

[Handwriting: *Jalaluddin Osman - (Signature) - (14) - (14 - 1)*]

Republic of The Sudan

Sudan Judiciary

**Omdurman Court of
Appeal**

[Logo]

Republic of The Sudan

Sudan Judiciary

Criminal Division

Number: MA/ASJ/1188/2018

District:

Mr. Mohamed Elfatih Ahmed Elyas	Court of Appeal Judge	Chairman
Mr. Ali Ahmed Hamed Mansour	Court of Appeal Judge	Member
Mr. Elsayed Ahmed Abdemajid	Court of Appeal Judge	Member

Trial of Defendant: Noora Husein Hammad Dawoud

Decision:

On 4/29/2018 (Within the proceedings of trial GA/Execution/10/2018) The General Court judge of South Omdurman Criminal Court convicted the above-mentioned defendant according to Article (130/1) of the Criminal Code 1991, and ruled her to be executed by hanging to death in retribution of her violation of Article (130/1) of the Criminal Code 1991, along with an order to surrender exhibits to their rightful owners, and referring the file to the National Supreme Court in accordance to Article (181) of the Criminal Procedure Act 1991.

On 05/24/2018 Attorneys Adel Mohamed Abdel Mahmoud and Hamza Mohamed Ali Abusin appealed the decision presenting an argument for the intervention of this court, that we summarize as that; the Subject-Matter Court parsed the defendant's testimonies both at the investigation stage and at the trial stage, while they were to be considered since there was no contradicting evidence in the claim. Also, the Subject-Matter Court denied the defendant her legal right of self-defense on the sudden quarrel and severe provocation she endured, either by fighting or by forcing her into the marriage which is a sort of coheres in violation of Article (43) of the Personal Status Act 1991.

[Handwriting: *14 - 2*]

Number: MA/ASJ/1188/2018

On the same date of 05/24/2018 Attorneys Somaya Ishag, Ahmed Ali Sebair, Amani Osman, Samia Argawi, Abdalla Mohamed Ibrahim, Ishag Ahmed and Elfatih Husein appealed the ruling on behalf of the above-mentioned defendant. They requested the intervention of this court and presented their argument that we summarize as that the Subject-Matter Court based on its decision on the testimony the defendant gave at the investigation stage, and disregarded the rest of her testimony in trial, without a causality, when it ought not to segment a sworn confession apart. Furthermore, the defendant was wedded before turning eighteen, without a judge permission, and without verifying her age, only a copy of the defendant's National Number was filed without verification. The Subject-Matter Court did not consider the revision of Article (149) of the Criminal Code 1991. the Subject-Matter Court also did not give the defendant the benefit of lawful self-defense argument, since the defendant faced the risk of rape. She ought to benefit of such defense since the deceased copulation with the defendant was without her consent, and was with the aid of his parents. The Subject-Matter Court also disregarded the defendant's defense argument of provocation Article (131-2) of Criminal Code 1991, a course the courts rode, whose principles were founded by the supreme court including cumulative provocation as in the supreme court's decision: Government of the Sudan vs. Muga Kujour number M A K/129/73, also the decision number A/T J/701/2007. Moreover, the Subject-Matter Court did not consider the defendant's psychological shock resulting from violent intercourse which is amount to psychological torture that the defendant was unable to bear. Adding that the National Number was not verified. For these reasons they demanded our intervention.

On 05/27/2018 attorneys Salam Madani Ahmed and Lutfi Abdelrahman Saad appealed on behalf of the defendant demanding our intervention for the reasons we summarize as that the Subject-Matter Court did not discuss cumulative provocation principle that was set by Supreme Court in: Government of the Sudan vs. Saki Sedhum Boles, which set the principle of cumulative provocation; also, Government of the Sudan vs. Nafisa Dafaalla, Gazette 61, saying: "Although the defendant was sane enough to cognate her actions, it seems, with the corroboration of the Psychiatrist Eltijani Elmahi, that under her severe jealousy emotions for her husband she developed fears that caused her wrath along with the angry behavior." The advocates see that the deceased practice of sexual intercourse with her, with the aid of others, amounted to forcible sex. Therefore, they demand our intervention to revise the conviction.

On 05/31/2018 the Public Defense Administration (Ministry of Justice) provided additional reasons on behalf of the Minister of Justice for the defendant. We summarize the reasons in the motion that the defendant was wed to the deceased whilst she was a 15 year old child, and was rejected when she reached her legal age. She refused the marriage and was forced to accept it, which was a violation to her constitutional right. After the marriage, he took her to an apartment where she refused to have sex with him. He asked help from his relatives, who beat the girl until she panicked and lost control... [Handwriting: 14 - 3]

Number: MA/ASJ/1188/2018

of herself and did not feel when she stabbed him repeatedly. Furthermore, the Subject-Matter Court violated a well-established profoundly active procedure about accepting the defendant's sworn confession without segmenting since prosecution did not provide supporting evidence to the claims, therefore she ought to use the benefit of provocation defense.

On 06/03/2018 attorneys Ali Qaliob and Samia Elhashimi, representing the defendant, filed a notice of additional reasons contended that the defendant ought to benefit from the severe provocation defense, whereas she was forcibly copulated by the deceased with the aid of others, forced to spend the night beside him in the apartment afterwards when they left (prosecution witnesses), and the deceased attempt to advance towards her in the next morning, when she stabbed him, provoked by his utterance “I do unto you whatever I please”. The Supreme Court reiterated that principle in its decision Number M A\ M K\180\78 Government of the Sudan vs. Berriman Mohamed Ali, which founded the principle:

Cumulative provocation allows the defendant to use the benefit of the first exception according to Article (249) of the Penal Code. The defendant, also, ought to benefit from the defense of self-defense, especially that Article (149/A) makes it possible for the wife to be the victim of rape.

Conclusion of facts, based on the plaintiff statement, that Noora Husein, the defendant, stabbed her husband, named Abdo Ibrahim Bashir, with a knife in his chest and his back causing his death at Omdurman Al Mohandiseen (On 05/03/2017.) The defendant was arrested and turned in by Al Bageir police. A knife and a phone belonging to the deceased was recovered with her. The defendant was interrogated, Page 7 of the journal, and she stated that she did not want the husband, but he wed her, and brought her on a honeymoon in the apartment. On the first day he did not ask her. On the second day she was excused and five days later she bade off her menstrual period, and he called upon her, but she did not consent. He called his paternal uncle who came to the apartment (the uncle), along with the deceased’s brother and a maternal cousin of the deceased, where she confirmed her refusal. She waited them with water, but they refused to drink it. They spoke to her (quarrel) and she confirmed her refusal. They dragged her inside and the uncle hit her across the cheek, and another smack from the brother and two more from the cousin who pulled off her dress, and the husband started to copulate with her whilst the other men waited outside snooping on her as the husband and the defendant were both inside. The uncle left after the intercourse was over, but the brother and the cousin stayed in the next room. She wanted to stab him that night, but she could not find the knife. She found out the next morning after they left, that they hid it under the mattress and slept on it, and that’s when she found it. The deceased was laying down unaware when she stabbed him first in his back. After the ...

[Handwriting: 14 - 4]

Number: MA/ASJ/1188/2018

After the first stab, they wrestled, and she was able to stab him again in the chest. They were alone when she; changed her cloths, took the apartment key and took off to her family in Al Bageir and told them about what had happened. Her family then turned her into the police.

A sworn confession of the defendant was recorded on Page 10 of the journal, stating that the deceased had a religious marriage contract with her three years ago, and that she did not agree and expressed her clear refusal to her father, who told her to either get a replacement of the deceased, or accept his marriage, since her father cannot pay the husbands losses. She talked to the husband and explained to him that he would have no rights in case he wed her or attempted to consummate the marriage. On the first day he did not sleep with her due to her rules for her five days of menstrual period. He complained to his family and, the above-mentioned, three came and beat her, and after

the intercourse they asked for her forgiveness and left. After he was relaxed, she stabbed him with the kitchen knife. He wrestled her, and she stabbed him again in his chest. As a result, she wounded both her hands, as written in the notice on Page (13) of the journal. The court referred the claim to trial, prosecution witnesses were heard, and the detective who stated that he visited the crime scene in Al Mohandiseen apartment after the report was filed. He found the corpse of the deceased covered with blood. The corpse was sent to autopsy to determine the cause of death, and the prosecution document () statement contended the following:

- A stab wound on the upper left side of the chest measures 3X1 cm.
- A cut wound at the end of the chest on the left side under the left nipple measures 3X1 cm.
- 3 cm Long horizontal flesh wound at the right side of the pelvis.
- A vertical stab wound below the right armpit measures 3X1 cm.
- A horizontal stab wound measures 0.5X2 cm on the thigh above the right knee.
- A wound on the upper back below the left shoulder measures 3X1 cm.
- A sting wound on the lower back 0.5X0.5 cm.
- A sting wound at the right side of the lower back 0.5X0.5 cm.
- A rupture on the left ventricle of the heart measures 1 cm.
- A rupture in the upper portion of the left lunge, with about 3 Lt hemorrhage in the chest.

Cause of death: Piercing stab wound and rupture of the lung and heart with acute hemorrhage caused by a sharp blade - Professor Jamal Yousif Ahmed, Forensic Pathology Consultant, Omdurman Hospital.

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 5]

- ◆ The knife (Exhibit) was examined and found to be a kitchen knife with a plastic handle. The sharp blade is 16.1 cm long, it weighs 126.5 g, as per prosecution document (6). The detective also stated that he questioned the prosecution witnesses, and that none of them witnessed the event of stabbing.

Prosecution witness Elsadig (3) stated there was a quarrel between the deceased and his wife. He stated that he went with Mohamed and Elnour, and the defendant asked that her father be contacted, but Elnour rejected that (Page 17 of the Record). He, also, stated that he spent the night before the crime with the deceased and his wife, accompanied by Mohamed Abubaker, the maternal cousin of the deceased, in the apartment. Then, after they left in the morning, he learned of the crime by phone. The fifth prosecution witness, Mohamed Abubaker, the maternal cousin of the deceased, stated that he spent the night before the crime, accompanied by the deceased's brother, with the deceased and his wife at the request of the deceased. In examination of the defendant by the court (Page 53 of the Record) she stated she did not know when the marriage contract took place, and that it was after she refused to marry the deceased, that was addressed to her father. When her father insisted, she escaped to Sennar, Sudan. Three years after the marriage contract was sealed, the

wedding was held at the groom's house, since she was not interested in holding the wedding. She left with the deceased to an apartment after the celebration. When he advanced towards her, she rejected him, and slept alone until the morning. They were not in good terms for the next five days. Afterwards, the deceased told his brother Elsadig about the quarrel, who came with someone named Mohamed. After a discussion she demanded divorce, an idea that Elsadig rejected, which led her to bring a knife from the kitchen, which Mohamed took from her and smacked her on the face, then they left. Mohamed and Elsadig along with Elnour came back the next day, she waited on them with some water, but they declined her offer. Mohamed instructed her to go in the room. When she refused, he grabbed her and dragged her inside. Once she was inside the room, Elnour smacked her across the cheek twice, Elsadig pulled her dress, and Mohamed threw her on the bed. They then called the deceased and asked him to strip naked, which he did. Once he was totally naked, he started to take off the rest of her cloths until she was also totally naked. He pushed her onto the bed, whilst the other three pinned her down, and then he forced his penis into her vagina. After he was done, Elnour left, but Elsadig and Mohamed stayed until the morning. They then left after she made them tea, then she went to sleep. About 2 O'clock in the afternoon the deceased tried his advance towards her again. She earlier went to the kitchen fetching the knife to cut some apples, but she couldn't find it, and went to sleep. During the deceased's attempt, she stumbled on the knife beneath the mattress, pulled it, and told the said deceased 'If you come close to me, I will stab you'. He said: "You are my wife, and I will do unto you, whatever I please". He then pulled her by the gown, and that's when she stabbed him on the back. He wrestled her, which wounded the palm of her left hand. He then bit her on her right shoulder, and she stabbed him again in the

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 6]

chest, and that's when he fell on the side of the bed. She then took a shower and cleaned up the blood stains, changed her cloths, took the knife and the deceased's phone, and left, locking the apartment, and heading to her parents at Al Bageir, where she turned herself in to the police. The fifth prosecution witness, Mohamed Abubaker, denied any knowledge of a problem between the deceased and the defendant, and denied the smacking incident. He reaffirmed the fact of his night spent at her place and attributed that to lateness of time as justification. While the third prosecution witness, Elsadig, stated that there was a problem between the deceased and the defendant, and that she refused copulation with him, and that she asked to be returned to her parents' house. He denied any of the parties (Mohamed - Elnour) smacking the defendant and stated that Elnour asked the deceased to contact the defendant's father, but the defendant objected (All this took place the night before the crime). The Subject-Matter Court arraigned the defendant under Article (130/1) of the Criminal Code 1991, and the defendant pleaded, her Attorney Muawia Esq., NOT guilty, arguing Sudden Quarrel, Self-Defense, and Fear defense. Dr. Ali Baldor, Consultant of Psychiatry, and the first defense witness, was heard. He stated in his testimony that he was interested in teaching romance as means of easement of communication between members of the society, and of marriage as an institution, and the factors of its success and rate of failure. He also spoke about forced marriage and it's causing of unstable psychological state that leads to surprising events to a normal man, like the feeling of inferiority and degradation that leads a vendetta that strongly motivates crime. He pointed out that the wife's unwillingness to give in to the husband, developed an inferiority feeling in him. Also, copulating her with the aid of others, forms an unstable psychological state to her. The Defense filed its argument that contended the severe provocation line and the manner of the deceased's copulation with the defendant; considered by the defense as

an unrecognized rape since committed by the husband. Therefore, the defense requests intervention to revise the description of the conviction into the description of the action. The Court of the Subject-Matter issued the ruling above, after deliberating the facts presented, and concluded a preliminary conviction through a viable process of conclusion under Article (130/1) of the Criminal Code of 1991 and deliberated and dismissed the permissible and constrictive causes of criminal responsibility. Then deliberated the defense provided in Article (131) of the same law, which did not benefit the defendant by any means. Afterwards, it issued the contested ruling at hand.

First:

The motions were filed within their time limits, by recognizable parties of the matter, therefore, and since they met the conditions in Articles (183 - 184) of the Criminal Procedure Act of 1991, we find them formally admissible.

Second:

In the matter, we agree with the Subject-Matter Court's inclination about the defendant's commission of a criminal act under Article (130/1) of the Criminal Code of 1991, and that is for the following reasons:

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 7]

Firstly: the murder crime should be committed against a living human as provided in Article (132) of the Criminal Code of 1991 (Murder is causing of death to a living human in premeditated manner, semi-premeditated manner, or wrongfully.) and it was proved in the testimony of the prosecution witnesses, that the deceased was with them and alive in the morning of the crime. The defendant confirmed that at all stages. Therefore, we find that fact affirmative.

Secondly: did the defendant stab the deceased? We affirmatively answer that as well, since the defendant, who should've been on a honeymoon with her groom, came alone to her parents' house at Al Bageir, eight days after her wedding, carrying a knife (The Exhibit) and told them that she stabbed her husband, and locked the apartment. After they heard her story, they turned her in to the police. The deceased family was contacted, who then went to the apartment before the police. The apartment door was broken, and the deceased was found dead on the room's floor covered with blood. The defendant admitted and recorded her statement that she did not retract at any stage later. An autopsy was performed on the deceased's corpse, and a report was generated as a prosecution document that proofed the stabs on the deceased's body. The knife was examined as well, by the forensic laboratories and a statement in prosecution document (6) verified a trace of human blood that matches the deceased's blood. Therefore, we answer affirmatively.

Did the stabs cause the death of the deceased? We effortlessly agree with the Court on this question. Since the defendant admitted to inflicting the stabs described in prosecution document (6), and since it was proofed that the cause of death was a penetrating stab wound, lung rupture and hemorrhage caused by a sharp blade (Dr. Jamal Yousif) a document that attributes death only to sharp blade stabs, and was not refuted. Therefore, we find the answer affirmative.

As for the intent, which the Court found conspicuously, is a moral concept that is debriefed from utterances and actions accompanying the act, a principle reaffirmed by the Supreme Court in the Government of the Sudan vs. Muga Kujoor, Gazette 73 Page (330) with a subjective measure to

debrief the thought in the Defendant's mind, and not another. Also in the Supreme Court's ruling in the matter of the Government of the Sudan vs. Mohamed Rabbah Hamid and Others, Gazette 74 Page (454) "the measure of the vitality of an organ or a part of a human body, meaning its attachment to a bodily source of life, where life is impossible without it, is a plausible measure to for criminal intent, adding the type of instrument, force and location. A principle that was reaffirmed by the Supreme Court in

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 8]

The Government of the Sudan vs. Issa Ali Ahmed, Gazette 73 Page (230), and the Government of the Sudan vs. Kheir Es-Seed Ajab Sido, Gazette 74 Page (387). Considering such measures, we see that the Defendant used a knife, and targeted the chest and the back of the deceased, which penetrated to the lung and heart, the basic core of life in the body, that were ruptured. Therefore, we concur with the Subject-Matter Court in finding the answer affirmative.

As of the arguments raised by Defense, starting by the lawful Self-Defense, it is the Defendant's burden to prove the elements of this argument provided in Article (16/1) of the Criminal Code of 1991 "An act is not considered a crime, if it happened while using the lawful right of Self-Defense in a legal manner" (2) "The lawful right of Self-Defense is established if a person is facing an undergoing or an eminent danger upon himself or, etc.," and establishment reason are two:

- That the danger is undergoing or eminent,
- And that the harm is upon the self or the property, etc.,

Going back to the facts, we find no preliminary grounds to establish such a right, whereas there was no proof that the Defendant was facing harm of danger upon herself. The deceased's advances and intentions towards her, as a husband, are only natural and in accordance to normal course. If something else took place, then it might had been abnormal, but we generally find no grounds for establishment of such a right, and the Subject-Matter Court's decision is in accordance with the decisions of superior courts, see the Supreme Court ruling in the Government of the Sudan vs. Attia faraj Attia, Gazette 77 Page (208) stating: "But the proven facts in this crime did not prove that the deceased attacked the Defendant." Also, it's ruling in the Government of the Sudan vs. Abbas Abdalla Bilal, Gazette 83 Page (77) stating: "There is no lawful Self-Defense excuse in the absence of sufficient details to prove that the Defendant was facing a grave danger." Therefore, disregarding the argument was correct. The Subject-Matter Court was successful in overlooking other arguments that were not argued, and not admitted in this matter; and considered the Provocation argument, denying the Defendant to benefit from it for the following reasons:

- That the deceased's advances and copulation with the Defendant, was the exercise of a previously prearranged right. If there was no consent at the Defendant's end, then it should show before the wedding.
- The Subject-Matter Court determined the availability of Court contest, for the Defendant to file a no-consent claim.
- Dismissed her testimony about others holding her for the deceased to copulate with her (And commented that it is neither logical, nor plausible, and made a sin out of rejection.)

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 9]

- The existence of a quarrel, or the presumption of its existence, was resolved by the two Prosecution witnesses, Elsadig and Mohamed Abubaker.
- It was up to the bride, if she was not consenting, not to accompany the groom to a honeymoon for enjoyment.

In reference to Article (131/2/w) “If the murderer killed during loss of self-control for a severe and sudden provocation, the provocator or another mistaken person”, and contrary to the conclusion of the court, we find that the issue of provocation to be purely a psychological matter, considering all circumstances of the claim, including the Defendant’s state of mind. The Supreme Court contended this principle in the matter of the Government of The Sudan vs. Mohamed Ibrahim Musa, Gazette 82 Page (68). Adding that, severe provocation is a psychological or mental state that only occurs to him when affected by an act or a behavior of the victim. The defendant suddenly becomes temporarily senseless and emotionless when the provocative act is severe and violent at the time. The Supreme Court contended that in the matter of the Government of the Sudan vs. Salah Hassan Mohamed Fageer, Gazette 71 Page (19). Since Provocation is a matter of facts, we go back to the facts to determine what factor provoked the Defendant. Is it the marriage? Or the sex? It was proven that the Defendant was entered in a marriage contract at the age of Fifteen (A minor), and that in the beginning she refused in a clear and candid form, but the deceased had already covered her father with money at the time, who became helpless and fearful about the Defendant, and insisted in consummating the marriage. Three years later the wedding took place in the deceased’s house, then proceeded to Al Muhandiseen’s apartment for the honeymoon. She rejected the deceased’s advances towards her, and he complained to his relatives (Firstly the Plaintiff came with the two Prosecution witnesses, Elsadig and Mohammed Abubaker) who talked to the Defendant and left. She did not have susceptible response to the deceased, and they came for the second time. They asked her to take a bath and go into the bedroom. Al-Sadeq then pushed her onto the bed whilst Al-Nour beat her. The deceased undressed and took her clothes off and copulated with her whilst the three men watched. After they both came out, the second witness called and asked them to return to the room. The copulation was repeated. Mohamed and Al-Sadeq spent the night with them in the apartment and left the next morning. This is the fact about the sex according to the Defendants sworn confession, Page (10-11-12) of the journal. As per the stabbing, it was not witnessed by anyone, but her confession states that the first stab was in the back, and when he turned around she stabbed him in the chest, then they wrestled, and he bit her, and she were injured (She was not medically examined, but the Court recorded that as a comment.) When questioned by the Court, Page (56) she stated that on the second time Elsadig and Mohamed Abubaker came to them in the apartment, they told her to go into the room, and she refused, then Mohamed forcibly dragged her in and hit her in the face, whilst he pulled her

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 10]

Outfit, and they called upon the deceased, and told him to take off his cloths, and he did, and he took off her clothes, and inserted his penis into her vagina. After the deceased was done, Alnour left, and Mohamed and Elsadig stayed overnight and left in the morning. The deceased tried to come close to her after they left, but she found a knife beneath the mattress. She stabbed him in the back,

they wrestled, then she stabbed him again in the chest. He fell and she went to the bathroom, where she cleaned up herself. She then took 50 SG from his pocket and went to her parents' house. The fifth Prosecution witness denied any disagreement existing between the deceased and the Defendant, same as the Plaintiff Alnour. The third witness's testimony was contradicting, although he admitted that there was a disagreement between the deceased and the Defendant, and that she asked to be returned to her family or at least they were to be contacted, but the Plaintiff (Alnour) rejected that stating one time, Page (88) of the Record, that Alnour asked for her family to be contacted and she refused. Therefore, we only consider the testimony of the Defendant, and although it bears some change, but they do not include a denial of the criminal act which is the murder, but a denial of the criminal responsibility or a limitation of it, as in the Supreme Court's ruling in the matter of the Government of the Sudan vs. Husein Abdelrahman Suliman, MA/ML/85/76 Page (755), and the Government of the Sudan vs. Haidar Abdelraziq, No. MA/MK/130/78 Page (379). "The general rule of the sworn confession is that it is taken in its entirety without segmentation, since it is not right to consider what is against the Defendant and disregard what is in the Defendant's interest, as long as it does not contradict the nature of things.) Whereas the Defendant refused copulation with the deceased, and he sought the aide of his family; She asked to be divorced and returned to her family, and he refused even to contact them; After their departure and her refusal, they came back, beat her up, forcibly dragged her in the room, and even though they left them alone, they kept peeping on them; does that constitute provocation? Since man knew sin, he knew that its exposure is ugly and detested to human sense. The Almighty says in that: 'So he made them fall, through deception. And when they tasted of the tree, their private parts became apparent to them, and they began to fasten together over themselves from the leaves of Paradise. And their Lord called to them, "Did I not forbid you from that tree and tell you that Satan is to you a clear enemy?"'. Al-A'raf (22). It states in Tahtheeb al-Ahkam, Part Seven, Page (457) that the woman's right in her husband is "To veil her privates, fill her hunger and not reject her ugliness, if he did so, then he honored her right". Ibn Abi Hakam Narrated of his father, of his grandfather, who said: I said 'Oh Prophet of Allah, what do we get and get not of our privates? And the Prophet, Peace and Prayers be Upon Him, said: "Keep your privates except from your wife, or who your right owns". And to reassert the veil, Islam commanded to woman to be veiled even from the blind. Ibn Nabhan narrated of Um Salama saying: I was sitting at the Prophet's, Peace and Prayers be Upon Him, me and Hafsa, when Ibn Maktum asked to enter, then the Prophet, Peace and Prayers be Upon Him, said "Veil from him." then I said "Oh Prophet of Allah, he is a blind who cannot see" and he, Peace and Prayers be Upon Him, said "Do it, even though you do not see him". That is because Almighty Allah commanded the women to lower

Number: MA/ASJ/1188/2018

[Handwriting: 14 - 11]

Their look the same as he commanded the men. Almughni, Part 7, Page (81) 'And the privates are veiled from the husband himself, as it was narrated of Aisha, Peace be Upon Her, said: "I did not see of the Prophet of Allah, and he did not see of me" (Saidul Khatir, Page 413). And on sex what he said, Peace and Prayers be Upon Him, (The one of ye shall not fall over his woman like the falling of the animal, let there be a messenger between them, it was asked: Oh, Prophet of Allah, what would the messenger be? He said: The kisses and the speech) (Al Siyooti, Takhreej al-Ihya', Part 3, Page (65)). Looking at what happened, we find that the copulation that took place, followed beating, threat and violation of privacy, up to the assassination of the Defendant's decency. It left pain in her mind that made her lose control of herself, that she could not rid except through these stabs that were not premeditated and happened after the departure of the two Prosecution witnesses who supported the deceased, then asked for forgiveness. We find what happened establishes Provocation that should benefit the Defendant in easing her burden of criminal responsibility.

Whereas, what happened was shocking to every sane person, we advise the cancellation of the conviction under Article (130/2) of the Criminal Code of 1991, and convicting the Defendant under Article (130/w) of the same law, along with the payment of full Diya (337,500.00 SG, Only Three Hundred Thirty Seven Thousand and Five Hundred Sudanese Pounds) to be paid by the Defendant and her family according to Article (45/5) of the Criminal Code of 1991, with a ruling of her imprisonment for five years starting of her arrest in 05/03/2017.

[Signed]

Mohamed Elfatih Ahmed Elyas

Court of Appeal Judge

06/03/2018

I Concur [Signed]

Ali Ahmed Hamed Mansour

Court of Appeal Judge

06/20/2018

I Concur [Signed]

Elsayed Ahmed Abdemajid

Court of Appeal Judge

06/26/2018

[Handwriting: 14 - 12]

Number: MA/ASJ/1188/2018

The Final Order: -

- The cancellation of the conviction under Article (130/2) of the Criminal Code of 1991 and convicting the Defendant under Article (131/2/w) of the Criminal Code of 1991.
- A five-year imprisonment, as of 05/03/2017.
- The Defendant, Noora Husein Hammad Dawoud, and her family, shall pay the FULL DIYA of (SG 337,500.00) Only Three Hundred Thirty-Seven and Five Hundred Sudanese Pounds to the Victim's Heirs, Abdo Ibrahim Basheer, to be collected under Article (45/5) of the Criminal Code of 1991.

[Signed and Stamped]

Mohamed Elfatih Ahmed Elyas

Court of Appeal Judge

Circuit Chairman

06/26/2018