STATE and others---Appellants
Versus

ABDUL KHALIQ and others---Respondents

P L D 2011 Supreme Court 554

MIAN SAQIB NISAR, J.---In all, these are ten matters arising out of the impugned judgment of the Lahore High Court dated 3-3-2005; eight are the appeals (four each) against the acquittal of the accused having been initiated by the complainant and the State; one appeal has been filed by the convict and the last is the Suo Moto action espoused by this Court.

These matters have genesis in a criminal case, which has emanated from an F.I.R. (Exh.P1) dated. 30-6-2002, got registered by Mst. Mukhtar Mai, the complainant, with the Police Station Jatoi, District Muzzafargarh initially under section 10(4) of Offence of Zina (Enforcement of Hadood) Ordinance, 1979 (the Ordinance) read with section 109, P.P.C., but thereafter offences under section 19 of the Ordinance, sections 354-A, 217, 119 and 342, P.P.C. and section 7 of Anti-Terrorism Act, 1997 were also added thereto.

It was reported by the complainant that on 22-6-2002, due to suspicion that her brother, Abdul Shakoor, has illicit relations with Mst. Naseem alias Salma, the girl, of Mastoi Baradari (accused party); the boy was confined by them in their house; in order to resolve the issue an `Akhat' `Panchayat' was held the same day, in which Faiz Mastoi, Ramzan Pachar and Ghulam Fareed (all accused) acted as the Arbitrators (Salis) for the Mastois, while Maulvi Abdul Razzak (P.W.11) and Manzoor Hussain (not produced) were the arbitrators (Salis) for the complainant, besides Altaf Hussain (P.W.12) and Ghulam Nabi (not produced) were also present. It was decided by the `Panchayat' that by exchange marriages of the complainant with Abdul Khaliq, the accused (brother of Salma) and Abdul Shakoor with Salma the dispute be settled, but Ramzan Pachar and Ghulam Fareed did not agree to this arrangement, therefore, the arbitrators for the complainant left the Panchayat. However, subsequently on the promise of the accused party, that if Mst. Mukhtar Mai came to the
`Panchayat' and sought forgiveness for her brother, he shall be pardoned according to Baloch customs and the issue stand resolved, Mst. Mukhtar Mai went to the `Panchayat', `Akhat' of the Mastois, which was outside the house of Abdul Khaliq (accused), but instead of upholding their word as promised, he caught hold of her when Faiz Mastoi said that Fareed (the father of complainant) be forgiven, but Abdul Khaliq, his brother Allah Ditta, Fayyaz, Ghulam Fareed son of Mahmood, all dragged her into the room of Khaliq's house, where zina-bil-jabbar was committed with her by all of them. After one hour she was turned out of the room in a nude condition, with a torn shirt on her body, Fayyaz threw her shalwar and duppta towards her. It is specifically mentioned that due to fear/threats of the accused party and moral onslaught and retribution of the public, the case could not be initiated earlier. Mst. Mukhtar Mai at the time of the initiation of complaint was accompanied by her father Ghulam Fareed; Maulvi Abdul Razzak (P.W.11), Altaf Hussain (P.W.12), Sabir Hussain (P.W.13), her maternal uncle, and one Ghulam Nabi (not produced), all of them were said to have either seen the occurrence or

participated in the proceeding, or were present at the time of `Panchayat'.

Before proceeding further, it may be pertinent to signify, that being a blatant, heinous and untoward incident it attracted the media, both electronic and the print, and on account of an atrocious, pernicious and shameful act, it generated both grief and rage in the public at large. The higher-ups of the Government including some Ministers at the Federal and Provincial levels condemned the deplorable act; they, as well as, the Governor of Punjab visited the complainant to pacify her with promises and , avowing that justice shall be provided to her forthwith. The Governor also announced some fiscal compensation for the aggrieved victim. The incident also drew the attention of the Apex Court and accordingly, a suo moto action was initiated, in which the progress of the investigation was monitored and directions were given for the submission of challan within a specific period. The Anti-Terrorism Court was also directed to decide the matter within a time frame, by even proceeding on day-to-day basis.

On account of the investigation, in all 14 persons were indicted in the matter; they were arrested and challaned by the police and charged by the Anti-Terrorism Court (the Court) with the offences under sections '19(4), 11 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 read with section 149, P.P.C. and under section 354-A read with section 109, P.P.C. and under sections 10 and 7(c) of the Anti-Terrorism Act, 1997. During the course of trial, the prosecution examined 17 = witnesses out of which the rather

important ones are: Maulvi Abdul Razzak (P.W.11) who stated to be one of the arbitrators for the complainant party, but left the Panchayat when Ramzan and Fareed declined the proposal of exchange marriages; Altaf Hussain (P.W.12) the brother of P.W.11, who states to be present during the `Panchayat' confabulations and is also the witness of the alleged occurrence; Sabir Hussain (P.W.13) who has also .deposed in similar vein; Abdul Shakoor (P.W.10), in whose context the issue triggered off; he denied of having any illicit relations with Salma, rather claimed that, in fact, he was sodomized by Manzoor, Jamil and Punno (the later is the brother of Salma). It is alleged that the said culprits after fulfilling their lust asked him not to disclose the incident to anyone, but on his refusal, he was locked up with Salma and with an object to cover up their misdeed, a false allegory of an illicit relationship was concocted. P.W.2, Dr.Shahida Safdar examined Mst. Mukhtar Mai and proved a positive report of sexual intercourse with her as Exh.P-E. P. W.7 is the Magistrate, who recorded the statements of the prosecution witnesses under section 164, Cr.P.C. and proved those as, Ghulam Fareed (Exh.P-L), Ghulam Nabi (Exh.P-M), Abdul Razzak (Exh.P-N) and Sabir Hussain (Exh.P-O). Six persons including the councillors of the area were examined as the court witnesses; while the Defence also produced six witnesses to support its version.

On the conclusion of the trial vide judgment dated 31-8-2002 eight out of the fourteen accused (originally) namely Aslam, Allah Ditta (son of Jan Muhammad), Khalil Ahmed, Ghulam Hussain, Hazoor Bakhsh, Rasool Bakhsh, Qasim and Nazar Hussain were acquitted by the Court, while all others were found guilty of the following offences and sentenced as under:

"Taking into consideration all the aforesaid facts and the circumstances of the case, I find that Abdul Khaliq, Allah Ditta sons of Imam Bakhsh, Muhammad Fiaz, Ghulam Farid,

Ramzan Pachar, Faiz Muhammad alias Faiza (accused of Column No.3 of the challan) along with others, in prosecution of their common design, convened Panchayat, mostly of their Mastoi Baluch tribe of the area, on 22-6-2002 in Mauza Meerwala Police Station Jatoi and coerced, intimidated, overawed the complainant party, and the community;, created a sense of fear and insecurity in society; and thereby committed the offences under sections 11, 10(4) of Ordinance VII of 1979 read with section 149/109, P.P.C. and 21-I ATA 1997, and section 6(1)(a) and (b) and subsection 2(b) ATA 1997, punishable under section 7(c) read with section 21-I ATA 1997 and sections 149/109, P.P.C.; and are, therefore, convicted under all the aforesaid provisions of the law.

Actions of the aforesaid convicts were cruel which overawed and harassed the society at large and therefore, they are not entitled to any leniency. Under section 7(c) read with sections 21-I ATA, 1997 and 149/109, P.P.C. each of the six accused persons, namely Abdul Khaliq, Allah Ditta, Muhammad Fiaz, Ghulam Farid,' Ramzan Pachar and Faiz Muhammad alias Faiza accused are sentenced to imprisonment for life, plus fine Rs.20,000, and in default to further undergo six months' R.I.

Under section 11 Ordinance VII of 1979 read with 149, P.P.C., each of the four accused namely Abdul Khaliq, Allah Ditta, Ghulam Farid and Muhammad Fiaz

convicts are sentenced to undergo imprisonment for life, plus thirty stripes each and fine Rs.20,000 each, and in default to further undergo six months' R.I each under section 10(4) Ordinance VII 1979 (liable to Taazir) read with 149, P.P.C., each one of them is sentenced to death, subject to confirmation by the Hon'ble High Court.

Under section 11 Ordinance VII 1979 read with section 21-I and section 109/149 PPC, Ramzan Pachar and Faiz Muhammad alias Faiza (convicts) are sentenced to undergo imprisonment for life, plus thirty stripes, and fine Rs.20,000 and in default to further undergo six months' R.I. Under section 10(4) Ordinance VII 1979 read with section 21-I ATA 1997 and section 109/149, P.P.C., Muhammad Ramzan Pachar and Faiz Muhammad alias Faiza .(both accused) are sentenced to death, (subject to confirmation by the Hon'ble Lahore High Court.

However, all the accused were acquitted of the charge under section 354-A, P.P.C.

Aggrieved, the complainant/State filed appeals against the acquittals, while the judgment was, accordingly, challenged by the convicts, before the Lahore High Court. On hearing, the acquittal appeals were dismissed and by accepting the appeals of all others in toto, they were exonerated from all the charges, except Abdul Khaliq, whose appeal was partly allowed, in that his conviction was converted from section 10(4) of the Ordinance to section 10(3) thereof and his capital punishment was reduced to imprisonment for life, while the fine imposed by the Trial Court was maintained. The benefit of section 382-B, Cr.P.C. was also extended to him. It seems significant to mention here, that while rendering its decision, the following (main) reasons/factors have prevailed with the Court: that the version of the prosecution is not proved beyond doubt, as its evidence is not confidence inspiring, thus, the benefit must go to the accused; delay in the lodging of the F.I.R. has not been sufficiently and plausibly explained, the complainant party was reluctant to initiate the case, but influence in this behalf was exerted by Maulvi Abdul

Razzak (P.W.11), who is the mastermind thereof; the F.I.R. was registered after due consultations and deliberations; sole testimony of the prosecutrix to prove the occurrence, no one 'else had seen it and hence is insufficient to establish the guilt of the accused; the DNA and SEMEN tests were not conducted to prove the gang rape; there are contradictions and inconsistencies in the statements of the witnesses inter se and also with their previous statements; there are improvements in their statements made before the Court; the occurrence has not taken place in the manner as is stated by the P.Ws.; there are no significant marks or injuries on the body of the prosecutrix, which is very unusual in such kind of a case; no duration of the heeled marks on the body of the victim has been given by P. W.2. thus, it is not possible to ascertain, if those were sustained during the occurrence; adverse inferences have been drawn for the non-production of Ghulam Nabi and Ghulam Fareed in the witness box as they, in their statements under section 164, Cr.P.C. recorded by the Magistrate, have not fully supported the version of the prosecution, the former's stance that on the given date/day he was not in the village and thus not a witness to the incident and/or modus operandi of the offence. The learned High Court has also considered the prosecution evidence regarding each of the accused, the individual role imputed to them and has found that the prosecution has failed to prove

its case to their extent, except Abdul Khaliq for which reasons have been duly assigned in the impugned judgment.

This is how, the noted appeals have reached this Court, besides vide order dated 14-3-2005 this Court took suo moto cognizance of the matter, because soon after the impugned judgment, a learned Single Member of the Federal Shariat Court, while exercising the suo moto jurisdiction suspended the impugned judgment, thus it was inevitable for the Court to interfere in order to avoid a ludicrous situation from arising and to prevent a conflict between two constitutional institutions of the State.

Anyhow, the leave, in these matters, was granted on 28-6-2005 and the important points in this behalf are: the jurisdiction of the Anti-Terrorism Court to try the case; effect of delay in lodging the F.I.R.; whether the sole testimony of the victim in rape case is sufficient for the purpose of conviction; whether the marks of injuries on the body of the victim are superfluous to secure conviction; whether the High Court has passed the judgment on surmises and conjectures in violation of/or ignoring the mandate of law; with reference to the above, some case law has also been cited in the LGO. Simultaneously, this Court was also pleased to suspend the impugned judgment and non-bailable warrants of arrest were issued of all the accused who were acquitted, even those by the trial Court; since then they are all behind the bars (Emphasis supplied).

Ch. Aitzaz Ahsan, learned Senior Advocate Supreme Court, has opened arguments in these cases and has divided his submissions into two main heads: The Law and The Evidence. Under the first, he has dilated upon the point of jurisdiction and it is. submitted that rape is a grievous bodily harm and injury to a person, thus the offence is duly covered by section 6(1)(a & b) read with sections 6(2)(b) and 7(c) of the Anti-Terrorism Act, 1997 (the Act). To elucidate the above, the learned counsel has cited the dictums reported as Bhupinder Sharma v. Himachal Pradesh (AIR 2003 SC 4684), Hyam v. DPP, HL [1974] 2 All ER 73, R v. Miller [1954] 2 All ER 529 and R v. Robinson [1993] 1 WLR 168. He has also relied upon the judgment reported" as Shakil and 5 others v. The State (PLD 2010 SC

47) to argue, that in a gang rape case the conviction awarded by the Anti-Terrorism Court was upheld by this Court, primarily on the reasoning that no prejudice was caused to either side and none (in that case) had objected to the jurisdiction at any stage of the proceeding. The case, according to the learned counsel, is apt for settling the jurisdictional question and should be followed in this matter. In order to show, that the incident (gang rape) created terror in the area, thus attracting the provision of the Act, on account of which the residents thereof even thought of migration, he has referred to the statements of the court witnesses.

Malik Muhammad Salem, the learned counsel for the defence has not joined issue with Ch. Aitzaz Ahsan, learned Senior Advocate Supreme Court on jurisdiction, rather has supported him by adding certain facts; that vide order dated 24-7-2002, the trial Court before commencing the proceeding decided that it has the jurisdiction, none assailed it; the Supreme Court also, as mentioned above, in the first suo motu action required the challan to be submitted before the Anti-Terrorism Court, and set out a time frame for the decision of the case by that Court. Be that as it may, during the hearing of the case, learned Attorney General was personally summoned and was put to notice on the issue, but the

Deputy Attorney General who from time to time has been attending the proceeding(s), has not controverted the jurisdictional aspect. The State counsel has also not questioned it.

In view of the above, we find that the issue of jurisdiction in these matters has lost efficacy; it emerged on account of the specific situation (indicated above) which has ceased; no one at the relevant time raised any objection thereto; all the concerned are in agreement that the Anti-Terrorism Court had the jurisdiction; appeals before the learned High Court were, accordingly, filed by both the sides and decided without there being any such objection; more than eight years have elapsed since the incident took place and those who have been acquitted, obviously have acquired a right of defending their acquittal and the one who is convicted seeks his acquittal and the State and the complainant are pressing to set aside the acquittal(s) and are urging to maintain the conviction of Khaliq. It is not established if any prejudice has been caused to the parties in any manner whatsoever and therefore now, if at this stage any interference on the basis of jurisdiction is made, justice, rather than being promoted shall stand defeated, and serious prejudice shall be caused to either side. Therefore, keeping in view the peculiar circumstances of the case and by following the ratio of the judgment reported as Shakil and 5 others (supra), we would not like to hold against the jurisdiction of the Anti-Terrorism Court and leave it an open question to be decided in some appropriate case, in which it is a live issue.

Adverting to the other submissions of Ch. Aitzaz Ahsan, Senior Advocate Supreme Court/the learned counsel, under the first head (The Law), he has argued that the impugned judgment is against the law and it cannot sustain; in this respect, he urged that previous statements of the P.Ws. have been invalidly and illegally used by the learned High Court for impeaching their credibility, in particular, when the P.Ws. had denied the making of certain statements, in the fact finding inquiry, conducted by the SP Crimes Range as per orders of the Government. Thus, without proving the statements in accordance with law, those could not be used for the purpose of confronting P.Ws. in their cross-examination. Besides, those were allegedly signed by the P.Ws., this is prohibited by section 162, Cr.P.0 and therefore these statements were illegal and could not be used in

terms of Article 140 of the Qanun-e-Shahadat Order, 1984 (QSO, 1984). In this context, the learned counsel has also submitted that section 161, Cr.P.C. and Article 140 of the QSO, 1984 are governed by section 162, Cr.P.0 which prohibits the signing of these statements. Likewise, serious criticism has been made that the learned High Court has used and relied upon the statements under section 164, Cr.P.C. of those persons, who were not produced by the prosecution in evidence; in this respect, it is stated that such statements are not substantive piece of evidence and have a limited use of confronting a PW, who appears in the Court and for no other purpose whatsoever, reliance is placed on 1969 PCr.LJ 1580; Yaru alias Yar Muhammad v. The State, 1995 MLD 515; Nasrullah v. The State 1985 PCr.LJ 428; Amjad Ali alias Kaloo v. The State 1984 SCMR 979; Nadir Khan and another v. The State 1974 PCr.LJ 224; Salehon v. The State AIR (33) 1946 PC 38; Brij Bhushan Singh v. Emperor; it is stated that holding the sole testimony of the prosecutrix insufficient to award conviction is against the law laid down in judgments reported as PLD 1991 SC 412; Mst. Nasreen v. Fayyaz Khan and another PLD 2003 SC 863; Muhammad Abbas v. The State 2002 SCMR 303; Rana Shahbaz Ahmad v. The State 1992 PCr.LJ 1944; Muhammad Amir Khan v. The State 2001 PCr.LJ 503; Saleem Khan

and others v. The State and others 1993 PCr.LJ 1839; Muhammad Boota v. The State 1993 PCr.LJ 1839 (FSC); Muhammad Boota v. The State. He has further argued that the victim in rape cases does not require corroboration and has drawn support from PLD 1989 SC 742; Muhammad Akram v. The State 2002 SCMR 1009; Shahzad alias Shaddu and others v. The State 1999 SCMR 1102 Mehbood Ahmad v. The State 1975 SCMR 69: Haji Ahmad v. The State, PLD 1984 SC 218 (SAB); Ghulam Sarwar v. The State. Reference in the above context is also made to the cases from the Indian jurisdiction: (1995) 5 SCC 518; Karnel Singh v. M.P, AIR 1996 SC 1393; State of Punjab v. Gurmit Singh AIR 2003 SC 4684; Bhupinder Sharma v. Himachel Pardesh AIR 1988 SC 753; Bharwada Bhogiawal v. Gujerat; the view of the Court that DNA etc. tests were not conducted due to any weakness of the prosecution case and the omission/lapse should effect the veracity of the prosecutrix is conjectural and is against the law declared by the superior Courts, even otherwise due to the lapse on part of the investigator, the prosecutrix should not suffer, besides, such omission is not fatal to the case of the prosecution, see 2002 SCMR 1009: Shahzad v. The State; he submits along similar lines vis-a-vis the view of the Court qua the absence of marks of violence or the injuries on the body of the victim; learned counsel has referred to cases 1999 SCMR 1102: Mehboob Ahmed v. The State 1975 SCMR 69; Haji Ahmed v. The State PLD 1984 SC 218 (SAB); Ghulam Sarwar v. The State; the learned counsel has further pointed out that in this case while making statements under section 342, Cr.P.C., the accused have not propounded their defence, rather in this behalf have solely relied upon their cross-examination; however, in the cross-examination vital suggestions have been given through which the case of the prosecution in material aspect has been admitted. In this context, Ch. Aitzaz Ahsan, Senior Advocate Supreme Court has made reference to certain portions of the cross-examination, such as about sodomy with Abdul Shakoor, he mentioned that P.W.14. stated "Incorrect to suggest that Abdul Khaliq accused stated that as his brother Punno had been accused of committing Sodomy with Abdul Shakoor, therefore, he could not give Salma in marriage to Abdul Shakoor" Like-wise P. W. 11 while replying a suggestion, "it is false to suggest that in BADLA of Mst. Mukhtar Mai, Salina was proposed to be taken and for sodomy another woman plus land was demanded by the complainant" Again P.W.14 responded "incorrect to suggest that up to 26-6-2002, Abdul Razzaq PW and my father tried to compound the matter in terms of

their demands or for the same reasons the sodomy case was also not got registered". On his contention that the incident of Zina with the prosecutrix and her nudity incident is also admitted, reference has been made by the learned counsel to the suggestions "I did not state to the Inspector/SPL,RC on their 'query "whether after Zina-bil jabr the accused persons turned me out in quite naked condition"? replied "no I had worn shirt and my private part was covered with duppta as the Azarband of my shalwar had been broken; shalwar was in my hand" "incorrect that she was handed over the shalwar inside the room after the rape", Further in response to a suggestion P. W.13 stated "incorrect that as we went there, we saw Mst. Mukhtar Mai holding Shaiwar in her hand". Moreover in the cross-examination of Mst. Mukhtar Mai, the suggestions culminate into the following replies "I recorded in the complaint that I had come out of the room in nude condition" ....."I stated to the police that after the accused person committed Zina, I came out in nude condition and called out my father Ghulam Fareed. I had not put on the shalwar as it was without string, nor I covered the same on my body, and my father had arrived just then". According to the learned counsel, this is a confession of the fact that she did come out of the room without shalwar on her body. The suggestion is only that the accused,

(who had thus admittedly taken the shalwar off her body in the first instance) were not responsible for her venturing out naked. But this is an admission that she did come out naked. It is also pointed out that responding to a suggestion in relation to Abdul Khaliq, P.W.14 replied "incorrect to suggest that he performed conjugal duties as my husband in the said night", furthermore; "incorrect. to suggest that upto 28-6-2002, Maulvi Abdul Razzak P.W. and my father tried to compound the matter in terms of their demands' or for the same reason the sodomy case was, also not got registered". It is explained that the suggestions, in the cross-examination have the effect of a defence plea, is an implied admission, an indirect admission and to support his point of view, reliance has been placed on the cases reported as 2010 SCMR 1009: Muhammad Shah v. The State, 2000 YLR 1406; Khalid Pervaiz v. The State 2003 CLD 80(sic.); Mian Sajidur Rehman v. Messrs Granulars (Private) Limited through Manager Commercial Lahore, 2005 PCr.LJ 729; Ibrar Hussain v. The State 2004 MLD 1062: Muhammad Inayat alias Inayatoo v. The State 2006 SCMR 577; Muhammad Tashfeen and others v. The State.

Under the caption of `THE EVIDENCE' on the factual premise, it has been urged by the learned counsel that glaring and patent errors of misreading and non-reading of evidence have been committed by the learned High Court; erroneous conclusions of facts and law have 'been drawn; the findings of facts are based on conjectures and surmises; the view that the prosecutrix has not been corroborated, is incorrect, rather the P.Ws. and the medical evidence has duly supported her version; the witnesses of the prosecution .were credible and trustworthy, but to hold them otherwise is a serious factual error, which is apparently against the record; in this regard, special reference has been made that even according to DW-1, the prosecutrix has declined the cash compensation given to her by the Governor, rather has used that money for an educational institution established by her after the incident and it .is a publicly known fact that now hundreds of girls of humble background of a backward area are receiving education due to the noble efforts of the lady; moreover her credibility is also established from the fact' that she has not implicated the sodomizers of Shakoor, who in case of a false claim were the obvious targets; the convening of the Panchayat with the `common intention' to take BADLA and such a decision being made therein was duly proved on the record; the conclusion that the

victim was not dragged, as there are no marks or injuries on her body, is a misconception, as it is not necessary that, if such marks/injuries should Always occur; besides; dragging has many shades which may not even sustain any injury at all; the learned High Court has gravely and seriously erred in drawing an adverse conclusion against the prosecution for the non-examination of Ghulam Nabi and Ghulam Fareed. It is also argued that the view set out by the Court that there are discrepancies and inconsistencies in the statements of the prosecution witnesses about the nude condition of the prosecutrix, again are the result of mis-reading and non-reading because the statements in this behalf are consistent; the Court has erred to hold that P.W.11, Maulvi Abdul Razzak is the mastermind and has influenced the complainant party for the registration of the case. The gentleman had no ulterior motives to falsely implicate the accused, rather as a conscientious person performed his moral duty to help the oppressed and aggrieved persons. It is also submitted that sufficient explanation was provided by the prosecution for the delay in lodging the F.I.R. and even otherwise on account of social, religious and cultural restraints, people are hesitant to report such incidents and some time is taken to glean and gather the courage of going public. In this connection, he has

referred to the judgments reported as 1999 SCMR 1102; Mehboob Ahmed v. The State 1993 MLD 2361; Maqsood Ahmad alias Mooda v. The State 1999 PCr.LJ 699 (FSC); Muhammad' Umar v. The State 2001 PCr.LJ 503; Saleem Khan v. The State PLD 2003 SC 863; Muhammad Abbas and others v. The State PLD 1991 SC 412; Mst. Nasreen v. Fayyaz Khan and another. Moreover, in this case, the complainant side was overawed/threatened and was in the state of both shock and fear, thus it could not approach the police immediately. As regards the view of the learned High Court that Mst. Mukhtar Mai was not abducted because of the short distance of a few paces, it is argued that distance is absolutely inconsequential for such an act/offence and reference is made to the case reported as Nadeem Iqbal v. The State (1994 MLD 1405). On the question, as to what extent the acquittal judgment can be interfered with by this Court, it is argued that such is possible, where there is a misapplication of law Barkat Ali v. Shaukat Ali (2004 SCMR 249); misreading and non-appraisal of evidence or is speculative, artificial and arbitrary Amal Shirin v. State (PLD 2004 SC 371); non-reading and non-appraisal of evidence Barkat Ali v. Shaukat Ali (2004 SCMR 249); Abdul Mateen v. Sahib Khan (PLD 2006 SC 538); the findings of acquittal recorded by the trial Court are not supported by the evidence on record and in fact are based on gross misreading and misconstruction of evidence Amal Shirin v. State' (PLD 2004 SC 371); the decision turned upon inadmissible evidence; 2006 SCMR 1550: Sana-ur-Rehman v. Nayyar; whether there is any piece of evidence which has not been considered or the evidence brought has been discarded for reasons which are not recognized under the law Barkat Ali v. Shaukat Ali (2004 SCMR 249); there is an error apparent on the face of record Abdul Mateen v. Sahib Khan (PLD 2006 SC 538); and to reappraise the evidence in its true perspective Gul Sabdar v. Malikuddin (2007 SCMR 714). He, has also made reference to the case of Muhammad Ashraf v. Tahir (2005 SCMR 383) in which, according to him, the Apex Court comprehensively reappraised the evidence and while taking into account the ocular testimonies, the medical evidence and other factors and also considering; the explanation of the delay in lodging of F.I.R., the acquittal judgment was reversed. It is submitted that the instant case is squarely covered by this pronouncement.

Towards the conclusion, Mr. Aitzaz Ahsan, Senior Advocate Supreme Court has argued

that the prosecution has proved its case against the accused beyond reasonable doubt and upto the hilt and specific roles performed by each of the accused which are duly established on the record through credible evidence; it is a clear and square case of `common intention'. Anyhow, before leaving the rostrum, the learned counsel in very clear, unequivocal and unambiguous words stated that while accepting the appeals, instead of resort to the provisions of section 10(4) of the Act, section 10(3) be invoked and all the accused must be sentenced thereunder. When specifically asked by the court for Abdul Khaliq, it is stated that he is not pressing for the enhancement of his sentence to death, but seeking to maintain the same. He states that though it is a gang rape case, but life imprisonments are permissible and reliance in this regard has been placed upon Shakil and 5 others v. The State (PLD 2010 SC 47). Malik Muhammad Saleem, Advocate appearing for all the acquitted accused and also for the convict, Abdul Khaliq (appellant in Criminal Appeal No.171 of 2005), has forcefully submitted that the High Court was justified in relying upon the statements of the prosecution witnesses recorded in the fact finding enquiry by the S.P Range Crimes, as those for all intents and purposes are the previous statements of such witnesses and, therefore, could validly be used for

confronting them in their cross-examinations in terms of Article 140 of QSO, 1984. It is further argued that such statements were also relevant under Article 153(3) for impeaching the credibility of the prosecution witnesses. He has submitted that these are not the statements under section 161, Cr.P.C. to be read subject to section 162, Cr.P.C. and, 'therefore, for the reason that these have been signed by the witnesses, should not be a bar for using them independently for the object of confrontation and for impeaching the credibility as aforesaid. Learned counsel for the respondents/accused has vehemently defended the judgment of the trial court regarding the acquittal of the eight accused, which decision has been affirmed by the High Court. While supporting the impugned judgment of the High Court regarding acquittal of the accused, he has argued that the conclusions of facts drawn by the Court are based upon proper reading and appraisal of the evidence and it is not a case of surmises and conjectures; the contradictions in the testimonies pointed out by the High Court have been reiterated by the learned counsel to assert that on account of such weaknesses in the ocular deposition of the P.Ws., their evidence/testimonies cannot be believed. He however has argued that on the basis of such quality of evidence produced and the conclusions drawn by the High Court, the case of Abdul Khaliq accused was at par with the others and thus he too was/is entitled to the acquittal. The learned counsel has forcefully argued that the parameters and the rules for interference in acquittal decisions are altogether different from those pertaining to appeals against conviction. In this respect, the learned counsel has relied upon Syed Saeed Muhammad Shah and another v. The State (1993 SCMR 550) and Ghulam Sikandar and another N. Mamaraz Khan and others (PLD 1985 SC 11).

We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against ' acquittal is not the same, as

against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir

Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.

Anyhow, before proceeding further with the matter, it may be observed with emphasis, that violating the sanctity and chastity of a woman is a sordid, despicable, squalid act, which is considered abhorrent in any civilized society; any language falls short of vocabulary to condemn such heinous act and cases of this taxonomy must be strictly construed and dealt with. However, at the same time under criminal jurisprudence for the safe administration of criminal justice, the courts are required to follow certain settled principles, such as the innocence of the accused must be presumed, till he is proved to be guilty; sifting "the grain out of the chaff"; the defence may take a number of pleas and even if all are' shown to be false, yet it is the duty of the prosecution to prove its case to the hilt; "better that ten guilty persons escape than that one innocent suffer" (William Black Stone English Jurist). In this context it may be mentioned that the above principle is engraved and embedded in t the American Constitution and Criminal Jurisprudence as has been put forth by Michael G. Trachtman in his Book The Supremes' Greatest Hits in the following words:--

"Our Founding Fathers were mindful of, the penchant of monarchs to charge persons with, false crimes as a means of political oppression and social control. Consequently, they built copious protections for those accused of criminal offences into the foundations of the Constitution. It was acknowledged that giving all benefits of the doubt to the accused would result in some guilty persons being set free, and yet they freely accepted this necessary evil as a price of freedom.

The story is told of a Chinese law professor who was advised of our, belief that it was better that a thousand guilty men go free than one innocent man be executed.

The Chinese professor thought for a bit and asked, "Better for whom?"

The Founding Fathers' answer to that question was this: better for all, because as history has proven, if anyone can be unlawfully jailed, everyone can be unlawfully jailed".

These are certain salutary principles of the criminal. justice system which should be adhered to by the Courts, in letter and spirit and there is no exemption to these rules, even in gang rape cases for otherwise, due to departure therefrom, the innocent person may suffer. However, at the same time the Courts should keep in view that in such a class of cases, usually independent ocular evidence is not available, therefore due weight should be attributed to the statement of the victim buttressed by medical evidence, and. strong attending circumstances, shall suffice to warrant the conviction.

Having referred to certain principles, we would now proceed to consider the merits of the case; and following the sequence we would first deal with the (acquittal) appeals of the eight accused persons, who were acquitted by the trial court and the decision affirmed by the High Court as well. The important features in this behalf are their names do not appear in the F.I.R.; in the statements under sections 161 and 164 of Cr. P. C. of the P. Ws. (except P.W.14) and even in the statements of the F prosecution witnesses in the court (except P.W.14.); no particular role has been assigned to them in the commission of the alleged offence, except their presence only in the `Akath' `Panchayat' which has been alleged by the prosecutrix alone. The accused, Khalil Ahmad is the one, who got married to

Salma on 26th of June, 2002, where-after this case was ignited. In this group of the accused, Ghulam Hussain is the real father of Khalil Ahmad (bridegroom of Salma), Qasim, Rasool and Hazoor are his real paternal uncles, and Nazar Hussain is his maternal uncle. According to the trial Court, they are placed in column No. two of the challan. These facts have not been controverted by the complainant's learned counsel. It seems that they have been implicated in the matter, because the complainant side felt annoyed and unhappy on account of the above marriage, because till then there is a complete lull, but thereafter everything suddenly sparked visibly and there is an element of vengeance in their involvement, as all the close relatives of Khalil were booked in the case; it is not a mere incident or an honest implication. The decision of the trial Court as earlier stated has been affirmed by the appellate court, however, the learned counsel for the complainant by resorting to the rule of `common intention' under section 109, P.P.C. has urged that their mere presence in the `Akhat' `Panchayat' where the decision for `Badla'

was taken and the object was achieved, is good enough to haul them up in the case. We are not impressed, if the rule of `common intention'- in this case can be stretched to an extent that any person who was present at the time of the alleged occurrence should be involved in the matter and convicted. In her statement, P.W.14. states that there were about 200/250 persons present at the place of occurrence, can all of them be held responsible for the alleged incident on the basis of the said rule, when no specific role has been assigned or performed by them in furtherance of any alleged common intention; they are not implicated by any P.W. at any stage in any manner whatsoever. Moreover, there is absolutely no evidence that Mastois' `Akhat' as a whole decided to commit the offence, in fact there were two `Akhat', of the Baradaris at distinct places and it is not established by any P.W. that he was present in the mastoi gathering where such an alleged decision was taken and shared by all those present. Besides, the village has no electricity, no P.W. has given the time of occurrence, but even if gathered by joining the scattered pieces of evidence,' it was somewhere after midnight on 22-6-2002; the prosecutrix remained outside Khaliq's house for a short while, so how could she in the darkness identify these eight persons by name and parentage. By now, they have acquired a triple presumption of innocence, which cannot be dispelled by the complainant's counsel on any score whatsoever. In view of the foregoing, we do not find that a case has been made against them for interference, therefore, the appeals relating to these accused are liable to be dismissed. While parting with their subject, it may be relevant to point out that in order to constitute and apply `common intention' rule it is necessary to prove that the intention of each one of the accused was known to the rest of them and accordingly shared, see PLD 2007 SC 93; Shaukat Ali v. The State; however, this is not established from the evidence of the prosecution. Therefore, the said rule for the aforesaid accused or for any other (accused) in this case cannot be pressed into service.

Before attending to the various pleas raised by Ch. Aitzaz Ahsan, learned Senior Advocate Supreme Court, we take up the prosecution's case regarding the incident as put forth by it, and endeavour to ascertain its veracity on the rules of common sense, ordinary prudence and logic; the chronological order of the incident, for the above is quite important; and it may be mentioned that the incident dated 22-6-2002 erupted from some obscure happening in a sugar field 'regarding which there is no direct and accurate evidence on the record; any how:

Taking the prosecution version on its face value as correct, it does not appeal to reason that Salma's brother, who along with two others when committed sodomy with Shakoor, was so naive to understand that Shakoor would not disclose their misdeed to anyone, and on his unexpected refusal they took the extreme measure of confining him in his own house along with Salma; risking, endangering and putting at stake, the virtue, the sanctity and respect of a young unmarried sister. It is incomprehensible that his other family members including the mother, other brothers, sister would allow this nefarious design to be carried out and would all become a party with him to do away with sacredness of their innocent daughter. This is absolutely not done or conceivable in our rural society, where people are very sensitive about the chastity of their womenfolk, especially young and virgin.

If the intention of the Mastois was to take BADLA, on learning about the confinement of Shakoor, Mst. Mukhtar Mai etc. had gone to the house of Khaliq, without the company and protection of their menfolk, this was a good opportunity for Khaliq or for that matter any other male of the family to settle the score, but no harm was caused to anyone.

It is strange that when Maulvi Abdul Razzak (P.W.11.), Hazoor Bakhsh (brother of Shakoor) along with the police arrived and rescued the boy, he did not apprise them that he is not the culprit, rather is a victim of sodomy; the explanation of the prosecution that it was due to shame that he refrained from the disclosure, does not go with the earlier prosecution's version, when he had refused not to declare being sodomised and was thus confined with Salma. It is unbelievable that the boy for `shame' would not tell the true story, lose the chance of liberty and the sympathies when Maulvi Razzak along with the police had reached the spot for rescuing him, rather would go to the police station instead of securing his liberation and exoneration from the charge of rape. Strangely even in the police station did not reveal his sodomy to any one.

Maulvi Abdul Razzak was a very important person to the complainant party, as he was the first one to be approached by them for rescuing Shakoor; he was the Salis for Gujjars (complainant) and had been to and fro for resolving the matter, he approached Faiz Mastoi the so-called head of` the Mastoi Baradari, and persuaded him to agree to the proposal of exchange marriages, but on refusal of Ramzan Pachar and Ghulam Fareed Mastoi walked out of the `Akhat', .leaving behind the people who were depending upon him; trusted him the most at the mercy of the alleged mighty Mastois. It is improbable and unbelievable that he did not come to know of the subsequent event of ziadti (rape) with the complainant for five days and during this period himself made no effort to find out as to what happened to such a burning issue after his return. Rather he discovered about it on 28-6-2002 from some individual whose name he does not remember, and that person .too was not the witness of the incident himself, rather he learnt about the occurrence from the vagabonds of the Mastois in a hotel; that, "BADLA" had been taken. It is strange and incomprehensible that being an Imam of the mosque, a mature, responsible, educated person, he would act in a way, that without even verifying the occurrence from any authentic source; not from the immediate relations of the complainant side as to whether the story is true or otherwise or they would like for it to be announced in the mosque or not, he disclosed it in his juma speech, without even the permission of the complainant side. It is afterward that he approached Ghulam Fareed (complainant's father), who

according to him would not acknowledge the incident at all; the reason given for this, that it was due to fear of Mastois, might have been possible in respect of approaching the police, but what fear-" did Ghulam Fareed harbour in revealing the incident to a man, who he always. looked upon, who was a friend, a confidant and who already knew about the incident and to whom the disclosure would not have caused any embarrassment.

There is another very important fact that P.W.12. Altaf Hussain is the real brother of P. W.11. and they admittedly live in the same house. P.W.12. claims to be the witness of the `Akhat' proceedings and also the incident, so how come can it be possible that till 30-6-2006, neither P. W.11 inquired as to what happened after he had left nor P. W.11. disclosed to his brother, for in his statement, P.W.12 has categorically mentioned that the incident was not divulged by him to his brother even till 28-6-2002 or 30-6-2002. This is one of the most ridiculous aspect of the prosecution's case which knock the bottom out of its version.

Anyhow, having failed in his first attempt to know from Ghulam Fareed on 28-6-2002 about the incident of which earlier he was not eager or bothered to know, after leaving the Akhat; now he became proactive and in utter exuberance, he again approached Ghulam Fareed on 29-6-2002, but this time with the power of media, as the `pressmen' were with him; even then, it is not spelt out from the prosecution evidence that any disclosure was made to them. However, all of a sudden in the early hours of the day on 30-6-2002 the complainant, her father and Sabir (P. W.13) approached P.W. 11 and thereafter he takes charge of the matter; he calls all the witnesses and usher them along with for reporting the matter to the police. Be that as it may, it is the categorical stance of the prosecution that the "contact with the police for the first time with reference to the incident was made on 30-6-2002, but it is quite important to note that in his statement under section 164, Cr.P.C. Maulvi Abdul Razzak has mentioned that the report was made on 29-6-2002. This was confronted to him, but he failed to offer any explanation. This man is not the witness of the incident, rather very conveniently drops out of the scene on the pretext of the refusal of Watta Satta marriage, but leaving behind his brother P.W.12 -to make up his deficiency who throughout remains attached to the events to witness those, till the drop scene thereof, however as a silent spectator only. It may be pertinent to mention here that in the F.I.R. there is no mention of Shakoor's sodomy, surprisingly Maulvi. Abdul Razzak says that he was not aware of it till reporting the matter, but P.W.14 deposed that the disclosure was made to the Police Officer, who advised that the matter shall be dealt with separately. However, this incident too perhaps later in the day was reported through the courtesy of Razzak; the man, who also collected the clothes of the prosecutrix for handing those over to the police. His role throughout remains conspicuous and of a vanguard.

It is also noticeable that a serious incident, allegedly has occurred in the area, it was almost known to about 300 people who were present in both the `Akhats' and if their family members are added to whom they would ordinarily pass on or share the information, number of people who would be aware of the occurrence would be exponentially increased but neither the Lumberdar/Chowkidar of the, village nor councillor of the area or any respectable got to know of it on the same/following day, or soon thereafter; the police from its own sources, which (sources) it has and is a publicly known fact, never got any clue about the occurrence till 30-6-2002 thus for the incident

remained hidden from all and sundry.

Furthermore, in the context of Maulvi Abdul Razzak (P.W.11)'s statement and his conduct, he has deposed in unequivocal terms that Faiz Mastoi agreed to the exchange marriages "Watta Satta" but Ramzan and Ghulam Fareed rejected the proposal and thus he and Manzoor left the `Akhat'; Faiz Mastoi allegedly was the head of Mastoi people, now if he had agreed, the rejection of the proposal by Ramzan, who was not even a member of the accused family/tribe, rather was a friend of Hazoor Bakhsh, the brother of the complainant comes across as rather convoluted and a ridiculous excuse for the walkout. Likewise, Ghulam Fareed too is an unimportant character in the scenario, he is not a close F relative of Abdul Khaliq and even is not shown to have any influence in the Baradari, but obviously is the son-in-law of Karam Hussain, with whom Maulvi Abdul Razzak was in litigation and had to give up some land; Razzak for reasons best known to him in his cross-examination has tried to be evasive when asked about such relationship; but his brother P.W.12 has admitted that Ghulam Fareed was so related to Karam Hussain. Be that as it may, it is hard to believe and does not behove of a person who has been portrayed as a conscientious man; who was discharging his moral obligation by helping the oppressed against the Mastoi atrocity as argued throughout, on the alleged refusal of the two unconnected men would absquatulate and shed his above virtue at the hour of the need and would not yearn to learn from anyone of those present in the `Akhat' (about 300 people of both sides) that when he came back what happened thereafter. He is the Imam of the mosque and runs a madrasa, but surprisingly never came across someone who could reveal the deplorable incident of the beleaguered Mukhtar Mai; what an apathy on his part. To us, as put by Shakespeare, in Hamlet, the role of Maulvi Abdul Razzak (P.W.11) is "like Hamlet without the Prince" (Hamlet).

It transpires from the record that the alleged recovery of the pistol from Abdul Khaliq was on the last date of his remand. According to the statement of P. W.9. the I.O., throughout the remand period, Khaliq denied about the pistol, rather would not answer on the pretext that he does not remember, I.O. unequivocally stated that Khaliq was not tortured; it is indiscernible that why all of a sudden Khaliq would agree to get the pistol recovered from his house. Besides, in such a high profile case, no independent witness was associated with the recovery process; neither the Lumberdar nor Chowkidar of village or any other respectable such as Councillors etc. were taken along with. We are not persuaded that Hazoor Bakhsh and Ghulam Hussain recovery witnesses, who are close relatives of the complainant would pass the test of independent witness in this respect.

P. W.10. Shakoor stated, that when he reached home he discovered that Ziadati had been committed with his sister, it is then he disclosed the Ziadati was committed with him too. It is not plausible that neither at the police station, nor while coming along with P.W.13, he mentioned about his Ziadati. P. W.14 in her statement mentioned that P. W.10. revealed about his Ziadati in the presence of
P.W.13. at (Fareed's) house when he returned from the police station, but from the statement of P.W.13. it can be reasonably spelt out, that after leaving Shakoor (P. W.10) at the house of Fareed, he immediately left, for his house and did not stay

back. From the above, it can be concluded that the version of the prosecutrix in this respect is not correct.

According to the prosecution, Ramzan Pachar and Faiz Mastoi are responsible for the ziadati, it is unbelievable that after the incident, they still would accompany, Sabir Hussain (P.W.13.) for the release of Shakoor from the police station.

It is against the human conduct if a daughter is being raped a father and maternal uncles would stand dormant and would not strive to get help from the Baradari or the police; at that time even Khaliq had left for the alleged rape; if they were earlier scared of his pistol, but when he was gone, no other person is alleged 'to be carrying any weapon; this was the opportunity to call for the help, the house of Khaliq and Ghulam Fareed is not at much distance, even Hazoor Bakhsh, a young man, also never turned up to save the honour of his sister. There is no material evidence even of threats on the record, none of the Mastois after the alleged incident is stated to have ever came in contact with the complainant side to extend any threat which could preclude the complainant from taking recourse to a legal action. The submission that threats were extended on the scene of occurrence to our understanding were nothing more than rhetoric and would not be the reason for their silence.

Afore-noted are the foundational facts of the case which have a serious reflection on the version of the prosecution, which put together, make the prosecution version implausible, flimsy and un-canny as set forth, and if, on account of, inter alia, the above, the learned High Court has drawn certain conclusion such as, that the complainant side was reluctant to report the matter and was influenced by Maulvi Abdul Razzak or that he is the mastermind of the entire episode, or the prosecution evidence is not confidence inspiring and the delay in lodging the F.I.R. has not been plausibly explained. Such a conclusion, in our view, cannot be said to be unjustified.

P.W.12. Altaf Hussain, as stated earlier, is the real brother of Maulvi Abdul Razzak. His statement has not been given much credence by the learned High Court, inter alia, for the obvious reasons of the inconsistencies and improvements in his statement in the Court, when compared with his previous statements under section 161, Cr.P.C. (leaving apart those allegedly compared with the fact finding inquiry). Besides, it emanates from the prosecution evidence that the case has been orchestrated by Maulvi Abdul Razzak, and he being his brother, has to support the prosecution version. As far as P.W.13. is concerned, the learned High Court has duly and extensively analyzed his evidence; he is the maternal uncle of the prosecutrix; the court has drawn certain factual conclusions from the reading of his statement. Our own reading thereof does not take us to form a view different from that of the High- Court; this witness has tried to improve the version of the prosecution and also the statement admittedly made by him before the police under section 161, Cr.P.0 and that under section 164, Cr.P.C. and such contradictions have been duly highlighted in the cross-examination; particularly his statement before the Magistrate under section 164, t Cr.P.C. to the effect "I stated to the Magistrate that the decision of the panchayat re. Watta Satta was not agreed to by Faiz Mastoi, Ramzan Pachar and Ghulam Fareed accused (confronted with Ex-PO where not so recorded).

Moreover, P.W.13. stated that Faiz Mastoi at the time when the victim came before the panchayat commanded that ziadati be committed with her, but this is not so stated in his previous statements, recorded under sections 161 and 164, Cr.P.C; even this portion of his

statement, which is quite important, is against the contents of the F.I.R., where it is recorded that Ghulam Fareed (the complainant's father be forgiven). P. W.14. in her statement has also not supported P.W.13 in this context when she deposed that Faiz did assert for the pardon, but was it siasi dunyavi, besides he has stated that when Mst. Mukhtar Mai was pushed in the Panchayat she fell down on the ground and was dragged, this has not been so stated by P.W.12 or even the prosecutrix herself; there are some more contradictions in his previous statement under section 164, Cr.P.C. and that made before the Court, such as, who declined the "Watta Satta" proposal etc. In the previous statement, he stated the man was Khair Muhammad Mastoi, but in Court he named Faiz. As regards nudity incident, this P.W. has been confronted with his statement before the Magistrate and his replies are that "I stated to the Magistrate that Fayyaz accused had thrown the clothes to Mst. Mukhtar Mai as she came out of Kotha (confronted with PO where not so recorded) I stated to the Magistrate that clothes of Mst. Mukhtar Mai were torn as she came out. I stated to the Magistrate that shirt of Mukhtar Mai was torn from the front and sides (confronted with PO where not so recorded). I stated to the Magistrate that coming out Mukhtar Mai called out her father and the latter picked up those clothes and put on her (confronted with PO where not so recorded)", therefore, if on the basis of appreciation of his statement the learned High Court has disbelieved him, it cannot be said to be the result of any improper reading of the evidence.

As far as P.W. 14. , the prosecutrix herself is concerned, though she has stated about the facts pertaining to the holding of the `panchayat', but she being not a witness Jo these proceedings herself therefore, all such evidence is hearsay thus, inadmissible. However, when she came to the `Panchayat', it is categorically stated by her that, Faiz Mastoi stated that the girl be forgiven, but according to her it was "politically and wordily". It is only an impression of the witness which has not been shared by any other P.W.; besides, this is not her version in the F.I.R. or the statements given under sections 161 and 164, Cr.P.C. In this regard, the relevant confronted portions of he; statement are, "I stated to the Thanedar at Chowk Jhuggiwala that accused Faiz Mastoi proclaimed dunyavi (siasi) and to show to the people that girl has reached and be forgiven (confronted with Exh.Pl where not so recorded) H except that Ghulam Fareed be forgiven "Further I did not state to the Thanedar that Faiz Bakhsh Mastoi stated that Ghulam Fareed be forgiven (confronted with Exh-P1. where so recorded) "I stated to the Magistrate that Faiz Mastoi stated dunyavi (siasi) that Ghulam Fareed be forgiven" (confronted with Exh.PK where words dunyavi (siasi) are not recorded), this clearly depict improvements and inconsistencies. There is another vital contradiction in her statement made before the Magistrate from that in the Court "I did not said to the Magistrate when we went back home, Ghulam Nabi and Altaf were present there (confronted with Exh.PK/6-7 where so recorded). She in her statement further admitted Allah Ditta accused lived in the house along with Abdul Khaliq, his wife and children, mother, six sisters and five brothers; in the situation it is improbable if such a despicable act was to be committed by the accused there, particularly by the two real brothers together, that too in the presence of the entire family living in the same house. If therefore, factual conclusions on that account have been drawn by the learned High Court, those cannot be held to be against the evidence on

the record or perverse etc. About her nudity and clothes in reply to a question P.W.14. stated, "I do not remember to have stated to the Thanedar that as I came out of room my shirt was torn from the front and the sides and Fayyaz threw clothes at her (confronted

with Exh.P1 where not so recorded). I had come out of the room in nude condition I stated that Fayyaz had thrown duppta and shalwar at me (confronted with Exh.PK where not so recorded), but duppta and shalwar were in the hands of Fayyaz". About the nudity aspect and the clothes and how allegedly those were thrown, the learned High Court has pointed out the inconsistencies in the statements of the witnesses and has again arrived at a factual conclusion, which to our mind does not suffer from any factual or legal vice. The learned High Court on account of extensive reading of the evidence has given its findings, which are covered by the rules (about appeal against acquittal) laid down in the aforementioned judgments and we are not convinced, that if any error of reading of the evidence or any misapplication or violation of law has been committed by the Court while delivering the impugned judgment. Only for the reason that on account of the re-appraisal of evidence a different conclusion can be arrived at by the court of appeal, in an acquittal case is not permissible under the law and this standard should not be resorted to at all. 'In view of the foregoing, we do not find it to be a fit case for interference. Before parting with this aspect of the case, it may be mentioned that prior to their examination in the Court, all the witnesses were taken by the police to a house in Muzzafargarh, there they were together for some good time, on account of which the learned High Court has drawn the inference of tutoring the witnesses; however, the complainant's counsel states, it was for their safety; but we are not impressed because almost all the concerned were behind the bar, then from whom the witnesses had a threat, is a question mark.

Now attending to certain legal and factual pleas raised by the learned counsel for the complainant which according to him also have nexus to the law, such as, the inferences drawn against the prosecution regarding delay in lodging the F.I.R. is against the settled law, because in cases pertaining to the present nature it is understandable that the victim' or her family is/are hesitant to report the matter and in certain cases delay of even upto a month has not been considered fatal to the prosecution. In our view, the above is not an absolute or universal rule and the delay in each case has to be explained in a plausible manner and should be assessed by the Court on its own merits; in a case of an unmarried virgin victim of a young age, whose future may get stigmatized, if such a disclosure is made, if some time is taken by the family to ponder over the matter that situation cannot be. held at par with a grownup lady, who is a divorcee for the last many years; the element of delaying the matter to avoid Badnami may also be not relevant in this case because the incident according to the prosecution's own stance was known to a large number of people and there was no point in keeping it a secret from everyone. We are also not convinced if any threats were flung to the complainant side as has been alleged and to us it seems to be an abortive attempt to cover up the delay, otherwise there is no substantial cogent proof that after the incident, in between the 8 days anyone from the accused side threatened and/or harassed the complainant or her family; likewise the reason of fear is also self-assumed. It seems to be a case where, the delay is not on account of the facts mentioned by the prosecution, but for some other reasons, which may be those as has been propounded by the defence version i.e. the marriage of Salma and Khalil, because the marriage took place on 26-6-2002 soon thereafter the case was registered and it is not a mere co-incident, rather conspicuously strange, that whole family of Khalil has been

roped into the matter. It seems that on account of this marriage the possibility of (Watta Satta) marriage extinguished and the complainant felt betrayed and deceived. The view of the learned High Court that The F.I.R. was registered after due care and deliberation and

all the witnesses of the prosecution were called and then under the leadership of Maulvi Abdul Razzak they all 'approached the police, therefore, the delay in the registration of the case is a factor which tilts against the prosecution, suffers from no vice and looks to be a proper perception and conclusion drawn by the Court from the record of the case.

As far as the argument that the alleged previous statements of the witnesses before the fact finding were illegally allowed to be used by the defence, for the purpose of confronting the prosecution witnesses, we hold that such statements should have been proved by the defence as those were denied by the P.Ws., when put to them; the S.P. Range Crime, D.W.6 has categorically stated not to have recorded the statements and, therefore, it was expedient for the defence to have been proved by either examining the inspector or his reader, in whose handwriting these are alleged to be; though the defence made an application for summoning the inspector, but that was turned down by the trial Court, however no challenge was thrown to this order at the appropriate stage. In this context, it may be held that the prosecution while confronting a P.W. under Article 140 of QSO, 1984 with his previous statement may use any of his previous statement not necessarily those recorded under sections 161 and 164, Cr.P.C. without the proof of those at that time. If the witness admits of having made such statement there is no need for the proof, but if it is denied, then through the process of confronting him and recording the inconsistency may be completed by the court, whereas such material cannot be used against the prosecution, until and unless the confronted statement is subsequently proved by the defence, as any disputed instrument. However, in this case even excluding the confronted portion of the P.Ws. with such statements (fact finding inquiry), we are of the view that the factual conclusion arrived at by the learned High Court, does not suffer in any material aspect and can sustain independently.

About the argument that statements 'under section 161, Cr.P.C. should be strictly construed in consonance with section 162, Cr.P.C. and if those are signed by the witnesses, such is an incurable defect and an illegality which vitiates the statement and it shall not be that previous statement which is contemplated by the above provision; available for confrontation in terms of Article 140 of the Qanun-e-Shahadat Order, 1984 (QSO, 1984). To this extent, we agree with the learned counsel, however, we cannot subscribe to the submissions, that Article 140 of the QSO, 1984 in a criminal matter is totally and conclusively governed and regulated by the provisions of section 162, Cr.P.C. It may be so, when the statement to be confronted has been recorded under section 161, K Cr.P.C. that the rider of section 162, Cr.P.C. shall apply, but Article 140 of QSO, 1984 being a part of general law of evidence, has its own independent legal efficacy and application and any previous statement of the witness, which may have been made by him in some other judicial, quasi judicial, administrative, executive proceedings or inquiries or before such of the forums or even privately made through some instrument i.e. agreement or an affidavit, can be confronted to him, if relevant, in any criminal case, however, subject to its proof as stated earlier. Such statements can. always be used by the defence for impeaching the credibility of a witness under Article 153(3) of the QSO, 1984 as well.

As regards the other submission of Ch. Aitzaz Ahsan, learned Senior Advocate Supreme Court, that the statement under section 164, Cr.P.C. of those witnesses who have not been examined by the prosecution is not a substantive piece of evidence and cannot be used for

any purpose in the case, including to support the plea of the defence, suffice it to say that admittedly in this case the Magistrate before whom the statements were recorded has appeared as a witness and has produced in evidence, inter alia, the statements of Ghulam Fareed, father of the complainant and Ghulam Nabi which were duly exhibited. In an answer to a question by the defence counsel, the Magistrate in unequivocal terms stated that Ghulam Nabi appeared before him and stated that on the day of occurrence he was not in the village, rather had gone to meet the relatives at Dera Ismail Khan and returned after two days when he learnt about the incident; these statements have been produced by the prosecution in the evidence itself as aforestated, the contents are also proved by the Magistrate, who recorded it; though ordinarily the opposite side can use such a document to its advantage which has been produced by the other side and the party producing it in evidence is bound by the fall out thereof; however, when the statement is under section 164, Cr.P.C.. of a person, who is not produced, it cannot be considered as a substantive piece of evidence, but at the same time the criminal court in order to administer safe justice, in consonance and in letter and spirit of section 162(2), Cr.P.C, may use such statement not as evidence, but to aid it; the said statement thus can be looked into, for drawing the presumption under Article 129(g) of QSO, 1984, because Ghulam Nabi was the star witness of the prosecution, who throughout remained in touch with the alleged events; he was allegedly present at the time of Panchayat, the occurrence and even went along with the prosecutrix to register the case in which he is specifically named, as a witness, but was given up by the prosecution, not being won over, but as unnecessary. The Court, thus, for the purpose (s) of drawing a presumption for withholding the best evidence under the said Article could examine the statement and make up its mind in this context. Had Ghulam Nabi been examined by the prosecution, the defence would have validly confronted him with his statement to create a vital dent in the prosecution version; and it seems that in order to avoid the repercussions and consequences thereof, he was given up. Adverse presumption of withholding the father of the prosecutrix could likewise be validly drawn.

As far as the question about the sole testimony of the prosecutrix and believing her without any corroboration is concerned, suffice it to say that this too, is not an absolute (Emphasis supplied) rule. It depends upon the facts and circumstances of each case and has to be assessed by the Court on the basis of the entire evidence on the record whether the sole testimony of the victim should be believed or not, particularly in the light of her cross examination, and the other evidence produced by the prosecution; if on account of totality of facts the Court is of the view that such a statement should not be believed and for that good reasons are assigned it cannot be said that any illegality has been committed by the Court in this behalf. Thus, rule pressed into service by the learned counsel shall not apply to each and every case of rape, as' a matter of routine and course, because it is not the command of any law/statute, that in deviation of the general principles of jurisprudence mentioned above, the accused must be put to the test of strict liability and should be asked to prove his innocence because the prosecutrix's version under all circumstances should be taken as correct; the sole testimony view, should be

applied with due care and caution in the cases where there is backdrop of grudge, rift and tiff between the parties, as has emerged in instant case. The possibility in this matter cannot be ruled out that the complainant side was trapped by Khaliq; Mst. Mukhtar Mai deceptively in the garb of exchange marriage was subjected to sexual intercourse by him,

who in this manner took revenge for Shakoor's act and, thereafter, Salma was secretly married to Khalil, which embittered and betrayed the complainant and provoked her to initiate the present case. Be that as it may, if not the ocular evidence, the prosecutrix in the case should have been corroborated by medical evidence, which in the required quality is missing. What is the basis of the lady doctor's opinion that she was raped, yes- she was subjected to sexual intercourse, but the question is whether by one person or forcibly four as the prosecution has set out.

The absence of injures and marks on the body of a prosecutrix should not be the only factor to disbelieve her version in an ordinary rape case, but where a woman has been forcibly raped for full one hour, by four young individuals on the bare floor, it is not expected that she would not struggle and in the course would sustain no marks or injury. This, of course, is not a conclusive proof or disproof of rape and the learned High Court has rightly held it to be unusual; we have no reasons to differ with it. The omission of DNA and group semen test, which would have been strong supporting evidence to the testimony of the victim, has not been done. To the argument of the learned counsel for the complainant, that on account of the lapse of investigating authorities, the prosecutrix should not suffer; suffice it to say that it should also be true for the defence, rather with more vigour and. force. The semen in the vagina were available till the date of her examination and we are at a loss to see what prevented the prosecution to seek the chemical examiner's opinion to confirm, whether the sexual intercourse was by one individual or more. It is especially required in gang rape cases, as it is a matter of life and death of a person and the life of an accused, who might be innocent in a such case and should not be put to danger, only because the prosecutrix has said so, and in any case he should not suffer for the omissions of the prosecution. If the view of the sole testimony of the prosecutrix as sufficient evidence, is accepted, as absolute without any exception thereto, what shall be the outcome of a case, where a lady claims being raped or gang raped, but the medical evidence negates it, what/who should be believed then, the point is, that it is not in every gang rape case, that the sole testimony should be accepted and relied upon, but each case as earlier stated should be assessed and adjudged on its own facts. The DNA and/or group semen test in this case was of immense importance which could have scientifically determined as to whether the intercourse with the prosecutrix was committed only by Khaliq or by a group of persons. Therefore, in our considered view, the benefit of this omission should go to the accused, rather the prosecution.

Responding to the argument about the credibility and trustworthiness of P. W.14. , it may be held that only for the reason, she declined the money awarded to her by the Governor and has established the school would not mean that whatever she stated should be accepted as true; in our view nothing much turns on it and the case of such a nature cannot be decided on these trivial factors, rather on the basis of tenable evidence, about the proof of the crime.

For, the non-involvement of Shakoor's sodomizers is concerned, in our view this is by design and quite a deliberate and clever move on part of the prosecution, these two incidents were kept aloof with an obvious object and we are told that convictions of the accused in that case have been achieved, the purpose seems to have been served.

Regarding the argument that the version of the prosecution. has been admitted and

proved through the suggestions put forth by the defence counsel to the prosecution witnesses, during the course of cross examination, particularly in view of the fact that the accused in their statements under section 342, Cr.P.C. has relied for their defence on the cross-examination; it may be pointed out that the purpose and object of cross-examination is two fold; one to extract truth i.e. to unfold the truth, second to challenge the veracity of a witness. During the course of cross examination to achieve the aforesaid objectives or any one of the two, the defence counsel at time put questions to the witness in form of suggestions suggestions not necessarily are always the defence plea or the admission. They can be so taken or assumed if through suggestion, I any statutory plea is set up. Like for example, if a witness is suggested that the act or commission by an accused person had to be done in exercise of right of self defence by suggestion in a cross examination, the attempt is to take the case to fall within the mischief of section 302(c) instead of 302(a) or (b) or where suggestion is made regarding plea of the accused as to his "alibi". Other suggestions are intended to dislodge the witness statement made by him during his examination-in-chief, like in the instant case the complainant-lady was suggested to which she replied "incorrect to suggest after commission of zina, the shalwar was given to me in the room". The suggestion that the Shalwar was not thrown upon her, rather was with her in the room does not mean that defence is accepting the occurrence of rape or accepting what the witness has stated in the examination-in-chief, but it is a challenge to a statement of fact as alleged. Secondly, it may be in the mind of the cross-examiner that he has already or at a later stage to come from some other witness has to extract that the Shalwar was not thrown outside the room, rather all this happened inside. For the suggestions to be construed as the admissions in any form (implied or otherwise) those should be unambiguous, clear, incapable of any other inference and where no two interpretations are possible. But from those to which reference has been made by the learned counsel, we do not find that these are adequate enough to be interpreted as the admission of the alleged occurrence; these may at the most be said to be the result of an inarticulate, or inapt art of cross examination, which is not of much importance in this hotly contested case and cannot be given that much importance especially, when the case of the prosecution from its own evidence is not proved to the hilt, as it was put forth.

It may, however, be observed that in the case of Abdul Khaliq the suggestion of his intercourse with the prosecutrix obviously is very clear, definite and qualifies the test of being an admission as described by the learned counsel for the complainant, however, his case shall be discussed separately.

Now considering the cases of each accused who has been acquitted, but before that, it is expedient to mention even at the cost of repetition that there was not one Panchayat as the impression sometimes emerge from the prosecution evidence; in fact there were two `Akhats' `Panchayats' of the two Baradaris, the Gujjar gathered in the Mosque of Meeranwala (presumably in which Maulvi Abdul Razzak is the Imam) and that of the

Mastois, was outside the house of Abdul Khaliq. It is not the case of the prosecution if any collective decision of all those who were present in such a `Akhats' was ever made, however, the so-called Salis (the arbitrator) of one side have been commuting to the other. It is not spelt out through any independent evidence that the Mastois' `Akhat' collectively took the decision of taking BADLA from Mst.Mukhtar Mai---

Be that as it may, firstly the role of Faiz Mastoi should be examined. In the F.I.R. it is mentioned that Shakoor was liberated by Abdul Khaliq etc. on his intervention; he according to P.W.1l proposed the exchange marriages, however, when again approached by (P.W.11.) he affirmed the proposal in this behalf. In the F.I.R. the complainant stated that Faiz avowed that Fareed (father of the complainant) be forgiven. PW.11 while appearing has not stated that Faiz had ever declared to take BADLA. This is not even the statement of P.W.12. Only P.W.13 (Sabir Hussain) at two occasions has imputed and insinuated that Faiz disagreed with the marriage proposal and also when Mst. Mukhtar Mai was brought to the `Panchayat' he asked for committing Ziadati with her. But this is directly in contradiction with the statement of Mst. Mukhtar Mai when she appeared as PW.14 and stated, that Faiz said the girl has come and should be forgiven, however, she further stated that it was "politically" or "wordily" which may be only her perception, as what has been stated, is not reflected on account of his conduct or words that he was party to any decision or act of Zina; no other witnesses have said anything about Faiz Mastoi having played any part which could be held to be pursuant to any `common intention'. He according to PW-13 also accompanied him to the police station for the release of Shakoor at about 3 a.m. on 23-6-2002.

As far as Ramzan Pachar is concerned, he admittedly is the friend of Hazoor Bakhsh, the brother of the complainant, he is not a Mastoi by caste, it transpires from the record that he accompanied Sabir (P.W.13) for the release of Shakoor, but demanded some money for further payment to the police. Though it is alleged that he declined the proposal of exchange marriages, but it seems strange that why would a person who does not belong to Mastoi tribe and has relations only with the brother of the complainant would become hostile and would insist raping his friend's sister, even by overruling Faiz Muhammad Mastoi, who is projected by the prosecution as a `Sarbrah' of Mastoi Baradari, and who had agreed to the proposal. To our mind, his status and capacity at the best was not more than a messenger.

About Ghulam Fareed, it is apparent from the record that his parentage was wrongly mentioned in the F.I.R. The F.I.R. was duly read over to the lady, she signed it in token of its correctness and she at that time was accompanied by all the male witnesses, who knew well all the people in the area, her father as well as Mamoon were also present, but no one pointed if the name of Fareed's father was wrong. The complainant does not mention in any of her statement under sections 161 and 164, Cr.P.C. about this error, rather for the correction a supplementary statement was recorded, however, there are no police proceedings, in the context of the supplementary statement, as has been held by the learned High Court. He too is neither a stalwart of the Mastoi Baradari nor is a close relative of Salma and his role has been inflated in the matter because he is the son-in-law of Karam Hussain Mastoi with whom PW-11 as mentioned earlier had litigation and as a result whereof he lost some land.

As far as Fayyaz accused is concerned, he is not the resident of Meeranwala as was alleged by the prosecution, he has produced evidence to that effect; besides he was taken into custody from jail, because actual Fayyaz who was the first cousin of Khaliq and Salma, could not be apprehended, therefore, his name was put in the matter, because the

investigators as stated earlier where under immense pressure to complete investigation and submit the challan. Moreover, he has produced DW-2 Nadeem Saeed correspondent "DAWN" who has stated that Hazoor Bakhsh the brother of the complainant told him that he is not the real culprit, in this regard the news item has also been brought on the record. He is an independent witness and no effective cross examination to his testimony to shatter the same has been conducted; the argument of the learned counsel for the complainant that he was duly identified by the witnesses, particularly by P.W.14 in the Court; it may be held that such was unavoidable at that stage in order to save the disastrous damage to the prosecution's case. The High Court in the impugned judgment has made comprehensive discussion about him and we do not find that any of the factual conclusions drawn by the said Court in this behalf being erroneous for any reason whatsoever.

Allah Ditta is the brother of Abdul Khaliq, he is married, living in the same house where the alleged incident took place, with his whole family including wife, mother, six sisters and five brothers and his children. It is improbable that he in the presence of all particularly his wife and children and young sisters would commit Zina along with his real brother. The High Court, in his case, too has given valid reasons, which calls for no interference on any account.

However the High Court has distinguished the case of Abdul Khaliq primarily for the reasons that he has remotely admitted the intercourse with the prosecutrix; he took up the defence of Nikkah,, but has failed to prove it. It is argued by his counsel that it is available to the defence to take as many pleas as it wants, and even if all such pleas are found to be incorrect yet the prosecution is not absolved of its primary duty to prove its case and, therefore, when on account of the reasons given by the High Court it is found that the case as set out by the prosecution is not true, he should have also been exonerated by giving benefit of doubt along with other accused. We are afraid that his case is not at par with the other accused for additional reasons that the version of the complainant of sexual intercourse with her has been duly corroborated by the medical evidence, notwithstanding the omission of DNA/SEMEN test, which may in our view would have been relevant for gang rape, to determine if the act is by one person or more, but in the instant case the suggestion given by his counsel to the prosecutrix is very clear, unambiguous and leads to no other interpretation. When in reply thereto P.W.14 stated as under:--

"It is incorrect to suggest that pursuant to the decision of my family members my Shari Nikkah was performed in the house of Abdul Khaliq in the presence of Ramzan Pachar, my father and Sabir P.Ws. It is incorrect to suggest that compromise was reached and thereafter my maternal uncle Sabir Hussain P.W., Ramzan Pachar and Abdul Khaliq accused went to the police station and brought Abdul Shakoor back with whom Nikkah of Salma was to be performed. Incorrect to suggest that at 3/4 a.m. Abdul Khaliq came to room where I was present as his bride. In-correct to suggest that he performed conjugal duties as my husband in the said night."

In the light of the above, it was incumbent for the defence to prove the Nikkah and being conscience of this requirement, that some D.Ws were also examined by the defence, however through such evidence the Nikkah could not be proved, the obvious result, would be that he committed sexual intercourse with the prosecutrix, but without a valid Nikkah.

While concluding we share the view of the Courts that no case for abduction was made out by the prosecution, notwithstanding the distance; we are not convinced that prosecutrix was taken to the room as has been alleged by her.

In the light of the above, we do not find any merits in these appeals, which are hereby dismissed. The suo motu action, initiated by this Court in the matter is also discharged.