

Her Majesty's Advocate

— v —

Saima Gul and Fazl-i-Rahim

An anthropologically grounded assessment of the circumstances in which Noor Mohammed lost his life

by

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1 The basis on which this report has been prepared

1.1 My instructions

1. This report has been prepared in response to instructions from Bridge Solicitors to prepare an anthropologically grounded assessment of the circumstances in which Noor Mohammed lost his life.

1.2 My academic and professional knowledge and experience of issues in this sphere

2. During the course of my professional career as a social anthropologist I have taken a specialist interest in South Asia. As an academic, I have been actively involved in researching these developments for the past thirty years, and during the course of so doing I have conducted extensive ethnographic fieldwork in both India and Pakistan, as well as amongst the settlers from those areas who have established themselves in the UK. In doing so I have taken a particular interest in the interpersonal consequences of the processes of racial, ethnic, and religious polarisation which have become such a salient feature of the local social order in all of the social arenas with which I have been concerned. Over the years I have published a large number of academic papers outlining my findings, with the result that I can now reasonably claim to be one of Britain's leading academic experts in this field. As a result I am frequently called upon to prepare expert reports for use in all manner of proceedings – no less in civil and criminal proceedings than in the Asylum and Immigration Tribunal – in which people of South Asian descent have found themselves involved. Having retired from my post as Senior Lecturer in South Asian Studies at the University of Manchester, I now operate as the Director of the independent Centre for Applied South Asian Studies in. (I have attached a fuller CV as an Appendix to this document).
3. I should also add that I have by now prepared over thirty expert reports for use homicide cases in the UK in which the defendant was of South Asian descent.

1.3 The materials on which I have relied

4. In preparing this report I have relied on the contents of the following documents
 1. Copy indictment
 2. Summary of Evidence
 3. Medical Reports on our client, productions 4, 5 and 7
 4. Post Mortem Reports

5. Transcript of 999 call
6. Witness statement of Fazl Rahim, 8th May 2012
7. Transcript of client's police interview
8. Transcript of co-accused's police interview
9. Precognition of client dated 11th September 2012
10. Copy letter from Crown
11. Witness statements of Aisha Rahim
12. Copies of Manuscript letters
13. Statements of Syed Khan, Production 106 which is translation of letters written by the Fazl-i-Rehman and delivered to his wife Saima.
14. Witness Statement of Mohammed Rahim
15. Marriage Certificate
16. Birth Certificate
17. CD-Rom of Photographs
18. Paternity Report
19. Archway Report
20. Transcript at Charge Bar
21. Precognition of Gulroz Bibi, dated 5th November 2012
22. Precognition of Hira Gul, dated

all of which I have considered and reviewed in the light of my professional knowledge and experience of contemporary social, cultural, religious and familial assumptions and conventions (known in the vernacular as *Pukhtunwali*) which condition everyday behaviour amongst Pathans, no less in their homeland along the Afghanistan/Pakistan border than in their still rapidly expanding overseas diaspora.

Nevertheless having done so I found myself facing all manner of loose ends, so I took the opportunity to arrange an all-day interview with Saima in HMP Corton Vale on 19th November, which proved to be most illuminating

5. With this in mind I should also add that during the course of the ethnographic fieldwork which I have conducted over the years elsewhere in Pakistan, I have also made several brief visits to the North West Frontier Province, and earlier still, to Pathan majority regions in Afghanistan. Moreover in preparing this report I have also relied heavily on accounts of *Pukhtunwali* which can be found in the academic literature of the subject, including

Palwasha Kakar, Tribal Law of Pashtunwali and Women's Legislative Authority, <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf>

Amineh Ahmed, *Sorrow and Joy amongst Muslim women the Pukhtuns of Northern Pakistan* Cambridge University Press 2006

Muhaqiq Massoma Ismati, *The Position and Role of Afghan Women in Afghanistan* (Kabul: Center of Social Science, 1987)

Fredrik Barth, *Political Leadership among the Swat Pathans*. (London: Athlone Press, 1965),
Akbar Ahmed, *Millennium and Charisma among Pathans*.

6. I should also that on 19th November I took the opportunity to visit Saima in person, in order ask to provide further details of her experiences which were not at that stage sufficiently illuminated in the documents before me.

1.4 *My approach to the issues*

7. Getting to the bottom of the issues in this case has proved to be a complex task, since they are located in the midst of at least three interpenetrating strands, including:
- i. The physical dimensions of the behaviour of the two defendants, as well of the deceased, Nur Mohammed
 - ii. The specific cultural context within which these events occurred – in this case the conventions of *Pukhtunwali*
 - iii. The likely motivations of all those involved in the run up to, the implementation of, and the aftermath of, those events.
8. In the light of these overlapping considerations, I have decided that the best way in which to deal with the issues in a coherent fashion is to set out my analysis under three broad heads: firstly of all my best estimate of the basic physical facts of the case, which are unlikely to be seriously contested by any of the litigants; secondly an account of the relevant components of Pukhtunwali, focussing primarily on the issues of marriage, and with that in mind, a specific focus the constraints to which Pathan women are likely to find themselves subjected; and last but not least, an assessment of the behaviour, and the likely motivations of all the *dramatis personae* of these proceedings.

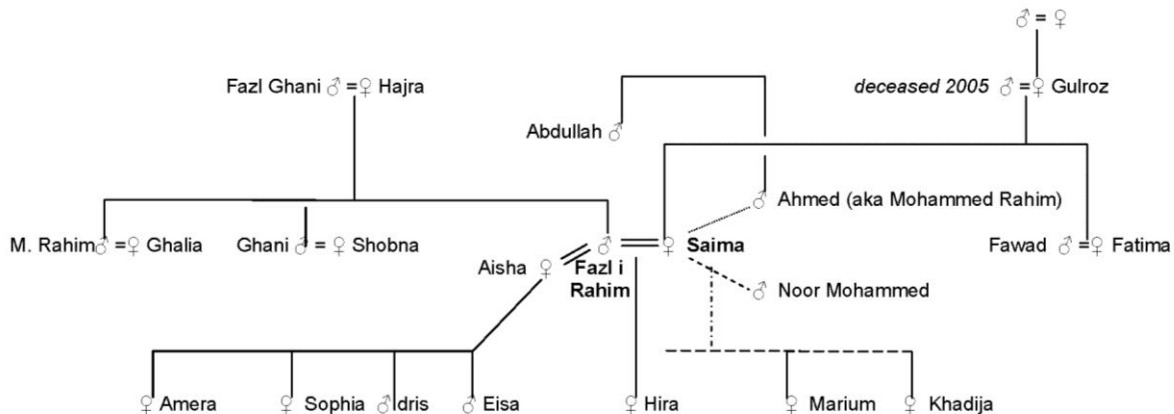
1.5 *Statement of truth*

9. In preparing this report, I have taken it for granted that my principal obligation is to the court, rather than to those instructing me. In fulfilling my instructions I have also made my best efforts to present an objective account of the premises and practices routinely deployed by members of the Pathan community who have recently settled in the UK. I

can consequently confirm that all the analyses I have developed and conclusions that I reached in the Report represent my considered professional opinion and are true to the best of my knowledge and belief.

2 The known facts of the case

2.1 The genealogical background



Fazli-i-Rahim, Saima Gul and her offspring in their Genealogical context

10. One of the few matters about which we can be certain in this case is that Noor Mohammed lost his life as the result of a vicious homicidal attack at around 11.00 a.m. on Saturday 5th May, in the top flat at 20, Netherplace Road, Glasgow. The flat was occupied by Saima Gul, together with her three children, of whom the eldest, Hira, was just twelve years old. Saima is the wife of Fazli-i-Rahim,¹ who was also present in the flat at the time of the incident, during course of which Noor Mohammed lost his life. As far as I am aware both defendants plan to mount a cut-throat defence.

¹ Given that there are several persons who answer to the name of Rahim who figure as *dramatis personae* in this case, for the sake of clarity I have routinely identified the second defendant (i.e. Aisha's and Saima's husband) either as Fazli-Rahim or Fazli as the case may be, his eldest brother as Mohammed Rahim, and Abdullah's younger brother known as Ahmed (to whom Saima was alleged to be married when she entered the UK), even though he formally identifies as yet another Mohammed Rahim.

2.2 *The defendants' background and their arrival in the UK*

11. Both defendants are ethnic Pathans from the Swabi District of the North West Frontier Province – recently renamed Khyber Pukhtunqa – and hence of Pakistani nationality. Both are drawn from families of rural peasant origin.
12. Shortly after he had entered into an arranged marriage with Saima Gul in 1999, Fazl-i-Rahim he set off for the UK without a visa, and shortly after his arrival lodged a claim asylum, presenting himself as a refugee from Taliban rule in Afghanistan. Meanwhile Saima continued to live with her in-laws, and in due course gave birth to her eldest daughter Hira, who was conceived prior to her father's departure for the UK. In 2002 Fazl married Suzanne Jackson, initially in an Islamic nikah, and subsequently in a registry office. In the aftermath of her marriage Suzanne Jackson changed her name to Aisha Rahim. Since then Fazl has fathered four children with her. Fazl's application for asylum was in due course granted, and in 2005 he was granted UK citizenship, and hence able to obtain a passport which would enable him to visit Pakistan, and to regain entry to the UK on his return.
13. In the absence of a passport Fazl was unable to return to Pakistan, but he nevertheless kept in touch with his family using letters, audio-cassettes, and in due course the internet to keep in touch. Although Fazl does not appear to have taken the opportunity to inform his parents – let alone his wife – that he had remarried in the UK. Nevertheless there had by then been a sufficient exodus of Pathans from Swabi to the UK for an active gossip network to come into being, with the result that news that Fazl had remarried in Glasgow soon got back to the villages from which the defendants were drawn.
14. If the news of his behaviour was humiliating for Fazl's parents, its consequences were even more serious for Saira, who had every reason to feel that she and her daughter had been double-crossed. However given the conventions of *Pukhtunwali* (the cultural and behavioural code of the Pathans) it would be even more humiliating for her to return home to her parents as a 'rejected bride'; instead she stayed on to perform the role of a dutiful daughter-in-law, the hope – amongst other things – of pressurising her parents-in-law to put persuade their son to properly fulfil his necessary obligations towards his wife and daughter, who had manifestly done nothing wrong.
15. The reality of the gossip grew ever stronger, most especially after Fazl took the opportunity to visit his wife and parents in Pakistan as a result of having been issued with

a UK passport. Not that he seems actively to have admitted the truth: but he did not deny it either. In any event he temporarily resumed his conjugal relationship with Saima, who was only too eager for her husband to resume his obligations towards her, since she had no wish whatsoever to find herself abandoned as a grass widow.

16. In the face of these pressures, Fazl began to take steps to bring Saima and his daughter over to the UK. However given that he was already married to Aisha, this was a far from straightforward task, since he could not hope to legitimately secure a UK entry visa for Saira as his wife, since he was already married to Aisha. Hence he approached an agent who surreptitiously inserted Saima's photograph into a valid passport containing an entry visa for the UK, such that he was able to bring her back with him to the UK on an apparently legitimate basis having made another visit to Pakistan in 2008.
17. In 2009 Fazl pulled off a similar trick on behalf of his daughter Hira in 2009, when he made another visit to Pakistan, at the conclusion of which he brought Hira through UK immigration control, where he presented Hira as his daughter (as indeed she was) but produced the passport of his eldest daughter (by Aisha) Amera to take Hira through immigration control.

2.3 *Developments in the UK*

18. If Saira was hoping to displace Aisha on her arrival in the UK, she was disappointed. Following their arrival Fazl made it quite clear that he did not wish to compromise his relationship with Aisha, to whose bed he carefully returned every evening once he had returned to the UK.
19. Moreover if he was to maintain a polygamous marriage in the UK – which was clearly his intention, and indeed wholly unproblematic in Islamic (but not in UK) law – Fazl still had to find some means of legitimating Saima and Hira's presence in the UK. Given that he facilitated her entry on a surreptitious basis, she and her daughter would have been liable to deportation if their presence in the UK was detected by the UK authorities. Against that background Fazl developed a second arm of his strategy emerged, in which he once again took the advantage of killing two birds with one stone.
20. Some time after his arrival in the UK Fazl teamed up with Abdullah and Ahmed (whose documentation appears to have identified him as Mohammed Rahim), two brothers also of Pakistani Pathan origin, who operated a take-away together. Fazl joined them in the business, and before long introduced Noor Mohammed – an Afghan Pathan who had also

recently arrived in the UK – to Abdullah, who ran the take-away business. Abdullah agreed to take Fazl Rahim on as an employee as well.

21. Neither Ahmed (nor, or so I suspect, Noor Mohammed) had at that stage obtained right of abode in the UK. Hence another plot was hatched: namely to assemble paperwork which suggested that both Saima and Ahmed were of Afghan origin, that they were married, that Hira was their child, and that they had all fled from Afghanistan to escape from the depredations of the Taliban – on which grounds they applied for asylum in the UK. In due course their application (although based on premises which were entirely false) was accepted, with the result that all three were granted right of abode in the UK.
22. However there was a further catch in all this. It was not just that Saima and Ahmed had to give an appearance of living as man and wife whilst their application for asylum was being considered by UKBA; once it had been granted they still had to maintain – at least in all encounters with the UK authorities – that they were indeed still man and wife, and that Hira was their daughter.
23. All this also had significant implications for Hira. In order to make the fake documentation hang together on a coherent basis, Hira's (equally fake) documentation had been drawn up in such a way as to indicate that she was two years younger than her real age; hence Hira also had to be given instructions always to cite her 'paper' age rather than her real age in all encounters with the authorities, and likewise to suggest that her 'paper father' (Rahim/Ahmed) was her real father, rather than Fazl Rahim, since to do otherwise would compromise her mother's presence in the UK. So far as I can see those were still the instructions which she was following when Noor Mohammed was killed.

2.4 Residential issues and their consequence

24. In order to give sustenance to the false claim which Fazl Rahim had organised on their behalf, it was clearly essential that Ahmed and Saima should maintain a public appearance that they were living together as man and wife. Hence after having lodged their application for Asylum, they took up residence in a one-bedroom flat provided by the UKBA at 20, Tarfside Oval, before moving on to a two-bedroom flat at 40 Tarfside Oval after Hira had been brought over by Fazl-i-Rahim.
25. But although Ahmed and Saima carefully sustained a public appearance of living together as man and wife, they took care to ensure that their domestic arrangements still conformed to the premises of Pukhtunwali: hence Saima slept in the bedroom, whilst

Ahmed slept on a sofa in the living room. There is no evidence to suggest that Ahmed ever took any sexual interest in Saima: rather their nominal conjugal relationship was no more than a charade maintained for the benefit of the immigration authorities.

26. Fazl-i-Rahim was a regular visitor at the flat, and he was frequently accompanied by his friend Noor Mohammed, who fairly soon began to sleep overnight in the living room of the flat as well.
27. As this took place Saima began to suffer from stomach cramps, and then from vaginal bleeding. It became clear that Saima had fallen pregnant to Fazl when he came to fetch her from Pakistan and she was now suffering from a miscarriage: Fazl took her to the hospital, where the miscarriage was dealt with, but after her discharge he was in no position to look after her, since there would be no way of explaining his overnight absence without revealing the fact that his first wife had by now arrived in the UK. Hence after Fazl had taken her back to Tarfside Oval, and found that Ahmed was unwilling to offer any physical assistance to his 'wife', he left her in the care of Noor Mohammed.
28. According to Saima, it was not long after Fazl had left the flat before Noor Mohammed began to suggest that they were like 'brother and sister' to one another, and hence there could be no objection to him keeping a careful eye on her by sleeping on the floor of her bedroom. Although Saima was deeply disturbed by his suggestion (which was wholly contrary to the conventions of *Pukhtoonwali*), she was so exhausted as a result of what she had just been through that she was unable to stop him from doing so. Likewise when Noor Mohammed crept into her bed and began to caress her whilst she was still asleep, she found herself unable to resist his depredations: as a result she found herself subjected to unwanted sexual intercourse: rape, in other words.
29. As was only to be expected, Saira not only felt deeply humiliated as a result of being treated in this way, but given the conventions of *Pukhtoonwali*, she also felt that she was at least partially to blame for the incident on the grounds that she had failed to take sufficient steps to protect her own *ghairat* (dignity), an offence which her husband might refuse to forgive her – with fateful consequences: she did not take the opportunity to reveal what had happened when Fazl came round to check whether she was alright the following day. It followed – if Saima's account is to be believed – that once the prime moment had passed, Noor Mohammed was in a position to play on her feelings of guilt, and hence to blackmail her into having sex with her on numerous further occasions by

threatening to reveal the nature of their relationship with Fazl, for which she would of necessity have to take the blame.

30. There is clear evidence – not least from Saira herself – that in the two years prior to Noor Mohammed’s death, that Saira had regular sexual intercourse both with her husband and with Noor Mohammed; however she also insists that whilst the relationship with her husband was entirely voluntary, her relationship with Noor Mohammed was subject to duress, both physical and moral in character, since Noor Mohammed constantly threatened to reveal the nature of his relationship with her to Ahmed – thereby threatening to reveal her to be a shameless whore who had wholly compromised her *ghairath*.

3 My role in these proceedings as an anthropological expert

31. It is in this context that my role as an anthropologist comes to the fore. Although I have headed the previous section of my report *The known facts of the case*, I should also qualify my remarks by noting that most of my conclusions on this front are distilled from a careful reading of all the (often contradictory and frequently fictional) accounts of their behaviour so far presented by Fazl-i-Rahim, nd by Ahmed, and initially by Saima herself, backed up by the results of a length interview with Saima, when I was able to cross-question her about all the evidence which I had so far been able to determine.
32. In doing so I am well aware that I am stepping into dangerous territory, since it is no part of my role as an expert anthropologist to step surreptitiously into the shoes of the finders of fact. I have no wish whatsoever to do so. Rather it is the outcome of two specific considerations. On the one hand to use my experience of patterns of immigration – no less on an illegal than a legal basis – to make sense of the strategies which have been deployed by the actors in this case to secure a legal foothold in the UK, and the misrepresentations of their relationships which they have found themselves impelled to make to secure their objectives.
33. With this in mind I can only hope that in the light of the diagnosis I have set out in Section 2 above, all the other parties will agree that my analysis of this dimension of these proceedings is broadly correct, and hence can be broadly (and conveniently) be taken as given.
34. However when we enter the sphere of interpersonal relationships, accusations of rape and so forth, we move into very different territory. Hence, for example, it is no part of my role

to seek to assess whether or not Saima's assertion that she was raped and subsequently blackmailed by Noor Mohammed is or is not true. That is a matter for the Jury to decide. Rather my approach to issues of this kind is to set all the available evidence in its appropriate cultural context – namely the social, cultural, religious and familial assumptions and conventions which condition everyday behaviour amongst Pathans, commonly summed up as *Pukhtunwali* – in such a way that the court, and most especially the jury, are better equipped to make an informed assessment of the evidence placed before them in the course of the proceedings. Hence my objective in this report is in no sense to trespass on the responsibilities of the jury, but rather to better illuminate the underlying logic of the factual nexus presented to them from an anthropologically informed perspective.

4 The Pathans and Pukhtunwali

4.1 The Pathans

35. The Pathans are a large tribal group some 40 million strong, who dominate the great part of the area on either side of the Afghanistan/Pakistan border. Although acutely aware of their behaviour and cultural distinctiveness from non-Pathans on the grounds of their common commitment to the premises of *Pukhtunwali*, the Pathans as a whole are nevertheless internally divided into an endless series of patrilineally divided tribes and sub-tribes, all of which are more or less vigorously in competition with one another, not least in terms of honour and status.
36. Since honour (*izzat*) is routinely understood in relative terms, and since all Pathans are nominally 'brothers' of equal standing, such competition has what can illuminatingly be described as kinetic consequences. If any one individual or sub-tribe gets ahead of the game, his (or their) rivals will be placed in the shade, and being overshadowed in this way serves to compromise their honour. There are two ways in which those who find themselves placed in the shade in this way: either they can find some way to outshine their rivals, or, alternatively, they can seek to find some way of pulling down their rivals a peg or two.
37. One of the most effective ways of doing so is either by seeking to demonstrate that their rivals' women-folk have been up to no good by behaving immodestly, to which one of the most effective responses is by playing tit-for-tat, not just by making a reverse suggestion that the behaviour of their rivals' women-folk is even worse, but also by underling the

point actively interfering with rivals' women folk, thereby demonstrating that their rivals are so weak that they lack the capacity to offer them a sufficiency of protection. Such an escalating series of confrontations regularly leads to *badal*, feud, which in the long run is most usually settled by arranging a series of marriages passing both ways between the rival parties.

38. Not for nothing do that Pathans regularly suggest that all the woes of this world arise from competition for *Zin, Zer, Zamin* – gold, women and land.
39. I should also add that if anything unites the Pathans it is finding themselves challenged by outsiders, whether by the British in the latter part of the 19th century, by the Russians in the 1970s and 80s, and by the Americans post 9/11. As a result of the resulting wars, large numbers of Pathans found themselves displaced, and took refuge in location where the fighting was less severe. In recent years many Afghan Pathans fled across the border into Pakistan, where they have taken up more or less permanent residence. But whilst they have remained strongly hostile to 'the invaders' in the aftermath of seeking refuge, it rarely takes long before clan-based rivalries manifest themselves once again.

4.2 Key premises of Pukhtunwali: *izzat, namus and the maintenance of gender boundaries*

40. In the light of the strongly patriarchal expectations and conventions which lie at the heart of Pukhtoonwali code, gender roles are exceptionally sharply differentiated in Pathan contexts, with the result, for example, that women are normally expected to don an all-enveloping *burka*, thereby rendering themselves socially invisible (and hence inviolable) whenever they step out of the shelter of the family compound and into the male-dominated public arena; however the *burka* is promptly abandoned once a woman steps back into the shelter of a domestic domain within which all present are her immediate kinsfolk.
41. But if women are effectively excluded from public/male-dominated activities, all males, except for close kin, are similarly excluded from the domestic domain. Hence all Pathan family compounds should in principle include a *hujra*, best described as a lounge in which to entertain male guests (Pathans are nothing if not hospitable), with its own separate entry, thereby enabling all such guests to be safely entertained with no prospect the modesty of the women within the household proper being compromised.
42. The ultimate driving force behind these conventions is an acute, and deeply competitive, concern male honour, *izzat*. At a household level, generosity – particularly in the form of

entertainment of male guests in one's *hujra* – is one of the most effective ways of boosting one's *izzat*; by contrast the exposure (whether deliberate or inadvertent) of the women for whom one is responsible – namely one's wife and one's unmarried daughters – to the gaze of (and worse still the sexual attention of) alien males has precisely the opposite effect, since it compromises their *namus*.

43. In an article entitled *Tribal Law of Pashtunwali and Women's Legislative Authority* Palwasha Kakar highlights these issues when he observes that:

Namus can be defined as that which is defended for honor to be upheld, instead of acted upon to achieve honor (such as hospitality). If someone offends the rules of the gendered order, then there is reason to act in defense of one's *namus*. *Namus* is thus an important institution for maintaining the gender segregated order of the society, which is often called *purdah*, Urdu for "veil," the veil or a curtain often being the boundary between men and women's physical space.

In Pashtu expressions it is recommended that both men and women conceptually apply *purdah*, and doing so is a sign of dignity for both men and women. Despite its applying to both genders, however, anthropologists have found that Pashtuns commonly identify *namus* as "defense of the honor of women," and men often think of *purdah* as a way of controlling women, even though it also controls men.

In other words, men are as bound by the rules of *namus*, and are thus as restricted from stepping into space reserved for women as women are from entry into men's space. For example, if a man who is unrelated to any of the women present walks into a woman's compound, especially among the *qalang* landowning class, he will be beaten, accused of dishonor, and even perhaps expelled from the community.

A woman's honor is closely tied to that of a man in Pashtun society. It is often said that Pashtun men customarily see women as comprising the essence of the family. If a woman earns a bad reputation, her whole family, which includes the men, is sullied. (The same could be said for Pashtun women's perceptions of men: the men represent the stronghold of the family and if they are dishonorable, the family has no honor.) A space in which men and women who are either unrelated or not married mix, opens those who step into it open to dishonor.

Only the most trustworthy are allowed into women's spaces, making them semi-sacred spaces. Men and women who have access to a family's women's space thus have a privileged relationship with the whole family. Allowing such access shows a relationship of trust. Women who are chosen to become part of a family become part of its private space, which is also a vulnerable space, since what happens there is judged by Pashtunwali norms, although technically beyond the reach of the public eye.

Such women, who are carefully chosen by the female leaders of the household, are trusted and given privileges within the women's networks. Access to women's public space for men and for women are exemplary of a trust that honor will be maintained. If this space is not upheld, it will cause a Pashtun dishonor and shame. In other

words, if a family's woman's space is transformed into a public space, it brings shame and dishonor upon the family.

44. In the light of the all-encompassing consequences of the Pathans' tightly linked concerns with matters of honour and gender, maintaining the conventions of *Pukhtoonwali* in diasporic contexts is an exceedingly challenging task – but one which remains all important for so long as close contacts with their kinsfolk back home. Moreover the toughest burden invariably falls on the women-folk. It is not just that their husband's *izzat* is conditional on his wife's maintenance of her *namus*: she herself is also responsible for ensuring that unrelated men do not break into the specifically female space which she is expected to establish around herself.
45. From that perspective Saima found herself placed in a position of comprehensive vulnerability on her arrival in the UK. Indeed the 'solution' with which Fazl-i-Rahman provided her was entirely contrary to the basic principles of *Pukhtoonwali* with which he still expected her to conform, and with which she still desperate to conform in order to sustain her *namuz*, and hence her *ghairat*. But given the double-dealing of the males around her, she was effectively in a position of facing a hiding for nothing.
46. However as Kakar rightly emphasises, these issues constrain – or at least precipitate extreme levels of concern – amongst males no less than females. Hence there are excellent reasons to assume that concerns to defend and/or to restore *izzat* and *namus* of the individuals involved were amongst the central driving forces behind the motivation of the male person or persons who were responsible for Nur Mohammed's death, and that the principal stumbling block around which the underlying conflict arose derived from Saima's severely uneasy consequences of her dual (but unacknowledged) sexual relationship with Noor Mohammed as well as her husband.

4.3 *Marriage and the consequences of marital disharmony*

47. Since any kind of contact, however innocent, between a nubile young woman and unrelated male will be regarded as having a disastrous impact on her *ghairaat*, since marriages in a Pathan context are necessarily always arranged. Moreover precisely because this is so, parents invariably seek to arrange their daughters' marriage at the earliest opportunity, with the result, amongst other things, that responsibility for protecting their *namus* will promptly be deputed to their husbands and in-laws.

48. But if marriage consequently leads to the transfer of a bride out of membership of her natal family and into that of her husband and in-laws, it is also regarded as a one-way trip. To be sure daughters are welcome to return to their natal families as short-term visitors, but otherwise it is assumed that her long-term future will of necessity be played out in the family into which she has been married. As a result it is dishonourable for a married woman to return to her natal family on a permanent basis.
49. It consequently follows that if a husband abandons his conjugal obligations to his wife, she will find herself facing severe difficulties, and all the more so if she has given birth to a child. In principle she has every right to stay on with her in-laws performing the role of a dutiful daughter-in-law awaiting her husband's return, but whether or not she is able to implement that right in a comfortable fashion is dependent on how far her in-laws are prepared to respect her in the absence of her husband, as well as the extent to which her own parents are able to demand that their daughter deserves better treatment.
50. Whilst returning to her natal home is her ultimate fall-back, even if her parents are willing to put up with the shame of taking her back, the prospects of being able to arrange a second marriage for her are exceedingly slim, since all potential grooms (and their families) will inevitably regard her as 'second hand goods'.

4.4 Long-distance migration and its consequences

51. In recent years large numbers of Pathan men have sought employment overseas, and at least in the first instance have invariably left the wives and children behind them. Most such migrants leave with the active support of their families, in the expectation that they will in due course send back substantial remittances from overseas before resuming their places as sons, as husbands and as fathers in their villages of origin, and with sufficient savings to comprehensively rebuild the family home, and better still to extend their holdings of land.
52. But whilst the majority of migrant workers do just that, a significant minority gradually let their ties with their families back home fall into abeyance, and hence begin to back out of their expected responsibilities. Given the immense emphasis which Pukhtoonwali places on ties of descent, such migrants' relationships with their wives are most vulnerable to collapse, and all the more so if they manage to establish an alternative conjugal relationship overseas. As a result left-behind wives regularly live in fear of being abandoned as grass widows.

53. Such concerns are also shared by the absent male's parents, partly as a result of the embarrassment of the presence of an abandoned daughter-in-law in their midst (even though her presence as an extra unit of domestic labour is invariably a significant advantage), but above all because they regard this a signal that their son might in due course back out on his obligations to them as well.
54. In such circumstances abandoned wives have few options to choose between, particularly if the males of their natal family are either unable or unwilling to boost their bargaining power viz-a-viz their husbands and their in-laws. In such circumstances brides who find themselves in danger of being abandoned in this way have relatively few options available to them. Most therefore go to great lengths to ingratiate themselves with their in-laws, in the hope that they will in due course pressure their son to fulfil his obligations towards his lawfully wedded wife; meanwhile the most adventurous and determined wives set about grasping the bull by the horns, by stepping beyond the established conventions of *purdah* with which they are normally expected to conform, and setting off overseas in the hope that they can sufficiently embarrass their errant husbands into restoring them into to their rightful position as their wives.
55. All the evidence suggests that in this case Saima studiously pursued the first option, and did so with a sufficient degree of success to receive her in-law's backing, such that Fazl was persuaded to fulfil his obligations towards Saima by taking her (and in due course Hira as well) to join him in the UK. However as Saima readily discovered, the deal was by no means so straightforward as she had hoped.
56. Although I have little doubt that Saima would have hoped to rapidly return to the centre of her husband's attentions as a good and respectful Pathan wife, thereby marginalising in *angrezi* wife Aisha, she would rapidly have realised that she was on much tougher territory than she had initially envisaged, not least when she found that she was required to overlook one of the key conventions of Pukhtoonwali by living under the same roof as, and by pretending to be the wife of her 'paper husband.' Nevertheless she was nothing other than resourceful, and hence fulfilled the role she had been allocated as modestly as possible, in the expectation that doing so was the best way of re-engaging her husband's respect for her loyalty, and hence of his affection. As a Pathan wife seeking to preserve her own *namus*, as well as her husband's *ghairaat* (dignity), no other option but obedience to his instructions was meaningfully available to her.

57. However her position became yet more precarious when Fazl not only introduced her to his friend Noor Mohammed, but offered no objection when he began to stay overnight at 20, Tarfside Oval. From the perspective of Pukhtunwali it was bad enough that she was required to live with one unrelated male as if he was her husband (although Saima indicates that he treated her with the utmost respect), but far worse when yet another male (and far less respectable) male was also given access to her domestic space. From the perspective of Pukhtunwali Fazl was simply asking for trouble in so far as he allowed – and indeed instructed – Saima to do so.
58. But in the light of the fact that she had only recently arrived (illegally) in the UK, and that she was entirely dependent on Fazl’s support to maintain herself in a wholly unfamiliar environment, Saima had no alternative but to follow her husband’s instructions, however uncomfortable – and indeed ultimately humiliating – the consequences of those instructions may have been. However before considering what those consequences were, and the strategies which she adopted to cope with those consequences, we must first consider just what it was that she was up against: namely the behaviour of Ahmed, Noor Mohammed and Fazl towards each other, as well as viz-a-viz Saima herself, during the period between her arrival in the UK and the confrontation during the course of which Nur Mohammed lost his life.

5 Ahmed/Mohammed Rahim’s account of his alleged marriage to Saima and his subsequent entry into the UK

5.1 Ahmed/Mohammed Rahim’s statement

59. On 9th May 2012, ‘Mohammed Rahim’ voluntarily made a statement to the Police which read as follows:

I have been asked by police if I know Mohammed Noor. I know Mohammed Noor but not as a personal friend. I know him to see him I know his face. I know him through my friends who are friendly with Noor. I have never spoken to him.

I am from the Kunar region in Afghanistan and grew up in the Soky district and in the Gato Village, that's where I was born.

In 2000 married to a woman Saima Gul, she was about 16-18 years old. We got married in Gato village, the same village as my own. I was about 22 when we married. I had no contact to Saima before the wedding, it was an arranged marriage. Saima moved in to my family home with my mother and father, I do not have any brothers or sisters.

Prior to me getting married to Saima she had been married before, she had been married to Fazl Rahim. I don't know how old she was when they got married, they had been together about a year. I think it was about five months after they split up we married. I don't know exactly why they split up.

I knew Fazl Rahim through my wife's relationship, we are not related although we have the same name. When Samia and I got married, Samia was pregnant with a child. I was happy with this as it was the decision of my parents for me to get married to Samia, I am an only son.

She had a baby girl called Hira; she was born on 14th March 2002. Fazl did not have any contact with the girl, it is not like the UK. I brought Hera up as my daughter.

In 2008 due to difficulties in our area with the Taliban, it was a dangerous area to live. Samia was a teacher and the Taliban threatened Saima as she was a teacher. She taught religion, and the Taliban did not like what she was doing, so in 2008 we decided to leave Afghanistan.

Samia and I decided to come to the United Kingdom as we thought it would be a safe place to come to for us to live, we had to pay money 22,000 US Dollars for the three of us to come to UK.

We had to sell property in Afghanistan to my uncle to pay for to come to the UK. The agents who we paid the money to, arranged for our travel from Afghanistan to the UK. When we were in Iran, I was separated from Samia and Hera. The agents then took all the males and the females. I thought Hira was with Samia and Samia thought Hera was with me, but in reality she was with other children. We all travelled separately to the UK. Samia arrived first. I arrived in the UK, I travelled in a lorry, the agent told me to get out and I was in the UK.

I arrived in the UK on 22nd December 2008. I left Afghanistan either 9th or 10th November 2008, went via Iran we travelling in the night and rested during the day, sometimes we were walking sometimes we used cars, sometimes we were in lorries, we were always getting passed on to different people. I don't know the exact route we took but we ended in the UK. When I arrived in the UK the agent dropped me off in Glasgow. The Refugee Council gave me a bus ticket to go to the Immigration Authority in Liverpool on 23rd December 2008. I was interviewed by immigration; I did not have any identification documents, as I gve them to the agent, as he never gave them back.

I was classed by Immigration as an Asylum Seeker, as off today I'm classed as full Refugee status, which means the Asylum has been granted. Immigration sorted me out accommodation in Glasgow and I stayed at the YMCA in Petershill Drive, Glasgow. This was on the 24th December 2012.

I then made enquiry with the Refugee Council in Glasgow to try and trace Samia and found out that she was already in the Y.M.C.A Block, she arrived around the 18th November 2012. Hera came to the UK in April 2009, was reunited with us in Glasgow. It was the same agents that arranged to get Hera to the UK.

When we were waiting for Hera to come Samia and I got a flat at 20 Tarfside Oval. A one bedroom flat when Hera came we then got moved to a 2 bedroom flat at 40 Tarfside Oval, Flat 75. At this time everything was good, we had a flat, Hera was going to school. I did not work as I was not allowed to work, and I did not want to cause any difficulties. Baby number two came on 20th March 2010, baby girl Maryam Gul. Everything was fine. The baby was fine at this point.

Around March or April 2011, we started arguing, fighting on a daily basis, she was not respecting me. I wanted Samia to teach our children in the house about our culture, but she was getting distant from our culture, she was not doing as I asked. She was disrespecting me and swearing at me and asked me for a divorce. I just decided to leave, I was trying to be patient. I thought things would get better, but they did not, so I left.

I know things are different in the UK, so when I finally left in June 2011 I went to a lawyer to deal with this matter, assist me on my divorce. There was never any physical violence between us just word of mouth, and as far as I know there was not another man involved with Samia. My decision was to leave the children with their mum, so when I contacted the lawyer I did not ask for access to the children, just to get the divorce official in the UK.

I had a friend from who I know from Afghanistan who lived in Glasgow, Abdullah Jan²; he is married with 3 children. I moved into his flat at *****. Since I came to Glasgow we have continued our friendship. I moved into Abdullah's flat, I asked him if I could stay, he said "OK. You can stay as long as you want".

Since I moved out, I have no contact with my wife Samia or the children. I have not seen her or contacted her by the phone, and the solicitors are still dealing with the divorce on my behalf. For the last two months, I have been helping out at Abdullah's take away restaurant helping out in the kitchen.

I first heard about the incident the police are investigating on Sunday 6th May 2012 the people from our Pashtun Afghan Community were talking about so was Abdullah, that a murder had taken place. That a guy called Noor had been killed, that a woman had been arrested and people are saying that my wife, ex-wife Samia had been arrested and it happened in her house. Also that male had escaped, his name is Fazl Rahim. I don't have enough information to say it's the same man that Samia was married to before me. But people are saying it is Fazl Rahim.

I have seen the Fazl Rahim in Glasgow. The last time I saw him in Friday prayers in Mosque in Langside Road. I just waved to him, but did not talk to him. I am aware that Fazl has worked from Abdullah before. I have been told by the police that Saima has had another baby, I did not know this. I'm feeling that it is very bad that Saima has been involved in the killing of a boy. This is her problem. I do not have anything to do with her.

I don't know why Noor was killed and I don't have any other information about his death. So as far as I know, Samia was still living at Tarfside Oval, but she may have

² Although he did not admit it at this stage, I understand that Ahmed/Mohammed Rahim is in fact Abdullah Jan's younger brother.

moved on since then. I don't know where the murder took place. I have been asked if I have ever spoken to Fazl Rahim's Scottish wife, I have never spoken to her.

I can confirm that this statement is a true and accurate record.

5.2 *A commentary on Ahmed/Mohammed Rahim's statement*

60. Even before I had an opportunity to interview Saima to ask her how far she could corroborate the contents of this statement, I was deeply sceptical of the truth content of the greater part of what he had to say. Having discussed the matter with Saima, my doubts were comprehensively confirmed: this so far as I can see Ahmed was simply rehearsing the cock and bull story which he had dreamed up in order to give substance to his (successful) application for asylum in the UK.
61. Moreover it would also appear that he was just as economical with the truth with respect to his employment history in the UK. When asked, Saima promptly informed me that Ahmed was Abdullah Jan's younger brother, at that for the greater part of the period he worked in the same take-away (owned by Abdullah) as Fazl and Noor Mohammed.
62. So far as I can see there are two obvious – and one possible – reason why Ahmed produced this pack of lies when interviewed by the Police. In the first place there is every reason to suppose that when confronted by the Police, he chose to repeat the cock and bull story which he had constructed for the benefit of the UKBA, not least because he feared that if he told the truth his right of abode in the UK would be rescinded; secondly, and equally significantly, he also appears to have done his best to distance himself from both Fazl and Noor Mohammed, and hence from the murder enquiry which was under way.
63. But does this reaction also suggest that he was in some way actively involved in Noor Mohammed's murder? Whilst there is little or no significant evidence that he was so involved, I will leave that question open for the moment.

6 Saima's account of her experiences in the UK prior to Noor Mohammed's death

6.1 Honour, shame, and the management of appearance in the context of Pukhtoonwali

64. As in all cultural contexts in which the maintenance of honour stands at a premium, whilst simultaneously being a focus of constant competition, a great deal of effort is invariably devoted to the management of appearance. Since personal faults and malfeasance of one kind or another are a source of dishonour, yet at the same time

virtually inescapable dimension of everyday social practice, the maintenance of honour, and hence the avoidance of shame, is ultimately a matter of the management of appearance. In such circumstances economy with the truth – or to put it the other way round, the systematic avoidance of displaying one dirty washing in public – is by definition the name of the game.

65. Given the strictness of conventions of Pukhtunwali, no individual, and no certainly family, is shame-free: everyone has secrets of some sort to hide. On top of that the nominally egalitarian conventions of Pukhtunwali also generate a high level of mutual competition, no less as between individual than as between families and clans, all of whom take a close interest in each other's secrets, the better to secure bargaining power over their rivals. It follows, in contexts such as this, that whenever the followers of Pukhtunwali find themselves in dangerous and unfamiliar circumstances they routinely seek to give away as little about as possible about themselves, for fear that in doing so that they will reveal secrets which will in due course be used against them. By the same token anyone who has gained knowledge of one's personal secrets, whether by fair means or foul, will be in an excellent position to engage in blackmail by threatening to 'go public' with those secrets. Such is the logic of Pukhtunwali.
66. Given these commonplace practices – which are by no means unique to the Pathans, since they are also deployed, although rarely with such sophistication, in many other cultural contexts – I was in no way surprised by the extent to which I encountered manifest economies with the truth when I considered the witness statements which had been laid before me in the bundle provided by my instructing solicitor. But having spent a great deal of time in the sub-continent, and having produced numerous reports for use in the courts, I deployed my usual critical procedures in an effort to distinguish likely truth from manifest falsehood, as well as the location of all manner of critical silences.
67. As I did so I did so I noted that in Saima's draft precognition she had provided next to no details as to just how and when she arrived in the UK, who paid for her passage, and who facilitated her 'paper marriage' with 'Mohammed Rahim', and above all the fine detail of her relationship Nur Mohammed, which was manifestly deeply shameful in terms of the conventions of Pukhtunwali. However in doing so she also appeared to have largely avoided telling outright lies: rather her strategy was to have been to be carefully economical with the truth – except with respect to those things which she initially

confessed to have done, but which she has subsequently suggested that Fazl had directly instructed her to lie in order to save his own skin.

68. By now it will be clear that Saima is by no means the only person whose activities and motives require such intense scrutiny: on the contrary many of the remaining actors appear to have been far more active in constructing fictions about themselves and others than she has. It follows, in circumstances such as this, that a jury whose members have no prior acquaintance with the principles and practice of *Pukhtunwali* are likely to find themselves faced with an exceptionally difficult task when they come to confront their core duty: namely to distinguish truth from falsehood.
69. With that in mind in the greater part of the remainder of this report I have deliberately pushed the boat out considerably further than I usually do in preparing expert reports of this kind. Hence besides seeking to set the events in question in their appropriate cultural context, I have also drawn on my knowledge and experience of the dynamics of inter-personal relationships (as well as the way in which these relationships are conventionally presented to others) to add a continuous series of assessments as to the likely truth of otherwise of the accounts of things said and done by those from whom evidence has been obtained. In doing so, I may seem at first sight to be stepping into the shoes of the jury.
70. Hence I would like to take the opportunity to emphasise as firmly as possible that as and when I have offered such opinions, I have invariably done so to assist the court, and ultimately the jury, as to just how evidence of things said and done in an unfamiliar context can best be read and understood from an objective perspective. In other words any judgements I might express are merely *opinions designed to illuminate the underlying issues*, and should be read as such by all concerned.

6.2 Saira's account of her arrival in the UK

71. In her precognition dated 11th September 2012, Saira indicated that:

When I lived in Pakistan I was married to Fazl Rahim in 1999. After we got married Fazl left Pakistan and moved to the UK. When he left Pakistan I was in the early stages of pregnancy with my eldest daughter Hira. Eventually, I ultimately moved over to Scotland in 2008/2009. By this time Fazl had taken another wife, a Scottish woman, who is called Aisha. I did not give my permission for this. Fazl has told Aisha that we are divorced, but in reality we have never been divorced. I have no paperwork to prove that I am married to Fazl.

When I came to the UK I had to pretend to be married to someone called Mohammed Rahim, he is who I refer to as my "paper husband". Both Mohammed Rahim and myself pretended to

the UK Border Agency that we were from Afghanistan and seeking asylum. Ultimately, I was granted leave to remain in the UK on this premise.

72. In the course of my visit to see Scotland to interview Saima, one of the first tasks which I undertook was to explore the details of her family background, and the basis on which she made her way to the UK – much of which I have set out in paragraphs 11 – 17 above. If the two accounts are compared, what she said in her draft precognition (which was prepared before I had any involvement in this case) appears to be entirely congruent with what she revealed to me during the course of the interview in Corton Vale.

73. She then went on to observe that

When I arrived in the UK my husband Fazl Rahim made me live with Mohammed Noor, his friend, and also my paper husband, Mohammed Rahim. Mohammed Noor was a friend of Fazl Rahim's and I understand that he was from Afghanistan.

which is once again accurate, though very short in detail. The same point can be made in spades when she goes on to indicate that

During the time that I had to live with Mohammed Noor he began to take sexual advantage of me and started forcing me to have sex with him. Sometimes he would be violent towards me and other times he would threaten violence. He used to beat me and hit me. He would hit me with an electrical cord, close the door on me and hurt me. On some occasions my daughter, Hira has seen him be violent towards me, although, she never seen him having sexual contact with me.

The sexual contact with Mohammed Noor lasted over a period of about three years. He would come to my house, I eventually managed to move to Tarfside Oval and then to Netherplace Road. He would come to my house when my daughter Hira was at school. He would make me have sex with him. Sometimes he would come to my house a couple of times a week and it was only for this purpose. I was never happy about it, but I was scared of him so that's what would happen.

74. I was extremely puzzled when I read this section of Saima's draft precognition, since there was manifestly something missing from this account. To be sure she found herself in the midst of a severely cleft stick in the immediate aftermath of her arrival, given that she had been brought into the UK illicitly by a husband who turned out to be more strongly committed to his second wife than he was to her, and was in no position to seek assistance from the authorities given that she had no right of abode, and would be promptly shipped straight back to Pakistan to resume her status as a grass widow if she revealed the false basis of her 'paper husband's application for asylum in the UK. Moreover as she went on quite explicitly to observe

I was upset that my husband arranged for me to come here, and then made me live with two other men. This is a deeply shameful thing in my religion.

75. With this in mind two problems confronted me: just why was she so scared of Noor Mohammed that she consented – albeit under severe duress – to have sex with him? And furthermore, why did she not take the opportunity to tell Fazl what was going on? Was it the case that she freely made herself available to Noor Mohammed – a prospect of which I was doubtful, given that such behaviour would have been wholly contrary to the principles of Pukhtunwali? Or was it, to the contrary, that Nur Mohammed had some kind of hold over her such that he was able to blackmail her into submission? Clearing that conundrum up was one of the principal reasons why I decided that I had no alternative to go an interview her in person at Corton Vale.
76. At first Saima was extremely reluctant to talk about these matters, but eventually revealed what appears to have been to truth of the matter in floods of tears, in the midst of which she recounted the way in which Noor Mohammed had crept into her bed and raped her immediately after she was released from hospital having suffered from a miscarriage – as recounted in paragraphs 24 – 30 above.³

6.3 *Blackmail*

77. Having relieved herself of this detail – which she told us that she had not hitherto disclosed to anyone else, not least because she was so disturbed, and indeed so guilty, of having surrendered her *ghairaat* in this way – the rest of her story came pouring out. In her view her greatest mistake was her failure to disclose what Noor Mohammed had done to her when Fazl arrived the following morning, partly because she was feeling so ashamed of herself, and partly because she was fearful that Fazl would dismiss her as his wife there and then. But as she subsequently realised, by confirming Noor Mohammed's *bona fides* in this way, she was playing straight into Nur Mohammed's hands, for thereafter he was in a position to blackmail her by telling her that she disclosed the existence of their relationship to Fazl, he would promptly tell Fazl that it was Saira who had seduced him, rather than the other way round, in the after Saima returned from the hospital in the aftermath of her miscarriage. Moreover he backed his position up with regular bouts of violence – including threats to kill her when he produced a small hand-

³ In doing Saira came out with a graphic account of repeated incidents of rape, including incidents in which Noor he tied her down to the bed with her arms and legs wide apart.

gun. It will, of course, be up to the jury to decide whether this dimension of the Saira account is true when she in due course appears in the witness box.

6.4 *Saima's explanation of Fazl's lack of reaction*

78. Having got this far I took the opportunity to ask her why she thought Fazl had failed to appreciate what was actually going on, not least by attempting to check up on Noor Mohammed's behaviour. We agreed that the solution which Fazl dreamed up for her in the aftermath of her arrival in Britain was entirely contrary to the principles of *Pukhtunwali*, since it rendered Saima's *ghairaat* wide open to molestation by the two non-related men with whom she was required to share a roof. Indeed she told me that she had never informed her mother that that was the situation in which she found herself, since her mother would have been absolutely horrified. However at the same time Saima was simultaneously aware that if she placed too much pressure on Fazl, he could all too easily repudiate her by accusing her of adultery – regardless of whether there was any substance to the accusation.
79. This led us to puzzle as to why it was that Fazl had chosen not to notice what was – or at very least might have been – going on between Saima and Noor Mohammed, especially because he knew that Noor Mohammed (with whom he went to work on a daily basis) regularly visited her in her flat. What gradually emerged in the course of our discussion was that prospect that Fazl was as probably as much concerned about his own *izzat* as he was about the consequences of all this for Saima's *ghairaat*, and that his best strategy was to comprehensively overlook what might be going on between them, thereby leaving the sleeping dogs to lie.
80. One can also identify many reasons why he may have chosen that option – partly because by doing so he could avoid humiliation in the eyes of the wider Pathan community, no less in Glasgow than back home in Swabi, and partly because the result of so doing might precipitate such ructions as to attract the attention of UKBA, which could all too easily bring their carefully constructed immigration strategies tumbling to the ground. There may well also be other grounds on which Noor Mohammed had a hold over Fazl, which also contributed to his decision to turn a blind eye to what was going on.
81. In any event by so doing Fazl found himself in a position to have his cake as well as eating it by maintaining what was effectively a polygamous marriage, even if in doing so he had to overlook the fact Noor Mohammed was nevertheless simultaneously cuckolding

him. Moreover Saira had no alternative but to go along with Fazl's carefully constructed charade

My parents hate Fazl for way he has treated me. I have never even been able to tell my mother that he does not spend nights with me. Although he would still come and visit me and the children and he would have sex with me he would never stay overnight. This is because his Scottish wife, Aisha, with whom he has four children, believes that we are divorced and our relationship is over.

I have met Aisha before. On one occasion she came over to my house with Fazl and Fazl showed her some piece of paper that was supposed to show that Fazl and I had been divorced and that she had nothing to worry about. I don't know if he made this piece of paper up or where he got it from, but certainly there is no divorce that I know about. A divorce in our religion can be affected by a husband telling a wife that he divorces her three times. He has never done this.

82. But there was more, since Saima soon fell pregnant

Obviously now I have two more children, Marium and Khadija. I have to say that I am not entirely sure about the paternity of both of these children, whilst I think that Marium is the daughter of Fazl Rahim, I really have my doubts about Khadija and think that she might be Mohammed Noor's. I would like to find out about this.

This is a brave and stark (and inherently shameful) acknowledgement for any Pathan woman to make, which for that reason is most unlikely to be untrue.

6.5 *Noor's relationship with Hira*

83. In her precognition Saima's daughter Hira further confirms many of her mother's observations as follows:

When I lived in Tarfside Oval a man called Ahmed who I was to pretend was my dad lived there as well. He slept in the sitting room with another man called Mohammed Noor. Mohammed Noor was my dad's friend and I called him uncle. My real dad is Fazl Rahim, but Fazl Rahim does not live with us. I would see him a lot, however, as he would help my mum out. I call my dad Papa. He would come to see us about three or four times per week when we were at the addresses at Tarfside Oval. He would come to visit and help and take us out. My dad I know worked in a takeaway in Cumbernauld. I have been there before and had food there. I knew that Noor worked in Cumbernauld as well. I think my dad and Noor seen each other every day because of work.

I have been asked about if Mohammed Noor would come to visit my mum and he would come, sometimes he would come with my dad and sometimes he would come on his own. When I first moved in to 20 Tarfside Oval I liked Mohammed Noor and thought he was great fun. However, I started to not like him because he began hitting my mum. I saw him doing this quite a lot of times.

I have been asked if he would use his hands or if he would use things to hit my mum and I remember that he would use wires to hit her, by wires I mean the wires from

chargers and hairdryers. This happened a few times that I saw. I have been asked if I can remember Mohammed Noor saying anything to my mum while he was doing this. The thing that he would say in Pashtu means “I will destroy your house and your family”

Noor would also boss myself and my mum about. I remember specifically Noor criticising things that my mum would wear. My mum would say that she thought what she was wearing was fine and he would disagree with her and hit her with the charger shouting that phrase. I have been asked if Noor was always cruel and nasty to my mum or if he was ever nice. The answer to that is that he was not always cruel. Sometimes he was nice and other times he was very cruel.

I have been asked if I know if he liked me and I don't know if he liked me. I have been asked if I knew if he was married and I don't think he was married. I used to ask him why he was not married and he just would not answer me. I don't know if he wanted to marry me. I am only 12.

Saira takes up the same theme when she notes that

When Noor used to come over to my house Hira hated him. Hira hated him because she knew that he was mean to me and that he was nasty to me and whenever he was in she refused to eat her food. She made it clear that she did not like him. Noor in fact had told Hira previously that he liked her and he had told me that he wanted Hira's hand in marriage.

84. So far as I can see from the evidence before me, and from Saima's remarks during the course of the interview at Corton Vale, it was Noor Mohammed's interest in Hira which eventually blew the *modus vivendi* apart. Saima grew suspicious when she noticed that Noor Mohammed was taking an unseemly interest in Hira's burgeoning sexuality, and even more so when he began to suggest that he should in due course marry her. Marrying Hira – even though he would have several years to wait – would have been to Noor Mohammed's advantage, since it might well have enabled him to establish right of abode in the UK. However both Hira and her mother appear to have been deeply insulted by this proposition, and to have taken it as an indication that Noor was seeking to further exploit their position of disadvantage.

85. Moreover this time round Saima decided that in these circumstances she had no alternative but to raise the matter with Fazl:

My husband, Fazl Rahim, was considering allowing Hira to marry Mohammed Noor. This must have been mid April 2012. It was this that caused me to disclose to Fazl Rahim what had been happening: that Mohammed Noor had been forcing me to have sex with him.

The reason that I had to disclose this was that it is *haram* (forbidden) in Islam for a man to marry a child or a daughter if he has had sexual intercourse with her mother. I could not allow this to happen. I wanted to protect Hira.

When I told Fazl, he doubted me. This was one of the reasons I never wanted to tell Fazl about the abuse. I knew he would doubt me and I knew he would blame me and say that I consented having sex, even though that is not true. I never did consent.

He was very angry when I told him what was going on. His immediate plan was to arrange for Mohammed Noor to go back to Afghanistan.

86. It seems that in the face of Saima's direct disclosure of the multiple breaches of the conventions of in Pukhtunwali for which Noor Mohammed had been responsible for precipitating, Fazl decided that there was no way in which he could continue to turn a blind eye to what had been going on. Hence whilst he still appears to have harboured doubts about Saima's innocence, he appears to have confronted Noor Mohammed about the matter face to face. The cat was out of the bag.

7 Denouement

7.1 The run-up to Noor Mohammed's death

87. As Saima goes on to recount:

All this happened round about mid-April 2012. At this time Fazl was working in a place called Bombay Dreams in Cumbernauld, where he worked alongside Noor.

After I told Fazl about the abuse to which I had been subjected by Noor, on Friday 4th May 2012 Noor phoned to tell me that he was coming over to my house to see me.

I did not want him to come over and abuse me because I had made a full disclosure to Fazl, I phoned my husband asked him what I should do, because I could not face the prospect of any more abuse I lived right next to Pollok Police Station, so Fazl told me that I should go outside with both Marium and Khadija (Hira was at school.) because Noor would not be able to do anything in front of the Police Station. When Noor turned up he told me if I did not go with him he would fuck me there and then on the street.

When I refused so he snatched Khadija, my two year old, out of the buggy and walked towards my house saying "aren't you going to come, if you don't I will throw her out of the window".

At this I ran in to the police station told the police that he had been annoying me and had taken away my child. Shortly afterwards Mohammed Noor then came into the police station and tried to smooth things over by saying that he was just helping me with the baby. He went away and after a while waiting in the police station I went to go back to my house, but as I exited the police station and walked slightly up the road I realised that he was standing there outside my house so I went back to the police station and waited for a while longer until police officers were able to come with me to my house.

I went to my house with the children and police officers and they came in and spoke to me in my house. I did not have an interpreter. From the conversation that I had

with the police I understood that they would arrest him and put him in jail. I found out later that this was not the case because Mohammed Noor phoned me and said that he was waiting for me at a park.

When the police were in my house I said that I was too scared to go to pick up Hira from school and that I would need a taxi. The police said that I could get a taxi if I wanted, but I would have to pay for it. After the police left, Mohammed Noor phoned me and said that he was at a swing park. I did not see him again for the rest of the day, but I phoned and spoke to Fazl and told him what had happened. I later found out that the police picked up Mohammed Noor on the street, gave him a warning and drove him back to the area that he lives in.

88. There is no reason to doubt the veracity of Saira's account of these events, not least because they are directly confirmed by the record of the events produced by the Police. Whilst Mohammed Noor is no longer with us to explain why he was acting in this way, the portents appear to be fairly obvious. After Saima had disclosed everything to Fazl, he could no longer keep a blind eye on Noor Mohammed's activities, and confronted him with what he now knew. Noor Mohammed reacted with fury, and promptly turned on Saira, and – so far as I can see – sought once again to blackmail her into submission. But having confessed to Fazl, she was now in a position to seek his advice, and hence his support. However Noor had not immediately appreciated how much the game had changed, so having verbally abused Saima and sought to further frighten her by grabbing Khadija out of her buggy and threatening to kill her, he realised the error of his ways when she stepped into the Police station, he changed tack and tried to present himself to the Police as a helpful friend. However Saima promptly indicated that she wanted to have nothing more to do with him.

7.2 *The day on which Noor Mohammed lost his life*

89. Saima takes up the story as follows

Mohammed Noor tried to contact me later that night, but I turned off my phone. I am aware that my husband, Fazl Rahim left his work early that night so as to avoid a confrontation with Mohammed Noor. I think he told his work that he had a family problem at home.

On the morning of 5th May 2012, myself, Hira, Marium and Khadija were all in my house, when Fazl phoned to tell me "if I come to your door with Noor let us in". In due course they both arrived, but I refused to let them in. They were standing outside my door and began abuse and then to fight with each other. I think they must have been outside my door for about fifteen minutes before I let them in to the house.

When I let them in initially things were pretty calm and they had stopped fighting. We were in the living room area of the house when Noor started getting really angry and shouting at Fazl "how did she get the courage to go to the police, she could not have

had the courage on her on, you must have told her to go". Fazl was denying saying "I don't know who told her to go to the police", but Noor refused to believe that I had decided to do this off of my own bat.

Whilst Saima was clearly still extremely frightened of Noor Mohammed, and most particularly the violence of his wrath, if I read what was going on aright, she had now at long last managed to turn the tables on her blackmailer by managing to disclose the fact of Noor Mohammed's behaviour to Fazl without losing his respect, such that she could now at long last pull him in as an ally. As a result Noor Mohammed reacted with even greater fury.

90. During the course of my visit to Corton Vale, I took the opportunity to ask Saima to provide me further detail of exactly what went on as the two men were standing on the doorstep. She told me that her first thought was not to let either of them in, for she thought that would there was bound to be trouble if she let them in. She also told me that whilst Noor Mohammed began to lose his temper when she refused to let them in, Fazl sought to calm him down, and to act more reasonably. However as the conflict between them intensified and a scuffle broke out on the landing, and she grew fearful that the two men might fall down the stairs – so she let them in.
91. Having done so they calmed down a bit, but before long the two men began arguing once again, most especially over whether or not Saira had gone to the police of her own volition, or whether she had done so as a result of instructions she had received from Fazl. All I would observe in this context is that male Pathans routinely assume that their womenfolk are incapable of agency in their own cause: hence if Fazl sought to play things down by denying that he had had instructed Saima to seek assistance from the Police (which is precisely what Saima suggest had been the case, even if she did not say so at this point for obvious diplomatic reasons), Noor Mohammed became increasingly angry about Fazl's denials. So far as I can see Noor Mohammed took the view that by assisting – and indeed directing – his wife to behave in this way, Fazl had gone behind his back and consequently betrayed their ties of qazi-brotherhood – contrary, amongst other things, to the premises of *Pukhtunwali*.
92. However it does not appear to have taken long before the ultimate source of this confrontation came to the fore, which engaged a far more serious dimension of *Pukhtunwali*: Noor Mohammed's now-admitted sexual relationship with Saima, and worse still his sexual interest in Hira, both of whose *ghairaat* it was Fazl's duty to protect

– together with Saima's further outrage on the grounds that it was absolutely *haraam* for a man to propose having sexual relation with a young woman when he had also had a sexual relationship with her mother: in other words if no-one else was prepared to do, *she* was prepared to take steps to protect Hira's *ghairaat*.

93. Once all this came to the surface it would appear that Noor Mohammed began to taunt Fazl for being so lacking in bottle that he was unable to protect the *ghairaat* of his wife, since – as he knew full well – Saima was no better than a prostitute. As Saira puts it in her precognition:

During this argument, I cannot remember word for word what was said, but at one point Noor started taunting Fazl and saying about me that he has fucked me so many times that he would not be able to fuck me and that he was going to do it now.

By taunting Fazl in this way, Noor Mohammed was further upping the ante, for such taunts were a direct and provocative attack on Fazl's *izzat*. Then he appears to have gone one step further in an effort to comprehensively humiliate – and hence his dominance over – his hitherto more or less quiescent rival:

Noor Mohammed then pushed me down on a couch, pulled down my *Shalwar* to my knees, and then pulled his own trousers partially down. He had an erection. I was screaming.

By now Fazl could not cope with such provocation:

At this point Fazl hit him and he stumbled over but did not completely fall to the floor. Because of all the shouting Hira had come in to the living room and Noor got up. Noor said to Fazl "if I can't fuck her, then I will fuck Hira" and he grabbed Hira by the clothing in her chest area.

In response Noor Mohammed was further underling his disdain for Fazl's incapacity to full his role as the protector of the *ghairaat* of those for whom he was responsible.

94. At this point Fazl appears to have had enough, and to have launched a frenzied attack on Noor Mohammed:

I am finding it difficult to recall exactly the order in which things happened, but I think it is at this point that Fazl went in to my kitchen and got a knife, this was a big silver knife with no handle on it and he came in and was fighting with Noor. He stabbed him in the neck and then knife was sticking out of his neck. Even with the knife sticking out of his neck Noor was still fighting and managed to get Fazl on to the couch and he was on top of him. Whilst he was on top of him on the couch I tried to grab Noor to get him off Fazl because he was continuing to attack him. He was like a mad man and Fazl shouted on Hira and told Hira to go and get a hammer.

Hira went and got a hammer and Fazl told her to hit Noor with it so she hit him. I don't think she hit him any more than twice on the head. At this point I was still trying to get him off of Fazl, but he was biting my fingers at the time. Hira hitting with the hammer meant that Noor managed to get the hammer off of Hira, but Fazl rescued this from Noor and started hitting him about the head with it. This caused him to faint/collapse and he was lying on the living room floor.

I am not sure whether the knife was still in his neck at this point, but I remember Noor asking Fazl not to kill him and to stop and I told him that he did not have to attack him anymore and that he should stop hitting him, but Fazl looked at him and said "look at him what is left?". It was then that Fazl slaughtered Noor.

I should say that when Fazl had the hammer he hit Noor on the head lots and lots and lots of times. Hira only hit him about once or twice. He got the knife and he slit his throat but he did not stop after he had slit it, he kept cutting and sawing with the knife until his head was almost completely off.

Hira saw her dad Fazl slit Noor's throat. When he was lying on the ground there were noises coming from his throat, like gurgling sounds and air escaping and Fazl stamped on his chest which caused the noises to stop and it was then that I knew that he was completely dead.

I think Hira might have been sort of coming in and out while all this was happening. Fazl's hand was bleeding, it must have been bleeding in the area between his fourth finger and his thumb, I noticed that that was where the cut was and this would have been from him using the knife with such strength and for such a long period on Noor's neck, so Fazl was bleeding.

95. Whilst I can see no obvious reasons why doubt should be cast on the broad accuracy Saima's account of this thoroughly traumatic series of events, not least because they appear make coherent sense in the light of what we know about the series of event which preceded this incident, it would in my opinion be way beyond my role as an expert to over any kind of judgement on this score: hence I leave that matter for the jury to decide, not least in the light of any evidence which Fazl may also choose to offer.

96. As it happens, however, we also have a further perspective on just what happened on that dreadful Saturday morning, in the form of Hira's precognition:

I have been asked to describe what I can remember from the 5th May 2012. That day I got up and went on my computer on Skype and I talked to my mum's brother in Pakistan. I think I might also have spoken with my uncle and my gran. My mum was up as well, I think, and I remember I was in the living room with my mum and my two little sisters when I could hear knocking at the front door.

My mum went in to the hallway and I could hear the voices of Mohammed Noor and my dad, Fazl Rahim. They were shouting at the door and my mum was not letting them in. They were there for quite a while. My mum was saying to them "I'm not letting you in, you're not my friends or my relatives get out of here" and she kept the door closed. She was talking to them through the letterbox. Noor was kicking and

banging at the door and was shouting "open the door, open the door". My dad sounded more calm and he was just saying not shouting "open the door, open the door, I'm telling you open the door".

My mum continued to shout at them "You are not my relatives. Don't come to my house and I won't go to your house". I think she was meaning both of them.

I was in the living room but I was peeking out in to the hall and I knew that Noor could see me. My mum realised that I was there and she told me to go in to the living room. I went in to the living room and this continued to go on so I went to have another peak and my mum says firmly to me "get in" again. So I stayed in the living room and finally she opened the door.

She came in to the living room with my dad and Noor and told me to take my sisters in to the bedroom. I am not sure about the order of this but I think I took Marium in to the bedroom first, then I think my mum let them in and then I think that I came back for Khadisha who was in her bouncing chair. I am not entirely sure about the exact order of how this happened. I think I was actually in the bedroom when the call came through the front door and went in to the living and I could hear noise.

The next thing I remember is a picture of my dad being on the sofa, Noor being on top of my dad and then my mum being sort of top of Noor. I have been asked which sofa this was on as there were two sofas in the living room. There was one at the kitchen and there was one at the window. It was the sofa nearest the kitchen that this was on. My dad said to me to go and get a hammer so I went in to the kitchen to look for a hammer and it was not there. Then I said "where is the hammer" and I think it was my mum that tells me it was in the store cupboard next to the bathroom. So I went to find the hammer from the store cupboard and I gave it to either my mum or my dad, I think it was my dad, but I am not entirely sure. I also remember an image of them standing at the window but I am not sure of this was when I gave them the hammer or if they were still on the sofa at this time.

The next thing I remember is that my mum or my dad, I cannot remember which one, asked me to go and get a knife. I went in to the kitchen and the first knife I got had a yellow handle. I did not give that to anyone thought as I cannot remember is someone told me that that was the wrong one or that would not do and I was to get another one. I do remember though that I never gave that knife to anyone because I had to change it. The knife that I got was a silver knife that had a broken handle. There was hardly any handle on it, it was just a small black bit may be in the shape of a triangle. The handle was almost completely broken and I gave this knife to either my mum or my dad.

I remember that Noor was lying on the floor and that Noor was holding the knife. I remember my dad was sort of crouched down next to him but not on top of him. He was next to the table that the computer was on and Noor was lying on the floor. Noor was holding the knife and my dad was holding Noor's hand saying "let it go, just let it go and you can go home". I am not sure where my mum was at this time.

The next picture I have of Noor is that there is blood coming from him, the blood is coming from his head, I think this was caused by the hammer but I cannot remember who hit Noor with the hammer. I did not hit him with the hammer. I think I cannot remember lots of details because I had to keep going in to the bedroom because

Marium was crying and I did not know how to shoosh her. I do remember seeing Noor lying on the floor with an injury to, I think, it was his neck and there was lots of blood all around. I have been asked if I saw either my mum or my dad sitting on top of Noor and I don't remember this.

97. It goes without saying that for a twelve year old girl, witnessing these activities would have been a thoroughly traumatic experience, and all the more so because she would by then have been well aware that both her parents had been charged with Noor Mohammed's parents – with the result, amongst other things, that her memory of the events in question appears to have been reduced to a series of flashbacks. All I would note is the Hira's account of what went on appears to be broadly congruent with that of her mother.

8 In the aftermath of Nur Mohammed's death

8.1 Hira's perspective

98. As Hira goes on to indicate

The next thing I remember is that my dad was having a shower and while he was having a shower my mum put blood on me. She smeared it on my clothes and that is why I had blood on my clothes.

I also have a picture that my mum was standing on Noor with just one foot. This was when my dad was either in or out of the shower and he asked us to check if Noor was still breathing so that he could not hurt us. I have been asked if know who caused the injury to Noor's neck and I don't know. It might be that I don't remember or it might be because I was in the bedroom with my sisters at the time.

I have been asked what my dad did after he came out of the shower. He put on clean clothes, he kept clean clothes in our house. Then he came and hugged me. When he hugged me he said "this is for your *izzat*".

This remark is congruent with the analytical suggestions that I set out in Paragraphs 93 – 94 above.

99. Hira then goes on to cautiously suggest that her father had instructed her mother that she and her mother should incriminate themselves when the police arrived after his hasty departure:

I cannot remember the order that my mum put blood on me, and whether this was before or after my dad went away. Before leaving my dad hugged me. As he walked out down the stairs my mum followed him, carefully trying to put her footprints where his footprints were.

I don't remember my dad telling me what I was to say [to the police], but when I saw my mum walking over my dad's footprints I got the impression that we were to cover

up for my dad. My mum also told me to say that my dad was not here. I cannot remember if my dad was upset or if he was crying and I cannot recall if my mum was upset or crying.

8.2 Saima's perspective

100. In her precognition Saima takes up these matters in much greater detail, clearly acknowledging that she took steps 'to make it look as if it was me who had killed Noor.'

After Fazl had killed Noor he went in to the bathroom and had a shower. He clothes at my house and he changed out of his clothes which were soaked in blood

Whilst Fazl was in the shower in my house I was trying to find the knife that Fazl had used so that I could put my fingerprints on it, to make it look as if it was me who had killed Noor. I could not find that knife so I went in to the kitchen and got another knife that had a yellow handle.

At this time Noor was very clearly dead and Fazl was in the shower. I put the yellow knife in to the gaping wound on his neck so that it would have my fingerprints on it and Noor's blood and so it would look as if I had in fact killed him. I am sure Hira saw me do this. This was intentional, as I also wanted Hira to think that it was me who killed Noor. I wanted to take the blame for my husband Fazl.

101. However in my opinion the next sentence in her precognition is the key to much of Saira's otherwise puzzling behaviour in this case, especially since she repeated the same sentiment during the course of the interview in Corton Vale:

[When] Fazl told me that I should do this, I thought that because he killed the man who had been abusing me, he had done so to protect me and Hira, and that I should [consequently] take the blame for it.

All this suggests that Saima's commitment to the premises of Pukhtoonwali was just as firmly embedded in her psyche – and in all probability more so – than in the psyches of the menfolk in her life. Moreover in my view it was precisely because they were aware of the depth of Saima's sentiments that Noor Mohammed – and ultimately Fazl himself – were able to take such advantage of her.

102. As became clear during the course of the interview in Corton Vale, the greater part of which was conducted in Pashtu and Urdu, Saima is as concerned about the maintenance of her own *ghairaat* as the menfolk around her are about the maintenance of their *izzat*. Hence she feels deeply ashamed, and hence guilty, of having allowed Nur Mohammed to compromise her *ghairaat*, even though that happened under duress, and hence still feels she owes a debt of gratitude for having at long last stepped in to fulfil his obligations towards her by eliminating the source of all her grief. Hence her readiness – at least initially – to follow Fazl's instructions to act in such a way that she would take the blame

for Nur Mohammed's death. However little did she realise that she was being blackmailed once again – this time by her husband.

103. Hence in the first instance she went along with Fazl's instructions:

Before leaving Fazl told me that I should wait two hours before calling the police. I did not manage to wait that long. I only managed to wait for about fifteen minutes. There was a blood bath in my living room and the children were crying. I phoned the police and said to the 999 operator that I had committed the crime. This was what I was saying at the police station, although I gave a no comment interview after I had spoken to a solicitor.

104. However it did not take long for the scales to fall from her eyes:

A few days later I became aware that my children were in foster care, and that my effort to protect Fazl Rahim had not worked out, since he was in prison too. It was then that I realised that I had to disclose what had really happened. It was not me who murdered Mohammed Noor: my husband Fazl Rahim did.

105. Moreover her disappointment in her husband's lack of self-respect was further confirmed when she began to receive letters from her husband setting out the precise steps she should take to facilitate his efforts to escape conviction:

During the time that I have been in prison my husband has been sending me letters. I have responded to him. I am not worried about anything that I have said in my letters to him. I have only really told him that I am sorry and that I could not wait for the two hours before I phoned the police and that that was my fault. Basically, in the letters I have confirmed that it was him that killed Noor and not me. I agree for these letters to be used by lawyers if they see fit.

8.3 *Fazl Rahim's behaviour in the aftermath of Nur Mohammed's death*

106. Having been called to the scene of the crime, police investigations revealed that Fazl immediately returned home (i.e. to the house in which he lived with Aisha), where he appears to have dumped all his blood contaminated clothes, including his trainers, into the washing machine, before setting off for Edinburgh, where he purchased a ticket to Belfast on a flight leaving for Belfast that evening. When he returned on 8th May the police were waiting for him, and he was arrested as soon as he stepped off the plane and taken to Pollock Police station.

107. Whilst there he made a voluntary statement whose initial contents were very broadly congruent with the account I have set out above, up until the point where he and Noor Mohammed confronted one another in Saima's living room. However in his account it was Noor who attacked him first, rather than the other way round, and after which they fought with one another for fifteen or twenty minutes, before going on to say that

'We were both breathing heavily as we were fighting. We were both tired and Saima picked up a hammer and hit Noor on the head, so many times. Blood was poured over me. Noor fell to the floor. Saima had a knife and was sitting on me.'

Having given this statement voluntarily, Fazl was cautioned and detained. Having been given access to a solicitor he gave a 'no comment' response when he was formally interviewed the following morning.

8.4 *Fazi Rahim seeks to persuade Saima to take the blame*

108. Subsequently Fazl-i-Rahim wrote three letters to Saima, in which he sought to instruct her how she should explain herself when the matter came to trial:

Whatever you have stated forget about that. Now make a statement relevant to this and don't be afraid. The correct/final statement is the one which is brought forward by the Judge, because that is the only one of which the Judge will account. The statement set before the High Court is [seen as] the most reliable one. But before you appear in the Court, see your lawyer first and read him that statement. If you want to explain yourself, say your mind was somewhere else when you made your previous statement, and you made a mistake; or you can say it was the translator's fault.

[In my statement] I have said that Rahim⁴ was present at the fighting, but when Noor became unconscious he fled away. When he came back to his senses after two or three minutes, Saima was so fearful of Noor that she hit him again, and killed him.

Don't call to your home. Don't speak to them on the phone. It is no good because you are an Afghani, and if you do so it will make matters worse.

Let me make make clear what I am telling you. Your being Afghani or Indian will make matters worse. Never phone me to my home or yours; forget about all that. I have not contacted anyone since I have been in Jail. It is no use to make phone calls. When I am released, *insh'allah*, I will phone everyone, and will come and see you as well. I have told all I could, and now you should do the same.

109. However in his next letter Fazl's instructions to Saima were even more explicit:

I have told the police, the lawyers, and everyone who asked about the person who subjected you to all that cruelty. I have told them that it started when you were hit by Noor in your home, after which he raped you, such that you started bleeding and then had a miscarriage. I told them how he warned you that if you told anybody about that, I will kill you. Tell them about all the troubles you have been through at the hands of Noor, whether you have told me about them or not. Explain all that to the police, the lawyers, and anyone else who asks: it is no longer a matter of shame.

⁴ As I read through the letters it became self-evident that in setting out his instructions to Saima with respect to what she should say about his behaviour, Fazl-i-Rahim systematically refers to himself in the third person as Rahim.

Whatever you have done is the right thing. You have saved my life, so I live because of you. I thank you for all of this, because he wanted to kill me.

Please carefully remember what I have written when you explain yourself to the police and the lawyers. Explain all the cruelty done by Noor, and don't leave anything out. It is my request to you, for the sake of God.

Whenever they ask you, tell all this to the Police and the lawyers. It will be good for you as well as for me if you avoid saying that I was involved. It is up to you now. Don't worry about what you have already told the police or your lawyer. From now on my statement and yours should be the same.

The police story is that on Friday Saima phoned me to say the Noor is coming to my home to beat me, and that Rahim told you to go to the Police if Noor started chasing you. That is not the case: what happened is like this

That night I phoned you from my home, to check whether everything was OK. After that I went to bed. The following morning Noor phoned me at 9.30, saying he wanted to have a word with me. After visiting Spar we went to Saima's home. On the way Noor asked me who told Saima to go to the police. I said I didn't know. Then he asked Saima who had shown her the way to the police. She kept silent. Soon an argument started.

Noor caught Rahim and knocked him down to the ground. Rahim stands up, and Noor knocks him down again. The fighting began. Noor went to fetch a knife from the kitchen, knocked Rahim to the ground again, and then sat on top of him. Rahim was holding Noor's hands, whilst Saima sent Hira to get the knife.

Rahim was under Noor, and Noor was trying to beat/kill him. Meanwhile Saima hit Noor three or four times on the head, with the result that Noor fell unconscious to the ground. Then Saima sat on top of Noor, whilst Rahim fled away from Saima's home. Rahim does not know about anything which happened after that.

The police have shown me a picture showing that Noor's throat had been cut. I told them that I had not seen this before.

If you explain that Noor was killed by Saima in this way, Rahim will have a chance to escape. You are a woman, so it does not matter if you tell them this. In this country you will be saved, but if you make even a little mistake, Rahim cannot escape. It will be hard. There will be no harm to you if you save Rahim, but you will get no benefit if you involve Rahim.

What is going to happen to you is unavoidable, but by protecting Rahim you reap the advantage of protecting him, having killed the cruel Noor. From the judge's perspective you have protected an innocent person, as well as protecting three innocent families. It is useful as well that I will bear the responsibility of looking after seven children.

I have also explained to the police that you had told me that Noor had been trying to sleep with Hira. Noor used to see you with Hira, and had and had been trying to rape her.

110. It goes without saying that if Saima had gone along with these suggestions she would not only have painted herself into a corner where she was not only primarily responsible for Nur Mohammed's death, but also that she had failed to protect Hira's *ghairaat*.

9 Statement Saira's mother, Gulroz Bibi

111. Some time after all these events occurred, Saima's defence team put a phone call through to Saima's mother, Gulroz Bibi. The results were illuminating, and for the most part self-explanatory.

My name is Gulroz Bibi. My age is about 50 and I live in Topi in North Pakistan. I live with my son, my daughter in law, me, my daughter and my granddaughter. I have a daughter called Saima, who lived with me until she got married to Fazl Rahim. Everyone calls him Rahim. We knew his family before they got married. It wasn't my decision for Saima to marry him. I never liked him. The decision was made by Saima's father and my maternal grandfather.

Rahim's family lived in another village called Kalabet, which was quite a long way from Topi. We needed a car or transport to get there. Three months after they married Rahim went away. He didn't even say goodbye and even his family didn't know where he had gone. I think he just disappeared.

I went to see Saima when Fazl disappeared. His family told me to ask her what had happened, but she didn't know anything. Fazl Rahim contacted his family four days later and told them where he was. But he never told Saima. Saima was patient about the prospect of continuing to live with her in-laws. Within a year Hira was born and she carried on living with them. She was very happy there. When Saima came to see me I would suggest that she should leave her in-laws and come to stay with me. But she always refused, telling me that the proper place for her to live was in her husband and her in-law's house.

Saima had clearly decided to stick it out as a dutiful wife and daughter-in-law.

Rahim did not return for six years, by when my husband had died. Rahim came directly to my house to offer his condolences, as is the tradition; then he went back to his home. I continued to tell Saima to leave and come back to me, but she didn't want to. I have been asked if in her culture could she have left the in laws and come to live with me. Yes, some women do that if their husbands not in the country. Saima thought Fazl would not be happy if she was not at his parents.

After that he came back to Pakistan many times, and there were rumours that he was married in the UK. I told Saima that if he was married to someone else, she should come back home. But Saima said that he was still her husband. I think Saima knew he had married a second time, but she never admitted it of me.

I have been asked whether, in our culture, a wife can leave her husband if he marries someone else. Some women will opt to leave, but usually they make the necessary sacrifice and opt to stay. Saima ended up going to the UK when Rahim finally came finally to take her over.

112. Reactions to the news of Fazl and Saima's arrest having been charged with murder

When Saima's first Trial (i.e. hearing in the Magistrate's court) was about to take place, Fazl's younger brother Mohammed Ghani came to see me. He told me that Saima must take the blame [for killing Noor Mohammed]. I told him I would not forgive Saima if she did that. She is not allowed to do so.

When the second Trial/hearing was about to take place Mohammed Ghani, as well as his elder brother's wife Ghalia came to see me. Once again they asked me to request Saima to take the blame. Ghani explained that he law had been contacted by a friend in the UK, who advised him to take a *jirga*⁵ to my house and to ask me to convince Saima to take the blame.

I was really surprised when Saima was blamed for murder. No one came to offer condolence. Her husband didn't call. Her in-laws told me to tell Saima to take the blame. I phoned them, begging them to let me know how Saima was. They pretended they didn't know anything. On his first visit Mohammed Ghani came to the house alone. I have been asked if I was alone. The second visit it was a *jirga*, so he came with his older brother's wife. My mother and my sisters-in-laws were there as well. .

In the course of the discussion Ghani sought my support. He told me "Auntie, would you please advise Saima to take the blame for this murder if she phones you. It doesn't matter if she has been sentenced or caught. I will spend money to get her out." I replied by asking him "Then why don't you spend money on your own brother?"

I also asked him "Why did your brother allow a stranger into my daughter's presence? If this murder has been done by my daughter I will tell her to admit it. But if she did not I couldn't tell her to lie one single word. [Whatever happened] it is probably your brother who has done something wrong. He must have done something because he knew the dead guy. Why is he blaming Saima?"

During the course of the conversation Ghani asked me how and why it was that Saima had become so bold. He suggested that that had had happened after she gave Fazl's letter to her solicitor. Then he asked me again, "Who told her to be so bold?" I answered "as far as I know her father or grandfather or brother could have come out of the grave to advise her to do that." Since her father, grandfather and brother are all dead. I said this in a taunting tone meaning that it must have been a ghost.

All this happened before and my mother and my sister-in-law. I was crying and upset about what they were doing to us. Once again Ghani told me that Saima should take the blame so that his brother can be released. I asked him "How is this possible you to ask for a man to not take the blame and for a women to stay in jail? Four women are in prison." Of course I know her daughters are not really in prison, but they are a

⁵ In this context a *jirga* is best understood as mission sent out to conciliate a dispute in which a woman is the principal counterparty.

part of her. Ghani said nothing and then left. I had made my point. I am not scared of Ghani.

I do not know anything about the man who died. I have been asked how I knew he was in Saima's house. I think my in-laws told me that. I have also been asked if the brother said Saima had done it. I had heard from people that Saima did [indeed] do it, but in my opinion they are just saying that because they want their brother out of jail. I should also mention that before the *jirga* took place, I met Fazl's sister-in-law Ghalia somewhere in their village. I told her that Ghani had approached me, and told me that Saima should take the blame. However all that Ghalia would say was "Auntie I don't know anything I have no idea about it." The second time she came along to my house with Ghani. I didn't speak a word to her.

I have had no other contacts with Fazl's family other than the two occasions when they came to my house. I have no doubt that they will approach me again when the next Hearing date arrives.

If nothing else, Gulroz' account serves to show just how closely connected Pathan residents in Britain keep in touch with their kinsfolk in Pakistan, so much so much so that the resultant transjurisdictional kinship networks take the form a single socio-cultural arena. As a result few secrets remain undiscovered by the transjurisdictional gossip network.

I have also been asked if I know anything about a fake wedding. There are rumours that Rahim arranged for someone else to be Saima's paper husband and he arranged the papers. I cannot say whether or not her brother-in-law told me. When Fazl broached the idea of taking Saima to Britain illegally, I told him that if he couldn't take her to Britain legally, he should not bother to take her at all. I have also been asked if there is anyone we can talk to who can tell us more about this fake marriage. If you like I could call her in-laws and ask them; but I have been told not to do this just now.

10 Conclusion

113. There is a strong sense in which the analysis this report is one sided, since I have not seen a copy of a detailed case summary which will in due course be produced by the prosecution – nor indeed any documentation outlining the position which Fazl is likely to take when this case in due course comes to trial. It follows that might well wish to amend some of my observations and conclusions as and when this material becomes available.
114. Moreover there is also a strong sense in which it is inappropriate for me even to attempt to draw my arguments and analyses together into a coherent conclusion, for that would inevitably lead me to usurp the role of the jury as finders of fact.

115. With that such considerations in mind I would simply like to take the opportunity to the court's attention to a couple of paragraphs which appeared in a Chapter entitled 'Culture and Communication' which I contributed to the first edition of the Judicial Studies Board's *Equal Treatment Benchbook*, raising issues which are in my view particularly germane to the issues in this case. In doing so I observed that

As soon as questions of culture and communication are recognised as necessary components of a case, issues arise with respect to judicial instructions to the jury. In particular, the routine injunction that jurors should deploy their "common sense" in evaluating the credibility of the evidence set before them may need careful qualification. In the context of ethnic pluralism, common sense becomes a slippery concept. Where different groups organise their lives around differing sets of conceptual premises, "common sense" ceases to be a common phenomenon, but will vary between different groups. Also the "common sense" understandings found within any one group may include negative stereotypes about the lifestyles of other groups. For whichever reason, the "common sense" test could lead members of the jury to evaluate some aspects of the evidence according to wholly inappropriate yardsticks.

In these circumstances it is necessary for the judge to provide the jury with an indication of just what kind of "common sense" they should employ during the course of their deliberations, and to warn them of the dangers of deploying their own assumptions to evaluate the behaviour of those whose cultural conventions may be very far from congruent with their own. In such circumstances, it is more appropriate to think oneself into the shoes of the actors in the case, and to seek to apply their notions of reasonableness and common sense, rather than to unthinkingly apply one's own.

116. With such considerations in mind, I trust that the court will find my efforts to set the behaviour all those involved in the events which precipitated these proceedings – whether they be living or dead – will serve to illuminate the underlying issues in this case.

A handwritten signature in black ink, appearing to read 'Roger Ballard', with a horizontal line underneath the name.

Roger Ballard

22nd January 2013

ROGER BALLARD CV

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1. Qualifications

1966 B.A. in Social Anthropology, University of Cambridge
 1970 Ph.D. in Sociology, University of Delhi.



2. Membership of Professional Bodies

Fellow of the Royal Anthropological Institute
 Member, Association of Social Anthropologists
 Member, Register of Expert Witnesses

3. Appointments

2002 – Director, Centre for Applied South Asian Studies, University of Manchester
 1989 – 2002 Senior Lecturer in Comparative Religion, University of Manchester
 1975 – 1989 Lecturer in Race Relations, University of Leeds.
 1971 – 1975 Research Associate, SSRC Research Unit on Ethnic Relations, University of Bristol.

4. Fieldwork Experience

India (District Jullundur): 1967-69 (18 months), 1972-73 (6 months), 1981 (6 weeks), 2000 (3 weeks)
 Pakistan (District Mirpur) 1981 (6 weeks), 1984-85 (12 months), 2000 (3 weeks), 2009 (1 week)
 Bangladesh (District Sylhet) 2003 (1 week)
 UK Continuous contact (although of varying intensity) with Punjabi communities throughout the Pennine region during the course of the past 30 years

5. Languages spoken

Punjabi, Urdu

6. Recent consultancies

2003 *The Current Demographic Characteristics of the South Asian Presence in Britain: an analysis of the results of the 2001 Census* Foreign and Commonwealth Office
 2003 *The economic impact of migrant remittances* Department for International Development
 1999 Equal Treatment Advisory Committee, Judicial Studies Board (to contribute to second edition of the JSB's *Equal Treatment Benchmark*).

7. Professional activities

In 2003 I took early retirement from my teaching post in the University of Manchester in order to service an ever-growing number of commissions to act as a Consultant Anthropologist. In doing so I have accepted instructions from a variety of central and local government agencies, but the mainstay of my business has turned out to be the preparation of expert reports for use in legal proceedings in which members of Britain's South Asian minorities have found themselves caught up, and in which social, cultural, linguistic, familial and religious issues are in some way at issue. I have now prepared over 500 such reports for use in the criminal, civil, immigration, family and administrative courts. Much (although by no means all) of the material in my current academic publications is now drawn from my experience of acting as an expert witness.

8. Selected Relevant Publications

- 2011 "Honour Killing? Or just plain homicide?" in Holden, Livia (ed) *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives* London: Routledge 124 - 147
- 2011 "The Re-establishment of Meaning and Purpose: *Mādrī* and *Padre Muzhub* in the Punjabi Diaspora" in Olwig, Karen (ed) *Mobile Bodies, Mobile Souls: Family, religion, and migration in a global world* University of Aarhus Press 27 - 53
- 2009 "The Dynamics of Translocal and Transjurisdictional Networks: A Diasporic Perspective" in *South Asian Diaspora* Vol1, (2) 141 -166
- 2009 "Human Rights in Contexts of Ethnic Plurality: Always a Vehicle for Liberation?*" in Grillo, Ballard, Ferrari, J. Hoekema, and Shah (eds) *Legal Practice and Cultural Diversity* Aldgate 299 - 330.
- 2008 "Minority professionals' experience of marginalisation and exclusion: the rules of ethnic engagement" in Eade, John (ed) *Advancing Multiculturalism, Post 7/7* Cambridge: The Scholar's Press pp 73 - 96.
- 2008 "Inside and Outside: Contrasting perspectives on the dynamics of kinship and marriage in contemporary South Asian transnational networks" in Grillo, R. (ed) *The Family in Question: Immigrants and Minorities in Multicultural Europe* University of Amsterdam Press p. 37 - 70.
- 2007 "Common Law and Common Sense: Juries, Justice and the Challenge of Ethnic Plurality" in Shah, P. (ed) *Socio-Legal Perspectives on Ethnic Plurality*. Leiden: Martinus Nijhoff.
- 2007 "Living with Difference: a forgotten art in urgent need of revival?" in Hinnells, J.R. (ed) *Religious Reconstruction in the South Asian Diasporas: From one generation to another* London: Palgrave Macmillan p. 265 - 301
- 2006 "Forced Marriage: A Criminal Conspiracy?" in N. Schlenzka (ed) *Female Marriage Migrants: Awareness Raising and Violence Prevention*. Berlin: Edition Parabolis 167-180
- 2006 "Popular Islam in Northern Pakistan and its Reconstruction in Urban Britain" in Hinnells and Malik (eds.) *Sufism in the West* London: Routledge p. 160 – 186.
- 2006 "Ethnic diversity and the delivery of justice: the challenge of plurality" in Shah, Prakash (ed) *Migrations, Diasporas and Legal Systems in Europe* London: Routledge Cavendish p. 29 – 56
- 2003 "The South Asian Presence in Britain and its Transnational Connections" in Singh, H. and Vertovec, S. (eds) *Culture and Economy in the Indian Diaspora*, London: Routledge Pages 197 - 222
- 2000 "Religious reconstruction in an alien environment: the Sikh tradition in Britain", in Coward, H. and Hinnells, J.R. (eds), *The South Asian religious diaspora in Britain, Canada and the United States* New York: SUNY Press. pages 193 - 124
- 2000 "Panth, Kismet, Dharm te Qaum: Four dimensions in Punjabi Religion" in Singh, Pritam and Thandi, Shinder (eds.) *Punjabi Identity in a Global Context* Delhi, Oxford University Press, p 7-37
- 1999 "Communication" and "Ethnic Minority Families", in *Equal Treatment Benchbook* London, Judicial Studies Board, pp. 87 - 98, and 99 - 115.
- 1996 "The Pakistanis: Stability and Introspection", in Peach, C. (ed.) *The Ethnic Minority Populations of Great Britain: Ethnicity in the 1991 Census*, Vol. 2 London: Central Statistical Office, pp. 121 – 149
- 1994 *Desh Pardesh: The South Asian Presence in Britain*. London: C. Hurst and Co
- 1990 "Migration and Kinship: the differential effect of marriage rules on the process of Punjabi migration to Britain", in Clarke, C. Peach, C. and Vertovec, S. (eds.), *South Asians Overseas: Contexts and Communities*, Cambridge: Cambridge University Press pp. 219 – 249
- 1982 "South Asian Families: Structure and Process", in Rapaport, R. Fogarty, M. and Rapaport, R. (eds), *Families in Britain*, London: Routledge. pp. 179 – 204