

**IN THE LAHORE HIGH COURT LAHORE
(JUDICIAL DEPARTMENT)**

Criminal Appeal No.66722 of 2019

Muhammad Waqas versus The State etc.

Murder Reference No.215 of 2019

The State versus Muhammad Waqas

Date of hearing **12.11.2024**

The Appellant by **M/S Sardar Muhammad Latif
Khan Khosa and Usman
Naseem, Advocates.**

M/S Barrister Hamza Shehram
Sarwar and Asad Zaman
Tarar, Advocates/ Defence
counsel.

The State by **Mr. Munir Ahmed Sial, Addl.
Prosecutor General**

The Complainant by **Nemo.**

Asjad Javaid Ghural, J. Through the afore-titled criminal appeal, appellant Muhammad Waqas has challenged the vires of judgment dated 15.07.2019 passed by the learned Additional Sessions Judge, Daska in case FIR No.151/16, dated 15.07.2019 in respect of an offence U/S 302PPC registered at P/S Moutra, District Sialkot whereby he was convicted and sentenced as under:-

Under Section 302(b) PPC as Tazir

Death and to pay the compensation amounting to Rs.5,00,000/- to the legal heirs of deceased namely, Samina Bibi under Section 544-A Cr.P.C. and in default thereof, to further undergo simple imprisonment for six months.

2. **Murder Reference No.215/2019** for confirmation or otherwise of death sentence of the appellant shall also be decided through this common judgment.
3. The prosecution story unfolded in the crime report (Ex.PB) registered on the complaint of complainant Muhammad Adnan (PW-4) is that his sister

Mst. Samina Bibi was married with Muhammad Waqas (appellant) 7/8 months ago. After 20/25 days of the marriage, appellant went Saudi Arabia and came back to Pakistan 20/25 days prior to the alleged occurrence. After arrival in Pakistan, appellant developed illicit relation with his sister in law (*Sali*) namely Anam and this fact came into light when 4/5 days prior to the occurrence the appellant while leaving his wife in his house, visited the house of complainant and in connivance with Anam administered intoxicated tea, due to which entire family of the complainant except said Anam became unconscious. In the intervening night of 3/4th of April, 2016 at about 3.00 a.m. appellant informed the complainant telephonically that his wife Samina has died due to cardiac arrest. Complainant has strong suspicion that the appellant in order to contract marriage with his *Sali* committed the murder of his wife by administering some poisonous material.

4. Iftikhar Ahmad,S.I. (PW-12) visited the place of occurrence on the same day, prepared injury statement (Ex.PJ), inquest report (Ex.PK) of deceased Mst. Samina Bibi and escorted the dead body to mortuary for autopsy. He collected two empty strips of lorazepam 2mg Arsopal from the place of occurrence vide memo (Ex.PE), prepared rough site plan of the place of occurrence and recovery (Ex.PM), recorded the statement of PWs and took all other necessary steps of initial investigation. He arrested the appellant on 13.04.2016 who during investigation disclosed that he purchased intoxicant tablets from Mughal Medical Store, Adda Badian and also got recovered three strips of tablets from his residential room vide memo (Ex.PG). He got prepared report U/S 173 Cr.P.C and submitted through the SHO concerned.

5. Lady Dr. Shumaila Naz (PW-7) had conducted autopsy on the dead body of deceased Mst. Samina Bibi on 04.04.2016 at about 7.10 p.m. and observed two dirty black colour impressions on both sides of the neck. On receipt of report of PFSA, she formed an opinion that death occurred in asphyxia mode alongwith poisoning. Duration between injury and death was immediate, whereas, between death and postmortem examination report 14 to 20 hours.

6. At the commencement of the trial, the learned trial Court had framed a charge against the appellant to which he had pleaded not guilty and claimed to be tried.

7. The prosecution had produced 12-witnesses beside the report of Punjab Forensic Science Agency (Ex.PN). The appellant in his statement recorded under Section 342 Cr.P.C. had denied and controverted all the allegations leveled against him, he neither opted to make statement under Section 340(2) Cr.P.C. nor produced any evidence in defence.

8. Learned trial Court, upon conclusion of the trial convicted and sentenced the appellant as stated above. Hence the aforementioned criminal appeal as well as the connected Murder Reference.

9. We have heard learned counsels for the appellant, learned Additional Prosecutor General appearing for the State and perused the record with their able assistance.

10. In this unfortunate case, a young girl aged about 21/22 years met with unnatural death in the intervening night of 3/4th day of April, 2016 inside her bed room and her legal heirs raised accusing fingers towards the husband/appellant responsible for committing her murder, thus, there was no possibility of direct evidence and the prosecution has to establish its case on the basis of circumstantial evidence, which comprises of following pieces:-

- (i) Extra judicial confession.
- (ii) Medical evidence.
- (iii) Recovery of strips of tablets.

First link in the chain of circumstantial evidence was the extra judicial confession of the appellant made before Muhammad Amir Nadeem (PW-6) & Muhammad Azeem (PW-8). Both of them while appearing in the dock in the court room unanimously stated that on 04.04.2016 upon hearing the news of death of Mst. Samina, they reached in the house of the appellant for obituary, when brother of the deceased namely Muhammad Adnan (PW-4)/complainant told them that his sister was murdered by the appellant. At about 2.00 p.m. appellant invited them and one Amir (given up PW) to a corner for telling them something and thereafter took them to the fields, where he confessed before them that he committed the murder of deceased by administering poisonous tablets and strangulating her and requested for managing pardon for him. Both the said witnesses were cross-examined but they remained firm and consistent on material points and the prosecution has failed to extract any favourable material from their mouths. A question

might arise in a prudent mind that why would the appellant confess his guilt before the aforesaid PWs for inviting trouble for him, the answer is first of all the appellant tried to give the murder, a colour of natural death but when the legal heirs of the deceased decided to get lodge the criminal case against him qua the murder of deceased, he in order to save his skin attempted to manage the situation. Muhammad Amir Nadeem, (PW-6) belongs to Lamberdar family of village of the complainant and in our rural set up no one can deny the influence of said family upon the villagers. Similarly, Muhammad Azeem, (PW-8) was close family relative of the complainant, as such he was also a suitable person to use his influence for securing clean chit to the appellant, therefore, keeping in mind these factors the appellant made extra judicial confession before them. Moreso, both the witnesses were neutral persons having no direct relationship with the complainant and at the same time have no animosity or ill will against the appellant for falsely involving him in the charge of capital punishment. Even the appellant in his statement recorded U/S 342 Cr.P.C. did not question the neutrality of these witnesses or even a slight indication of their hostility towards him. Both the witnesses faced the test of cross-examination with confidence, therefore, their evidence being free from any bias deserves consideration.

11. Second incriminating piece of evidence against the appellant was medical evidence. Lady Dr. Shumaila Naz, (PW-7) had conducted autopsy on the dead body of deceased Mst. Samina Bibi on 04.04.2016 at about 7.10 p.m. and observed two dirty black colour impressions on both sides of the neck. Duration between injury and death was immediate, whereas, death and postmortem examination report was 14 to 20 hours. According to her opinion death occurred due to asphyxia mode along with poisoning. Thus, medical evidence confirmed that deceased met with an unnatural death.

12. Third and most important piece of circumstantial evidence in this case is recovery of two empty strips of Lorazepam 2mg Arsopal from the place of occurrence and a packet of Lorazepam 2mg Arsopal got recovered by the appellant. At the time of postmortem examination of the deceased, her liver, lung, stomach, kidney, heart, brain and blood of the deceased were sent to the office of Punjab Forensic Science Agency, Lahore for expert opinion and according to the report of said office (Ex.PN), liver of deceased contained

11.195 mg/Kg Lorazepam. Two empty leaves of tablet were secured from the residential room of the deceased. The said room was in exclusive possession/use of the appellant and his deceased wife and there is no possibility of plantation of said empty leaves of the tablet upon the appellant. Moreso, a packet of Lorazepam 2mg Arsopal got recovered by the appellant was also sent to the office of PFSA on 27.04.2016 and the report of said office has been received on 28.09.2016. Till the arrival of report of PFSA, even no medical expert was in a position to determine what kind of poisonous material was administered to the deceased, except the person who administered the same. Presence of two empty leaves of tablets at the spot and getting recover rest of the same tablets by the appellant himself much prior to the report of PFSA shows that the appellant was responsible for administering huge quantity of tablets to the deceased. There is no cavil to the proposition that such kind of tablets are available in the medical stores and can easily be secured for the purpose of plantation but here in this particular case, the appellant himself disclosed the name of the Mughal Medical Store owned by Haroon s/o Mukhtar from where he purchased the said tablets and the Investigating Officer (PW-12) while appearing in the witness box deposed that he joined said Haroon during investigation, who confirmed purchase of tablets by the appellant and he placed his statement on record. Moreso, as has been discussed supra prior to the report of PFSA, the prosecution could not take risk of planting the same on its own, as if in the end, in the report of PFSA some other material detected, then it would have serious consequences qua the veracity of prosecution story. Thus, we can safely conclude that the recovery lends full support to the prosecution story.

13. Learned counsel for the appellant laid much emphasis that there is no eye-witness of the occurrence, who saw the appellant committing the murder of deceased and the entire case of the prosecution is based on suspicion, which whosoever strong was cannot be made basis for maintaining the conviction and sentence of the appellant. This submission of the learned counsel is repelled. No doubt it was the duty of the prosecution to prove the guilt of an accused beyond the shadow of doubt which as has been discussed supra has successfully been discharged by it but at the same we may not ignore that where a wife met with an unnatural death inside the privacy of room at odd

hours of the night, the only one person who has access to the bedroom was the husband and he was the sole person, who has exclusive knowledge as to what happened to his wife inside the room, as such onus was also shifted upon him to prove this fact. In this regard reference can be made to Article 122 of Qanun-e-Shahadat 1984 which for ready reference is reproduced as under:-

“122. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.”

Herein the instant case, two dirty scars around the neck of the deceased were visible as noted by the Medical Officer but the appellant who was supposed to be the protector of his wife, instead of exploring cause of such marks on the neck of deceased, prematurely announced that the deceased died due to cardiac arrest. This haste on the part of the appellant suggested something fishy on his part. It is, therefore, observed that in cases where the offence is committed in a privacy of room, no doubt initial burden is upon the prosecution but the onus would comparatively be of lighter nature and if the husband or the wife as the case may be failed to offer an explanation how his/her partner met with unnatural death inside the bedroom, the same can be considered an additional factor qua his/her guilt.

14. Besides above, in such like cases where the offence was committed in the privacy of room, the first version of the accused is of much significance. Here in the instant case, at the time of arrest of the appellant, he disclosed that from the day one, he intends to marry younger sister of the deceased namely Anam Bibi but the family of the deceased was not ready to give hand of their younger daughter in the presence of elder, as such his marriage was arranged with the deceased. However, he made his mind to get married with Anam Bibi, but for achieving this goal deceased was the main hurdle and he made different plans to remove her from his way. On the fateful day, he arranged intoxicant pills and after grinding the same asked the deceased to take the same for the treatment of abdomen pain. Thereafter, he kept on waiting for the death of the deceased. At about 2.00 p.m. when he observed that deceased was still breathing, he put a pillow on her mouth and choked her breath. Thereafter, around 3 ½ a.m. (night), he told his family members and took the deceased to the hospital, where, the doctor confirmed her death. He informed

the parents of deceased that she died due to cardiac arrest. During investigation first version of the appellant was found correct. It is well settled by now that first plea of an accused is admissible piece of evidence. Reliance is placed on case reported as "*Raza and another ..Vs.. The State and another (2020 SCMR 1185)*", wherein it has been laid down as under:-

“It is an admitted fact that first plea of the accused is admissible in evidence under Article 27 of the Qanun-e-Shahadat Order, 1984 (“Order of 1984”). Article 27 of Order 1984 is general principle enabling the Investigating Officer to record the same whereas Article 28 is mere an exception. As a general rule evidence no forming part of the transaction is not admissible whereas Articles 27/28 are exceptions to the said general principle by laying down a rule that admissibility of those facts which might not be tendered in evidence to prove it but these are relevant to prove the status/mind the person committing it. For example the guilt, intent, knowledge, negligence, malice etc. and in all the intentions qua these conditions would be an admissibility as it provided under Article 27 of the Order of 1984. Article 27 of the Order of 1984 has extended the scope to meet the question qua the existence of person state of mind or bodily feeling and all these facts and their existence in the state of affair has turned relevant.”

We are cognizant of the fact that admission of the appellant before the police cannot be made sole ground for maintaining his conviction and sentence, but keeping in view peculiar facts and circumstances of the case, where other links as stated above have been satisfactorily established by the prosecution and the circumstances accusing the appellant to be the only assailant with certainty, the same can be considered an additional link which completes the chain.

15. Motive as set out by the prosecution was that the appellant intends to get marry younger sister of the deceased and in order to achieve this goal, he committed this crime. The complainant while appearing in the dock in the court room reiterated the same in the following terms:-

“Accused committed murder of my sister due to the reason that he intended to contract marriage with my younger sister Anam and to remove my sister from his way, he has committed his murder.”

Learned defence counsel laid much emphasis that the complainant while appearing in the dock in the court room did not narrate the motive part of the occurrence in the same words as alleged in the crime report and omitted the major part whereby he alleged that the appellant developed illicit relation with younger sister of deceased namely Anam and also administered intoxication to the entire family with her connivance, which was duly

confronted to him. That may be so but this does not in any manner can be construed that the complainant has not supported the motive part of the occurrence. Main part of the motive has been clearly stated by the complainant in his examination in chief, which served the very purpose. Even otherwise, when the omitted part of Fard Bayan (Ex.PD) was confronted to the complainant, he conceded said facts, as such by confronting the same, the defence helped the prosecution in many words to establish the same. Moreso, both the witnesses of extra judicial confession namely Muhammad Amir Nadeen and Muhammad Azeem/ (PW-7&8), also categorically stated that the appellant confessed before them that he committed the murder of his wife, in order to get marry with her younger sister and the defence could not shatter their credibility on this point. Additionally, the appellant upon his arrest, in his first version also conceded that the only purpose for committing the murder of deceased was to get marry with her sister, which though has been denied by him subsequently in his statement recorded under section 342 Cr.P.C. yet as has been observed supra in cases where a partner met with unnatural death in a privacy of room, first version of the surviving partner has persuasive value and cannot be ignored at all, as such the same also strengthen the version of the prosecution. Hence, we can safely say that the prosecution has successfully proved the motive part of the occurrence.

16. From this discussion, we have no hesitation in holding that the prosecution has successfully proved the charge of homicidal death of the deceased at the hand of the appellant through cogent, reliable and confidence inspiring evidence. Appellant being the sole person, having access to his bedroom, where the deceased breathed her last in odd hours of the night was supposed to have exclusive knowledge regarding the circumstances, faced by the deceased, prior to her death and he was duty bound to explain the same to the satisfaction of a prudent mind and his failure to do so was an additional factor pointing finger towards him. It is reiterated that in cases where crime committed in the privacy of room, first version of the accused has also persuasive value and can be considered an additional factor in the chain of circumstantial evidence. Similarly, while scanning circumstantial evidence, in cases where a partner breathed his/her last, inside the privacy of room, stringent principles may not be applied and the conduct of the surviving

partner in dealing with such situation must be taken due care of. If a surviving partner instead of informing the police and without making any effort to determine the cause of death, in particular, when some kind of marks or violence was visible upon the dead body, adverse inference can be drawn against him/her. It is not the duty of the prosecution to meet each and every hypothesis put forward by an accused. No doubt, it is the duty of a Judge presiding over a criminal trial to ensure that no innocent person is punished but at the same it is also an obligation of the Court to see that a guilty person does not escape. In view of what has been discussed supra, we are constrained to concur with the conclusion arrived at by the trial Court qua the conviction of the appellant under Section 302(b) PPC.

17. Now coming to the quantum of sentence, it is well settled by now that question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court. In this regard, reliance is placed on case reported as *Mir Muhammad alias Miro ..Vs.. The State (2009 SCMR 1188)* wherein it has been laid as under:-

“It will not be out of place to emphasize that in criminal cases, the question of quantum of sentence requires utmost care and caution on the part of the Courts, as such decisions restrict the life and liberties of the people. Indeed the accused persons are also entitled to extenuating benefit of doubt to the extent of quantum of sentence’.

Here in the instant case, there is no direct evidence against the appellant and the entire case hinges upon circumstantial evidence, therefore, as a matter of caution, we consider it a mitigating circumstance for awarding the appellant lessor punishment. Even otherwise, it is settled principle of law that when a case qualifies the awarding of both sentences of imprisonment for life and that of the death, the proper course for the Courts, as a matter of caution, is to give preference to the lesser sentence. Reference may be made to case titled “*GHULAM MOHY-UD-DIN alias HAJI BABU and others versus The STATE (2014 SCMR 1034)*” wherein it has been observed at page 1044 as:-

“In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence.”

18. In view of what has been discussed above, the appeal in hand stands **dismissed** by maintaining his conviction in offence under Section 302(b) PPC, however his sentence of capital punishment is converted into one of *imprisonment for life*. The amount of compensation and sentence in lieu thereof shall remain intact. The appellant is given benefit of Section 382-B Cr.P.C.

19. **Murder Reference No.215 of 2019** is answered in the **NEGATIVE** and the Death Sentence awarded to appellant Muhammad Waqas is **not confirmed**.

(Aalia Neelum)
Chief Justice

(Asjad Javaid Ghural)
Judge

Approved for reporting

JUDGE

Azam*