court of Allahabad observed as follows:-

"46. Moreover, mere absence of signature of the traumatised informant (whose brother was murdered before him) over written report (Ext. Ka-1) would not affect the sanctity of the written report as well as F.I.R. Section 154 Cr.P.C. provides that F.I.R. can be lodged orally as well. In this case, the scribe (P.W.-3) has proved on oath that he had prepared the written report (Ext. Ka-1) on the spot on the dictation of the informant and had written his name as a writer."

Likewise in Criminal Appeal No.266 of 1990 (J) titled "*Rajoo Vs. State of M.P.*" the High Court of Madhya Pradesh observed as follows:-

The real purpose of the F.I.R. is to set the criminal law in motion and to confront for the purpose of finding out any contradiction. We may refer with profit to the decision of the Apex Court in this regard. Hasib Vs. The State of Bihar MANU/SC/0180/1971 : AIR 1972 S.C. 283. Thus, merely the F.I.R. was not signed, is in itself no ground, to discard it.

Non-obtaining of signature is a procedural irregularity, but, it cannot over-turn prosecution. This proposition was specifically dealt with by the Division Bench of Calcutta High Court in the case of A.W. Khan Vs. The State MANU/WB/0139/1962 : AIR 1962 Cal. 641 in which Their Lordships in para 7 of the judgment has held that absence of signature to the First Information Report by the informant is not necessary to the extent that its absence will vitiate and nullify such report. If there is an information relating to the commission of a cognizable offence, it falls under Section 154 of Cr. P.C. and becomes admissible in evidence as such, even though the Police Officer may have neglected to record it in accordance with law. Now, the admissibility of first information report depends not on the fact that it is signed by the person making it, but on the fact a first information report given in writing or taken down by a police officer would be a part of the official record as the substance of such information is to be entered in a book kept by the station officer in the form prescribed and that may attract the operation of the provisions of S.35 of the Indian Evidence Act. The condition as to its being reduced to writing and that it shall be signed by the person giving it seems to us to be mere matter of procedure and failure to observe the procedure as to signature would not make the information given, if it is reduced to writing, inadmissible."

Finally, in Criminal Appeal No.324 of 1961 case titled "A.W.

Khan Vs. The State"the High Court of Calcutta observed as follows:-

"The second answer to Mr. Mitter's argument is that absence of signature to the First Information Report by the informant is not necessary to the extent that its absence will vitiate and nullify such report. A Division Bench of Lord Williams and S.K. Ghose, JJ. in the case of Mani Mohon Ghose v. Emperor MANU/WB/0247/1931 : AIR 1931Cal745 lays down that:-

"If an information 'relates to the commission of a cognizable offence' it is a first information admissible in evidence as such although the police officer may have neglected to record it in accordance with law."

At p. 628 (of Cal WN):(at p. 748 of AIR) of the report the learned Judge delivering the decision of the Division Bench observed:

'The conditions as to writing in Section 154 of the Code are merely procedural. If there is an 'information relating to the commission

of a cognizable offence' it falls under Section 154 and becomes admissible in evidence as such, even though the police officer may have neglected to record it in accordance with law. Owing to this neglect in particular cases, the Courts have laid down from time to time that the information which starts the investigation is the real first information under Section 154 and should be treated in evidence as such. It does not depend on the sweet will of the police officer, who may or may not have recorded it. But the condition as to the character of the statements is really two-fold; first, it must be an information and, secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. It was never meant to be laid down that any sort of information would fall under Section 154, so long as it was the first in point of time."

12. In light of the above case law, it is clear that the nature of an F.I.R. is that it sets the law in motion upon which the investigation in a cognizable case commences. In case there is any procedural irregularity including not signing of the complaint that will not vitiate the criminal trial or tarnish the case of the prosecution in any way. Hence, the fact that the Tayyaba Bibi never signed the complaint made before Ms. Nishaa Ishtiaq is not consequential and not fatal to the case of the prosecution.

13. Before appreciating the rival contention of learned counsels for the parties and appraisal of the evidence it is relevant to mention certain important facts and evidence. It is the case of the prosecution that Mst. Tayyaba Bibi was employed as maid servant at the house of Raja Khurram Ali Khan and Ms. Maheen Zafar and the police recovered the minor, aged less than 10 years, at the relevant time and took her in custody and after the initial medical examination brought her before Ms. Nishaa Ishtiaq, Assistant Commissioner (PW-7), who after reducing the statement of the minor committed her to Child Protection Bureau. Minor was examined twice by the medical experts. Firstly, she was examined

by Dr. Muhammad Naseer, PW-5, who examined her on 29.12.2016 at 11:16 A.M. The referred witness in his statement spelt out the nature of injuries recorded in the report on 30.12.2016, which was tendered in evidence as **Ex.PW-5/A**. The second medical examination was conducted by Medical Board which examined Mst. Tayyaba Bibi on 09.01.2017; the board consisted of Dr. Hameed-ud-Din, Dr. S.H. Waqar, Dr. Rizwan Taj and Dr. Maqbool Hussain. The Board examined the minor and the findings were recorded in the report which was tendered as **Ex.PW-6/A** and **Ex.PW-6/B**. During the course of investigation and in trial evidence was tendered by Maria Hayat, PW-2, who deposed that she saw the minor in destitute condition on 26.12.2016 out in the cold and gave her food and warm clothing. Similar statements were made by Naila Khizar, PW-3 and Ms. Humaira Haroon, PW-4. Minor Tayyaba Bibi appeared in witness box as PW-1 and stated that Ms. Maheen Zafar hit her and burned her hand and also provided the details of how the injuries were reflected. She corroborated the statements of PW-2 and PW-3 and submitted that Maria Hayat gave her food and provided blanket. However, in cross-examination she stated that she has not been hit by anyone. It is pertinent to observe that a note was made by the Court that in cross-examination the minor Tayyaba Bibi has answered all questions in affirmative (جی ہاں). The prosecution also adduced evidence of Ms. Nishaa Ishtiaq, who provided details of recording the statement of Mst. Tayyaba Bibi, however, in extensive and lengthy cross-examination the defence sought to question the authority under which Ms. Nishaa Ishtiaq recorded the statement of Tayyaba Bibi and as to why she was brought before her. Formal witnesses i.e. police officials corroborated the case of the prosecution. In this behalf, Ghulam Hussain, PW-8, produced the items Wiper and *Dohi* etc. which were not sealed. Muhammad

Naseem, who remained with the investigation for a short while and Shakeel Ahmad appeared as PW-9 and PW-10 and deposed about initial investigation and how the child was recovered. PW-11, is the *Moharar* and deposed about the Mobile Phone which was sent to the Forensic Laboratory for recovering the photographs taken from the mobile phone of Maria Hayat. The Investigation Officer, Khalid Mehmood Awan, appeared as PW-16, who provided the details of the investigation and about various reports. He was re-called and re-examined by the prosecution and in the same, he tendered in evidence *Rupt* No.24, dated 28.12.2016 (**Ex.PW-16/B**). The two important witnesses are Guldaraz Khan PW-12, who worked as a cook in the adjacent house and stated that he gave food, tea and medicine to Tayyaba Bibi and father of Tayyaba Bibi namely Muhammad Azam, PW-13, who was called by the prosecution, however, during the course of his examination-in-chief request was made to declare him hostile, which was accordingly done. The prosecution asked questions and he was also cross-examined by the defence. He admitted that he had sent Tayyaba Bibi for employment and Raja Khurram Ali Khan had given him sum of Rs.18,000/- as salary for six months. He also admitted that a compromise was effected between the accused persons and him. In cross-examination he stated that Mst. Tayyaba Bibi informed him that she has never been ill-treated. Accused tendered statements under Section 342 Cr. P. C. and some orders and other documents as mentioned above, in their defence.

14. The first charge on the accused persons is that they wrongly confined Mst. Tayyaba Bibi and she was recovered by the police from the House No.50, Street No.12, Sector I-8/1, Islamabad, therefore, they have committed an offence under Section 342 P.P.C. Admittedly, Mst.

Tayyaba Bibi was working as a maid servant at the residence of Raja Khurram Ali Khan and Ms. Maheen Zafar, however, the prosecution has not produced any evidence which goes on to show that she was wrongly confined at the aforementioned residence of the said person. The sole evidence tendered by the prosecution in this behalf is the statement of Kahlid Mehmood Awan, SHO, PW-16, who stated that he was informed that a child namely Tayyaba Bibi was working at the residence of Raja Khurram Ali Khan and has been tortured, therefore, he visited the House No.50, Street No.12, Sector I-8/1, Islamabad and contacted the accused by phone and thereupon the custody of Tayyaba Bibi was handed over to him, whereupon, she was taken to PIMS Hospital. Even, the statement of the minor i.e. examination-in-chief, does not divulge anything to the effect which goes to establish wrong confinement. Even though, she stated in her examination-in-chief that when she got injured then they (accused persons) had hidden her, however, the fact that she was recovered without any resistance and as she was handed over to PW-16 shows that there was wrongful confinement as nothing was stated in specific by the Investigation Officer. In view of the referred evidence the prosecution has failed to prove the referred charge against the accused persons.

15. Ms. Maheen Zafar has been charged with causing injuries which are multiple in nature i.e. small healed wounds on cheek as well as contact burn under Section 337-A(i) P.P.C. Likewise, the referred accused was also charged with causing multiple injuries by way contact burn wounds on right arm, right wrist and right hand on left mid arm over deltoid area, dorsum of left index finger extended upto MP joint of left hand, left little finger and left lower arm, right thigh and right buttock

under Section 337-F(i) P.P.C. Admittedly, there is no ocular account of causing injuries by Ms. Maheen Zafar to Mst. Tayyaba Bibi, however, the victim Mst. Tayyaba Bibi in her examination-in-chief specifically stated that she worked for a period of two to three months at the residence of Ms. Maheen Zafar and that she used to hit her and burned her hand as well as back and also her with the *Dohi*. It was also stated by Mst. Tayyaba Bibi that she got injuries near eye and at the back. She further stated that the burn injuries were caused because of stove and that the accused lit the stove and burnt her hand. It is pertinent to observe that at the time of recording of the statement in examination-in-chief of Mst. Tayyaba Bibi the demeanour of the witness was noted by this Court and it was observed that she responded to the questions asked confidently after understanding them. The Court also observed that Mst. Tayyaba Bibi is intelligent. In cross-examination, she admitted that first time she told everything to the police authority and the same was all recorded in a video clip. The Court exhibited the video clip as Ex-D/A and the examination of the same shows that police officials asked leading questions and the lady person in the background is somewhat tutoring Mst. Tayyaba Bibi and helping her. The display of the video clip and its admission in evidence was objected by the prosecution that the same is not permissible, however, no specific prohibition or bar under Qanun-e-Shahadat Order, 1984 was pointed out by virtue of which the same cannot be done, hence, the objection of the prosecution is overruled. In cross-examination, Tayyaba Bibi stated that nobody hit her and that she had fallen down and she was living voluntarily at the residence of Raja Khurram Ali Khan and Mst. Maheen Zafar and she was also taken to the doctor. During the course of cross-examination, the Court also observed that Mst. Tayyaba Bibi is answering all questions in affirmative (جی ہاں).

The photographs of Mst. Tayyaba Bibi showing her injuries were taken by Mrs. Humaira Haroon, PW-4, which have been exhibited in evidence. The referred witness stated in examination-in-chief that Tayyaba Bibi told her that Mst. Maheen Zafar has hit her. The learned defence counsel objected to the statement of PW-4 on the ground that the same is hearsay. However, there is an exception to the referred principle which is referred as *res gestae* under the same if the victim informed someone immediately about the occurrence and had no time to meditate or make up things then the same is admissible in evidence as exception to hearsay. Reliance is placed on cases reported as "*Faqir Muhammad Vs. The State*" (**PLD 1971 Lahore 929**) and "*Sameeullah Khan Vs. The State*" (**2000 MLD 1290**). In the said case the doctrine of *res gestae* was explained in the following manner:-

"7. *This is a case which fully attracts the rule of 'Res gestae'. The Res gestae rule is that where a remark is made spontaneously and concurrently. It is defined as a matter incidental to main fact and explanatory of it, including acts and words which are so closely connected therewith as to constitute a part of transaction and without a knowledge of which main fact might not be properly understood. They are events themselves speaking through instinctive words and acts of participants; circumstances, facts and declarations which grow out of main fact are contemporaneous with it and serve to illustrate its character. Res gestae includes everything that may be fairly considered as an incident of even under consideration. It carries with it inherently a degree of credibility and will be admissible because of its spontaneous nature. 'Res gestae' means literally thing or things happened and, therefore, to be admissible as exception to hearsay rule, words spoken, thought expressed and gestures made must all be so closely connected to occurrence or event in both time and substance as to be a part of the happening. It is a spontaneous declaration made by a person immediately after an event and before the mind has an opportunity to conjure a false story. It represents an exception to the hearsay rule.*

8. *Res gestae is a concept which as a matter of principle is employed in the English system of administration of criminal justice under the name of 'res gestae'. In our system of administration of justice, Article 19 of*

Qanoon-e-Shahadat (P.O. No. X of 1984) corresponding to section 6, of the Evidence Act of 1872, is an enacted provision of law under which statement made immediately after the occurrence under the influence of occurrence in order to characterize it and connecting therewith would be admissible under this article as 'res gestae' evidence."

16. In the instant case, it is not clear as to how much time had lapsed between receiving of injuries by Mst. Tayyaba Bibi and her informing the same to PW-4. Hence, in the referred facts and circumstances, whether what was informed by Mst. Tayyaba Bibi to PW-4 can be relied upon under res gestae is questionable. The victim was duly examined initially by, Dr. Muhammad Naseer PW-5, who tendered his report and then by Medical Board constituted in this behalf. PW-5 in his report (**Ex. PW-5/A**) categorically stated that there is swelling and blackening of right upper hand and lower eye lid and conjunctivitis of right eye which was ecchymosed; swelling and burn marks superficial in nature on the dorso-medial aspect of left hand and abrasions on right side of face of over left ear and pointed that injuries are in the nature falling under Section 337-A(i) and 337-F(i) P.P.C. It was also pointed out that probable duration of injuries is 24 hours. It is pertinent to observe that the examination was conducted on 29.12.2016, on which date she was recovered from the house of accused Raja Khurram Ali Khan and Mst. Maheen Zafar. During the course of cross-examination, PW-5 admitted that skin of children is more sensitive and that the injuries could have been either accidental or homicidal. He also stated during the cross-examination that the burn injuries could have been caused because of match box accident. The report of Medical Board which conducted the examination of Mst. Tayyaba Bibi on 09.01.2017 is Ex.PW-6/A and Ex.PW-6/B. In Ex.PW-6/D which is explanation of the earlier reports, it has been stated that the burn wounds are acute in nature and few weeks

old, whereas, the remaining wounds over body are old healed scars ranging from few weeks to several months. Likewise, Ex.PW-6/A and Ex.PW-6/B in detail explain the injuries sustained by victim. The photographs taken by PW-4 which were duly exhibited as Ex.PW-4/1 to Ex.PW-4/3, shows the conditions of Mst. Tayyaba Bibi.

17. In view of above facts and evidence, there is no ocular account that the injuries were caused to Tayyaba Bibi by Mst. Maheen Zafar but only statement of PW-4 which has been objected to as hearsay and the medical evidence along with the pictures of Mst. Tayyaba Bibi. It is a general principle that medical opinion corroborates the ocular account. In the instant case there is no ocular account and medical opinion along with the pictures taken as well as information provided to PW-4 by Mst. Tayyaba Bibi and her statement in chief directs infliction of injuries by Ms. Maheen Zafar. On the contrary, during the course of cross-examination Mst. Tayyaba Bibi has denied that she was beaten up by Ms. Maheen Zafar. Similarly, PW-5 and PW-6 in cross-examination had admitted the possibility of injuries being accidental. In cross-examination the defence has sought to put forward the case that Mst. Tayyaba Bibi had fallen from stairs, however, the pictures taken and exhibited in evidence seriously cast doubt to such version, hence, evidence in question is circumstantial which is always recorded as weak in nature. However, there are various pronouncements that conviction can also be based on circumstantial evidence if it consists a continuous chain without any missing link. Reliance is placed on "*SANGO and another Vs. The State*" (2004 P Cr. L J 1479) "*Shahid alias Shah Vs. The State*" (2002 MLD 1459) and "*Muhammad Qadeer Vs. The State*" (2007 YLR 625).

18. In view of the above facts and evidence, the case of the prosecution is based on medical as well as circumstantial evidence on the basis of which it cannot be said that the charges in question have been proved beyond reasonable doubt against accused.

19. Ms. Maheen Zafar has also been charged that she extended threats of dire consequences to Mst. Tayyaba Bibi, hence, committed an offence under Section 506(ii) P.P.C. The prosecution did not produce any evidence which goes on to show that such was the case and that Mst. Tayyaba Bibi was intimidated, therefore, the prosecution has failed to prove the referred charge.

20. Mst. Maheen Zafar and Raja Khurram Ali Khan have been charged for willfully assaulting, ill-treating, neglected, abandoned, harmed and injured minor Tayyaba Bibi, so as to commit an offence under Section 328-A P.P.C. Mst. Tayyaba Bibi in her statement in examination-in-chief did admit in cross-examination, that she had gone to the house of Maria Hayat and had sit with her late. PW-2, PW-3 and PW-4 all stated in their examination-in-chief that on 26.12.2016 Mst. Tayyaba Bibi had been left alone at the residence and was locked out till late in the evening. She had not been provided with any food, so, PW-2 gave her food. It was also stated by the witness that Tayyaba Bibi was shivering with cold and she tried to contact Raja Khurram Ali Khan, but was unable to reach him. The witness also stated that on 28.12.2016 she saw Tayyaba Bibi in an injured state. Likewise, Naila Khizar PW-3 affirmed the same facts. Likewise, Ms. Humaria Haroon, PW-4, also confirmed and stated that on 27.12.2016 they found Tayyaba Bibi in a injured state and that they had giving brufen to her. Likewise, PW-12, Guldaraz Khan stated that Tayyaba Bibi used to ask for meal, while he

was working as a cook in the adjacent house of Raja Khurram Ali Khan. He stated that lastly he saw the minor Tayyaba Bibi in an injured conditions and he gave her food, tea and medicine. Muhammad Azam, PW-13, who is the father of minor Tayyaba Bibi and compromised the matter during the course of proceedings which was rejected by this Court under the decision was confirmed by the august Apex Court stated that as per his information Mst. Tayyaba Bibi was living voluntarily at the residence of Raja Khurram Ali Khan, however, it is an admitted position that he had not seen her daughter for last many months and as per his statement he came to know about her through television news. The defence did not cross-examine PW-2 to PW-4 as to the state of affairs of 26.12.2016, hence, the statements of referred witnesses are un-rebutted. Even, the statements of PW-11, Guldaraz Khan, and minor Tayyaba Bibi show that from time to time she used to demand meals from the neighbors.

21. Even, if the defence version is admitted and Mst. Tayyaba Bibi received injuries from the fall, the fact remains that she was not given proper medical treatment for the same. During her cross-examination Mst. Tayyaba Bibi did suggest that she was taken to the doctor and likewise in Ex.D/A she also affirmed but the medical opinion did not suggest the referred fact; even otherwise offence did not produce anything to substantiate that she was taken to the doctor or had been given any medical treatment for the injuries/burns received by her. Raja Khurram Ali Khan filed report categorically stating that Tayyaba was working in his house as maid and hence was under the care of both the accused.

22. Under Section 328-A P.P.C., whoever willfully assaults, ill-treats, neglects, abandons or does an act of omission or commission, that results in or has, potential to harm or injure the child by causing physical or psychological injury to him shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend upto three years, or with fine which shall not be less than twenty five thousand rupees and may extend upto fifty thousand rupees, or with both.

23. The evidence mentioned above as tendered by the parties clearly shows that the accused persons neglected and/ or willfully harmed and abandoned Mst. Tayyaba Bibi which resulted in harm to her or had the potential of causing harm hence have committed the offence as charged and the prosecution has proved the same beyond shadow of doubt. Both the accused have admitted that Tayyaba was working as maid at their house thus was in their care. Raja Khurram Ali Khan being the head of the family and Mst. Maheen Zafar being responsible for the daily domestic affairs were jointly responsible for looking after and taking care of the child i.e. Tayyaba Bibi. The version of the accused that the media hype was created about the incident and hence the FIR, is inconsequential in as much as the media hype has no bearing on the facts leading to the commission of the offence.

24. Raja Khurram Ali Khan has been charged with an offence for caused disappearance of minor Tayyaba Bibi so as to commit an offence under Section 201 P.P.C. No substantial evidence was tendered by the prosecution to substantiate the referred charge and allegation, hence, the same has not been duly proved.

25. In view of above the prosecution has been able to prove the charge under section 328-A PPC, hence the accused persons Mst. Maheen Zafar and Raja Khurram Ali Khan both are jointly responsible for it and are accordingly convicted. They are acquitted of other charges. Raja Khurram Ali Khan and Mst. Maheen Zafar are punished with imprisonment of One year simple imprisonment with fine of Rupees 50,000/- each and in default to serve one month imprisonment. The accused shall have the benefit of Section 382-B Cr.P.C. The accused are on bail hence shall be arrested immediately to serve the sentence.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 17/04/2018.

JUDGE

Approved For Reporting.

M. Zaheer Janjua

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