

Campaigning for the right to life: The case of 17-year-old Rizana Nafeek

Asian Human Rights Commission

On 16 June 2007, 17-year-old Rizana Nafeek, a Sri Lankan migrant worker, was sentenced to death by a Saudi Arabian high court, for the death of a four-month-old infant in her care. The baby died from choking while being bottle fed by Rizana on 22 May 2005. Rizana was arrested by the Saudi police on the same day and allegedly confessed to the crime; however, in February 2007 she retracted this confession, saying the police obtained it under duress. Moreover, at no time was Rizana given translators or legal assistance. In subsequent hearings the three-judge panel noted that if the dead baby's family were to pardon Rizana, the case would be closed and Rizana would be free. The family refused, leading to Rizana's sentencing in June. Under Saudi law, Rizana could file an appeal against the death sentence within one month; by 16 July 2007.

Surprisingly, this case was barely reported in the Sri Lankan or international press. For this reason, when it initially came to the attention of the Asian Human Rights Commission (AHRC), it came as a sketchy tale. However, the AHRC took up the case purely on the basis of a 17-year-old being sentenced to death, and issued its first urgent appeal. Only later were more details uncovered, through communication with a number of different persons, including the Sri Lankan ambassador to Saudi Arabia.

Eventually it was realized that the crux of the case came down to filing an appeal against the death sentence; if Rizana was to be saved, the next legal step had to be taken. Amongst all the letter writing to the Saudi Arabian government as well as the family of the dead child, it was necessary that concrete steps be taken within the system; filing an appeal. The deadline was looming, and Rizana was unable to lodge an appeal without financial and legal assistance. The AHRC had written to the Sri Lankan government to assist Rizana in making an appeal, which the government claimed it could not do, as it had 'no policy' regarding such matters. When this was made public, several groups contacted the AHRC and expressed an interest in partially covering the legal cost. The AHRC immediately wrote to the Sri Lankan government asking them to engage lawyers, whose fees would be paid through the AHRC. The AHRC then requested persons to donate. Within a short time the fees were collected and legal representation was attained for Rizana, ensuring that she was able to make the deadline of July 16 for the appeal.

This interest indicated that when people are asked specifically to do things, they are more likely to take an interest in cases. It is therefore useful for human rights groups to move beyond certain self imposed boundaries when attempting to garner support for cases.

It was also important to note that throughout the two weeks in which these events occurred, there was a lot of media support. From the BBC to the International Herald Tribune, from Al Jazeera to

local Sri Lankan media, correspondents called up the AHRC and asked for information on Rizana. Other individuals and groups wrote to the AHRC expressing their support. Within a short time, there were 30 000 signatures to an online petition requesting pardon for Rizana. A local petition was later handed over to the Saudi Arabian embassy in Colombo, Sri Lanka with 100 000 signatures. While there was a lot of attention specifically on Rizana, there was just as much attention on the issues of migrant workers and the use of the death penalty. Discussion focused around the Convention on the Protection of All Migrant Workers and Members of their Families, the Vienna Convention on Consular Relations and its Optional Protocol, and previous beheadings of Sri Lankan citizens in Saudi Arabia.

This interest and discussion is ongoing, and the AHRC continues to receive expressions of support towards Rizana.

An appeal to Muslim scholars

(Edited text of two statements issued by the AHRC: AS-155-2007 & AS-169-2007)

The Asian Human Rights Commission (AHRC) is writing to Muslim scholars worldwide regarding the death sentence of a 17-year-old Sri Lankan girl, Rizana Nafeek, in Saudi Arabia.

In the course of Rizana bottle feeding a four-month-old infant, the infant choked to death even as the teenage girl desperately tried to help by way of soothing and stroking the baby's chest, face and neck. Due to misunderstandings, the case was presented as the murder of a baby by strangulation. Subsequently, the judges hearing the case requested the baby's father, Mr Naif Jiziyan Khklafal Otaibi, to use his prerogative to pardon Rizana, but he refused. On this basis, Rizana was sentenced to death by a Saudi Arabian court on 16 June 2007.

After careful consideration of all the facts, the AHRC is of the view that the baby's death was a terrible tragedy, but current events are leading to a further tragedy: the execution of an innocent, inexperienced teenager.

Scholarly considerations can help to make the necessary reflections distinguishing a tragedy from a crime, and from such reflections interventions can be made to prevent a further tragedy. We encourage Muslim scholars to communicate with this unfortunate family and provide them with the necessary counsel and support so they may deal wisely with the case.

While the AHRC is experienced in common and civil law jurisdictions, the same cannot be said of the Islamic legal system. To deepen our knowledge and understanding regarding the operation

of Islamic laws in Rizana's case as well as overall, we request Muslim scholars to consider the following issues:

a. How would complaints of causing duress to obtain a confession be examined in a Saudi Arabian court? Under both common and civil law procedures, such a complaint would be separately examined, and if the court was satisfied that the complaint is true, no importance is attached to the confession. The court will then decide the case on the basis of whatever other evidence is available.

b. How would a Saudi Arabian court treat new information which could have a significant influence on understanding the issues relating to the case? For instance, if it is revealed that the actual age of the accused is 17, and not 24 as originally claimed, would the court re-consider its verdict, taking into account any implications arising from this new information?

c. How would mens rea, or the mental element in crime be examined in a Saudi Arabian court? According to both common and civil law systems, the intention to cause the crime is an essential ingredient of the crime itself, and sophisticated jurisprudence regarding this exists. What is the counterpart in Islamic law?

d. What is the manner in which guilt is determined and the proportionality of the punishment measured under Islamic law? Again, common and civil law jurisdictions have seen centuries of debate on these matters and certain basic principles have become the norm in all courts.

e. What importance would a Saudi Arabian appeals court attach to the absence of legal representation during trial? It is now customary in common and civil law systems to consider the issue of legal representation as an essential element of a fair trial, particularly in cases carrying serious sentences such as the death penalty. An appeal court in either system may set aside the decision of a trial court if the accused was not provided legal representation. In fact, courts are also taking the stance that if legal representation was provided but it was inadequate - for instance the lawyer was patently incompetent - there is a strong ground for appeal. How are such matters considered within the Saudi Arabian legal system?

f. How does a Saudi Arabian trial or appeal court consider the issue of persons who are aliens to the country, who are unfamiliar with the culture, laws and legal practices of the country of residence? In common and civil law jurisdictions it is now a recognized duty to provide services which enable such persons to participate in the trial process with full comprehension and dignity. Any failures in this regard would be considered as flaws in the trial, giving rise to reasonable grounds for appeal.

The AHRC invites scholars and practitioners to express their views on these matters by writing to ahrchk@ahrchk.org. Those wishing to offer their advice to the family of the deceased child may do so through the following address c/o the Sri Lankan Embassy in Riyadh, Saudi Arabia:

Mr Naif Jiziyan Khklafal Otaibi

Ministry of Finance, Riyadh

C/O Sri Lankan Embassy

PO Box 94360

Riyadh 19693

Saudi Arabia

Email: lankaemb@shabakah.net.sa, amjsadiqu@hotmail.com