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Judgment Sheet

IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

Criminal Appeal No. 10-J of 2021
(Mst. Nadia alias Nadu Mai Vs. The State.)

Date of hearing:	04.12.2024
Appellant by:	Ms. Laraib Rehmat, Advocate.
State by:	Mr. Ansar Yasin, Deputy Prosecutor General.
Complainant of the case by:	Mr. Kunwar Farhan Ahmad, Advocate.

JUDGMENT.

SADIQ MAHMUD KHURRAM, J.– Nadia alias Nadu Mai wife of Muhammad Bilal (convict) was tried by the learned Additional Sessions Judge, Dera Ghazi Khan in the case F.I.R. No. 204 of 2016 dated 10.08.2016 registered in respect of offences under sections 302 and 34 P.P.C. at the Police Station Choti, District Dera Ghazi Khan, for committing the *Qatl-i-Amd* of Kalsoom Mai wife of Muhammad Iqbal (deceased). The learned trial court, vide judgment dated 14.12.2020, convicted Nadia alias Nadu Mai wife of Muhammad Bilal(convict) and sentenced her as infra:

Nadia alias Nadu Mai wife of Muhammad Bilal:

Imprisonment for Life under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Kalsoom Mai wife of Muhammad Iqbal (deceased) and directed to pay Rs.200,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of Kalsoom Mai wife of Muhammad Iqbal (deceased) and in case of default thereof, the convict was directed to undergo further six months of simple imprisonment.

The appellant was, however, extended the benefit available under Section 382-B of the Code of Criminal Procedure, 1898 by the learned trial court**.**

2. Feeling aggrieved, Nadia alias Nadu Mai wife of Muhammad Bilal (convict) lodged the instant Criminal Appeal No.10-J of 2021 through jail assailing her conviction and sentence.

3. Precisely, the necessary facts of the prosecution case, as narrated by Muhammad Bukhsh (PW-4), the complainant of the case, are as under:-

> "I am labourer by profession. About 8 to 10 years ago I got married my daughter namely Mst.Kalsoom Mai with Muhammad Iqbal son of Ghulam Rasool. Out of the said wedlock two daughters and three sons were born. Ghulam Rasool i.e father in law of Mst.Kalsoom Bibi and Mst.Shamoo Mai i.e mother in law of Mst.Kalsoom Bibi were not behaving with Kalsoom Bibi properly and use to maltreat and torture her. On 10- 08-2016 at 05:00pm evening I alongwith Nasarullah and Ghulam Raza son of Bakhshan went to the house of Mst.Kalsoom Bibi for the measurement of a newly constructed room there and on hearing hue and cry, we saw that Mst.Nadoo Mai accused present in the court under custody laid down Mst.Kalsoom Mai on the ground and were pressing her throat while Ghulam Rasool was catching her both legs, whereas Mst.Shamoo Mai were catching her arms. Jalal son of Mst.Kalsoom Mai aged 8/9 years was that weeping. Upon query Jalal apprised that his mother Kalsoom Mai put a "Thhal" on the "Tandoor", as a result of which the said "Thhal" has become damaged by falling the wall on the said "Thhal". Mst.Nadoo Mai, Ghulam Rasool and Mst.Shamoo Mai quarrel with Mst.Kalsoom Mai upon the said incident. We attended Mst.Kalsoom Mai but she had been died. For further satisfaction I called a private ambulance for medical check up of Mst.Kalsoom Mai from DHQ Hospital, DGKhan (Trauma Center). Upon the examination, doctor give the opinion that Mst.Kalsoom Mai has been died due to pressing of her throat. Police came there and recorded my statement which is Ex.P-B and I put my signatures upon the same which is Ex.P-B/1. Police escorted the dead body of Mst.Kalsoom Mai to the DHQ Hospital, DGKhan for conducting the autopsy of Mst.Kalsoom Mai. After the postmortem of Mst.Kalsoom Mai the dead body of Mst.Kalsoom Mai was handed over to me by the police and I made the signatures upon the receipt of receiving the dead body, which is Ex.P-C. On 11-08-2016 police came at the spot and prepared the site plan of the place of occurrence."

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the appellant namely Nadia alias Nadu Mai wife of Muhammad Bilal was sent to face trial. The learned trial court framed the charge against the accused on 22.01.2020, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got statements of as many as **fifteen** witnesses recorded. Muhammad Bukhsh (PW-4), Nasrullah (PW-5) and Muhammad Jalal (PW-12) furnished the case's ocular account. Munir Ahmad, 945/HC (PW-2) stated that on 11.08.2016, the Investigating Officer of the case, handed over to him the last worn clothes of the deceased, two envelopes, six sealed jars and one sealed syringe and on 11.08.2016, he handed over all the above said parcels to Sajid Majeed, ASI (PW-1) for depositing them in the office of the Punjab Forensic Science Agency, Lahore. Tanveer Hussain Jafri, Draftsman (PW-3)prepared the scaled site plan of the place of occurrence (Exh.PA). Muhammad Ismail, ASI (PW-6) stated that he executed the *non-bailable* warrants of arrest issued for the appellant and also received the proclamation under section 87 Cr.P.C. Abdul Rehman SI (PW-11) stated that he was familiar with the handwriting of Muhammad Sarwar ASI (since dead) and he identified that the formal F.I.R. (Exh.PB/4) was registered by Muhammad Sarwar ASI (since dead) on 10.08.2016. Ghulam Fareed 690/C (PW-14) stated that on 10.08.2016, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Woman Medical Officer after the post-mortem examination of the dead body of the deceased. Muhammad Sharif (PW-15) stated that on 10.08.2016, he identified the dead body of the deceased at the time of post-mortem examination . Abdul Rehman, SI (PW-7), investigated the case from 31.10.2016 till 26.01.2017 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

Sajjad Hussain, Inspector (PW-9) investigated the case from 10.08.2016 till 28.10.2016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Afroze Gul (PW-8) examined who, on 10.08.2016, was posted as Woman Medical Officer at the RHC Choti Zaireen and on the same day had conducted the post-mortem examination of the dead body of the deceased namely Kalsoom Mai wife of Muhammad Iqbal. On conducting the post mortem examination of the dead body of the deceased namely Kalsoom Mai wife of Muhammad Iqbal, Dr. Afroze Gul (PW-8) opined as under:-

> "RESULT & CONCLUSION.
>
> The cause of death which was under observation is declared on the basis of keeping in view the fracture of hyoid bone which is ante-mortem in nature. The cause of death is manual strangulation leading to asphyxia due to interference at the level of neck."

7. On 20.11.2020, the learned Assistant District Public Prosecutor gave up the prosecution witnesses namely Kaleem Ullah and Muhammad Raza as being unnecessary and closed the prosecution evidence after tendering in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PG and Exh.PH) .

8. After the closure of prosecution evidence, the learned trial court examined the appellant namely Nadia alias Nadu Mai wife of Muhammad Bilal under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, she replied that she had been involved in the case falsely and was innocent. The appellant namely Nadia alias Nadu Mai wife of Muhammad

Bilal opted not to get herself examined under section 340(2) Cr.P.C. and did not adduce any evidence in her defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Dera Ghazi Khan convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellant precisely was that the whole case was fabricated and false and the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellant further contended that the story of the prosecution mentioned in the statements of the witnesses, on the face of it, was highly improbable. Learned counsel for the appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also argued that the appellant had been involved in the occurrence due to suspicion alone. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

11. On the other hand, the learned Deputy Prosecutor General and the learned counsel for the complainant contended that the prosecution had proved its case beyond the shadow of a doubt by producing independent witnesses. The learned Deputy Prosecutor General and the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Deputy Prosecutor General and the learned counsel for the complainant further contended that the medical evidence also corroborated the statements of Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) as well as Muhammad Jalal (PW-12). The learned Deputy Prosecutor General and the learned counsel for the complainant contended that there was no occasion for the prosecution

witnesses, who were related to the deceased, to substitute the real offender with the innocent in this case. Lastly, the learned Deputy Prosecutor General and the learned counsel for the complainant prayed for the rejection of the appeal.

12. I have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned Deputy Prosecutor General and with their able assistance, perused the record and evidence recorded during the trial.

13. A perusal of the prosecution evidence reveals that the ocular account of the incident was narrated by the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) as well as Muhammad Jalal (PW-12). This Court would firstly discuss the evidence of the prosecution witness namely Muhammad Jalal (PW-12) as according to the prosecution case, he was the only witness who was the resident of the place of occurrence. A perusal of the prosecution evidence reveals that the prosecution witness namely Muhammad Jalal (PW-12) did not join the investigation of the case on the day of occurrence, even after the F.I.R. (Exh.PB/4) had been registered on 10.08.2016. It was admitted by the prosecution witnesses that the statement of the prosecution witness namely Muhammad Jalal (PW-12) was recorded with substantial delay, however, at the same time, the various prosecution witnesses made different claims regarding the date of recording of the statement of the prosecution witness namely Muhammad Jalal (PW-12) under section 161 Cr.P.C. In this regard, it has been observed that the prosecution witness namely Muhammad Jalal (PW-12) stated that after the occurrence, he was present at the place of occurrence when the police came and inquired from him regarding the incident. During cross-examination, the prosecution witness namely Muhammad Jalal (PW-12) stated as under:-

> "**At the time of occurrence** of this case all the said children, my uncle, aunt, paternal grand-father, paternal grand-mother were present in the house. **Police came to our house in the evening and I was present there when the police came there in the house. Police inquired from me** about the occurrence." (emphasis supplied)

Contradicting the above mentioned claim of the prosecution witness namely Muhammad Jalal (PW-12), Abdul Rehman, SI (PW-7), the Investigating Officer of the case stated that the statement of the prosecution witness namely Muhammad Jalal (PW-12) was recorded for the first time on **28.12.2016** i.e, after as many as **four months and eighteen days of the occurrence.** Abdul Rehman, SI (PW-7), the Investigating Officer of the case, stated during cross examination as under:-

> "**I have recorded the statement of PW-12 Muhammad Jalal for the first time on 28.12.2016**. While recording the statement of Jalal PW on 28.12.2016, neither he furnished any explanation regarding his delayed recording of statement nor did I ask him about the said delay for recording his statement. I did not put any questions regarding his non appearance before me during investigation prior to 28.12.2016. " (emphasis supplied)

It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay. No explanation, much less probable, has been given by the prosecution witnesses for the prosecution witness namely Muhammad Jalal (PW-12) not getting his statement under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to his statement. The august Supreme Court of Pakistan in the case of "*Abdul Khaliq Vs. The State"* (**1996 SCMR 1553**) has held as under:

> *"It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nill unless there is plausible explanation for such delay".*

The august Supreme Court of Pakistan in the case of "*Muhammad Khan Vs. Maula Bakhsh"* (**1998 SCMR 570**) has held as under:

> *"It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation".*

The august Supreme Court of Pakistan in the case of "*Syed Saeed Muhammad Shah and another Vs. The State"* (**1993 SCMR 550**) at page 571 has held as under:

> *"In the absence of satisfactory nature of explanation normally rule is that statements recorded by police after delay and without explanation are to be ruled out of consideration. In this case unsatisfactory explanation which is not substantiated can be equated with no explanation".*

No justification, much less credible, has been given by the prosecution at any stage for such deferral in recording the statement of the prosecution witness namely Muhammad Jalal (PW-12). The scrutiny of the statements of the prosecution witnesses reveals that the statement of the prosecution witness namely Muhammad Jalal (PW-12) was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised statement. The evidence in the case has been collected in a careless manner, employed more to create further muddle regarding the facts in issue rather than proving the said facts.

14. This Court has also come to the irresistible conclusion that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) also could not prove their arrival at the place of occurrence, at the time of occurrence

and their witnessing the incident. The relationship of the said witnesses with the deceased is also on record. Kalsoom Mai (deceased) was the sister of the prosecution witness namely Nasrullah (PW-5) and the daughter of the prosecution witness namely Muhammad Bukhsh (PW-4). The prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) were also admittedly not the residents of the place of occurrence. According to the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) , both of them had their residences at a distance of about *as much as about 5-6 Acres* from the place of occurrence. The prosecution witness namely Muhammad Bukhsh (PW-4) , during cross-examination stated as under:-

> "I am labourer at " Ara Machine". I am an uneducated person, however, I can sign. My house is at a distance of 5/6 Acres from the place of occurence."

In this manner, both the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) can be validly termed as "*chance witnesses*" and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. I have noted with grave concern that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place. The prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) claimed that on the day of occurrence, they had gone to the place of occurrence in order to measure a newly constructed room there. The prosecution witness namely Muhammad Bukhsh (PW-4) , in his statement before the learned trial court, stated as under:-

> "On 10- 08-2016 at 05:00pm evening I alongwith Nasarullah and Ghulam Raza son of Bakhshan went to the house of Mst.Kalsoom Bibi **for the measurement of a newly constructed room there."** (emphasis supplied)

However during cross-examination the prosecution witness namely Muhammad Bukhsh (PW-4) stated differently with regard to the reason for his going to the place of occurrence as under:-

> No mason was constructing the room in the house where occurrence took place. **It was a "Kachhi Wall" which was being constructed by Mst.Kalsoom Mai deceased** and her husband. The wall was constructed up to three hands and one hand is equal to 02-feet. The mud was present there for the purpose of construction. **We did not show the above said mud to the Investigation Officer when he visited the place of occurrence** "(emphasis supplied)

The above referred portions of the statement of the prosecution witness namely Muhammad Bukhsh (PW-4) reveal that he made a false and contradictory claim with regard to the reason of the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) for going to the place of occurrence. Furthermore, Sajjad Hussain, Inspector (PW-9), the Investigating Officer of the case, admitted during cross examination that when he visited the place of occurrence on the day of occurrence, he did not observe that any wall was being constructed or even that any construction material was available at the place of occurrence with which the said wall was being erected, for the measurement of which wall, the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) had proceeded to the place of occurrence. Sajjad Hussain, Inspector (PW-9), the Investigating Officer of the case, stated during cross examination as under:-

> "I cannot tell the distance at which the house of complainant is situated from the place of occurrence. The four walls of the under constructed room were

> constructed but the roof was not there when I visited the place of occurrence. **No construction material was present there at the place of occurrence when I visited the same**. (emphasis supplied)

During the cross-examination, prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) were badly exposed with regard to that there did not exist any reason for their arrival at the place of occurrence, at the time of occurrence. The proven failure of the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) to prove their reason for their arrival at the place of occurrence , on the very day of the incident has repercussions, proving that there was no reason actually for the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) to be visiting the place of occurrence. The very inception of the prosecution case is thus put in doubt due to the said abject failure of the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5). The prosecution was under a bounden duty to establish not only that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) had a reason to proceed to the place of occurrence however, failure of the prosecution to prove the said fact has vitiated the trust of this Court in Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) as being truthful witnesses. In this respect, reliance is placed on the cases of "*Muhammad Rafiq v. State"* **(2014 SCMR 1698)** "*Usman alias Kaloo v. State*" **(2017 SCMR 622)** and "*Nasrullah alias Nasro v. The State"* **(2017 SCMR 724)** .

15. I have also observed that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) claimed that the occurrence took place exactly at the same time when they had arrived at the place of occurrence. This narrative of the prosecution witnesses that the accused kept waiting for the arrival of the witnesses at the place of occurrence, and thereafter committed the same is

unnatural and cannot be believed. It is opposed to human conduct that an assailant would keep waiting for the arrival of the witnesses prior to the commission of the offence. It is all the more illogical that being perceptive of the fact that by pending the matter the accused ran the risk of the arrival of the witnesses and their deposing against the accused, even then the assailant kept waiting for their arrival. Such behaviour, on the part of the accused, as deposed by the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5), runs counter to natural human conduct and behaviour. Hence, being perceptive of this strain of human conduct, this Court is holding that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) were not present at the time of occurrence, at the place of occurrence and had not witnessed the occurrence. In this regard, reliance is placed on the case of "*STATE through Advocate-General, Khyber Pakhtunkhwa, Peshawar Vs. HASSAN JALIL and others"* (**2019 S C M R 1154**) wherein the august Supreme Court of Pakistan held as under:-

> *"Arrival of Noor Seema, PW at venue exactly at a point of time when the respondent allegedly did away with the deceased, in itself is a circumstance that reflects on the very genesis of the prosecution case."*

Reliance is also placed on the case of *Muhammad Imran Vs. The State* ***(2020 S C M R 857)*** wherein the august Supreme Court of Pakistan held as under:-

> *"These contradictions, viewed in the retrospect of arrival of the witnesses exactly at a point of time when the petitioner started inflicting blows to the deceased with their inability to apprehend him without there being any weapon to keep them effectively at bay, cast shadows on the hypothesis of their presence during the fateful moments. It was an odd hour of night without any source of light as admitted by no other than Fazal Abbas (PW-4) himself."*

16. I have also noted that the alleged eye witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) made no effort either to save the deceased or to apprehend the accused when they were three in number and could have easily restrained the accused. It was the claim of the prosecution

witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) that the accused, **a woman**, was **not even armed with any weapon** and still they did not make any effort either to apprehend the accused or save the deceased. It is unnatural and unbelievable that the alleged eye witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) did not even move a limb to protect their near and dear one. No person having ordinary prudence would believe that such closely related witnesses would remain watching the proceedings as mere spectators for as long as the occurrence continued without doing anything to rescue the deceased or to apprehend the assailant. It only proves that the deceased was at the mercy of the assailant and no one was there to save her. Such behaviour, on the part of the witnesses, runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat, 1984 allows the court to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. I thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat, 1984, that the conduct of the prosecution witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) , as deposed by them, was opposed to the common course of natural events, human conduct and that the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) and even the prosecution witness namely Muhammad Jalal (PW-12) were not present at the place of occurrence, at the time of occurrence and their presence was procured subsequently. The august Supreme Court of Pakistan has enunciated binding principles for the appreciation of evidence in such circumstances. Reliance is placed on the case of *Pathan v. The State* **(2015 SCMR 315)** at page 317 wherein the august Supreme Court of Pakistan observed as under:-

> *"No man on the earth would believe that a close relative would remain silent spectator in a situation like this because their intervention was very natural to rescue the deceased but they did nothing nor attempted to chase the accused and apprehend him at the spot."*

Further reliance is placed on the case of *Shahzad Tanveer v. The State* **(2012 SCMR 172)** at page-176 wherein the august Supreme Court of Pakistan observed as infra:-

> *"It is also more strange that none of the P.Ws. dared to physically intervene in order to save the victim or apprehend the accused at the spot."*

Reliance is also placed on the case of *Liaquat Ali v. The State* **(2008 SCMR 95)** at page 97 wherein the august Supreme Court of Pakistan observed as under:

> *"He was a single alleged assailant and if the witnesses were there at the spot they could have easily overpowered him. This makes their presence at the spot doubtful."*

17. I have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) is inconsistent with the medical evidence as furnished by Dr. Afroze Gul (PW-8) and flawed beyond mending, resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition. According to the statements of the prosecution witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) they had seen the appellant namely Mst. Nadia alias Nadu Mai, pressing the neck of the deceased with her hands and kept pressing the same till the deceased died, however, Dr. Afroze Gul (PW-8), on examining the dead body of Kalsoom Mai (deceased) did not observe any marks of violence on the neck of the dead body of the deceased.On conducting the post mortem examination of the dead body of the deceased namely Kalsoom Mai wife of Muhammad Iqbal, Dr. Afroze Gul (PW-8) observed as under:-

"EXTERNAL APPEARANCE

> **No mark of ligature found on any part of the body**. A dead body of women about 31/32 years old present on mortuary table wearing Shalwar plain blue coloured, Qameez(blue coloured having print of white & grey flowers and Dupatta of light green and light orange printed flowers. Right eye closed and left eye semi- closed. Mouth was semi-closed. **No dislocation of skin of neck. No protuberant tongue.**
>
> THORAX
>
> Paricardium and heart healthy having clotted blood at right and left ventricle whereas other organs of thorax healthy." (emphasis supplied)

In Chapter 20 '*Deaths from Asphyxia* ", from page 515 to page 517 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018) Strangulation has been defined as the compression of the neck by a force other than hanging and when constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. It has been further noted that if fingers are used for throttling, marks of pressure by the thumb and the finger prints are found on the either side of the neck. In Chapter 20 '*Deaths from Asphyxia*", at page 515 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018), the types of strangulation have been mentioned as under:-

> " Types of Strangulation
>
> . Ligature strangulation
>
> . Throttling (manual strangulation-compressing with hand) • Mugging (compressing with forearm or foot or wrist)
>
> • Bansdola (wooden stick is used to compress the neck) • Garrotting (a rope or a loincloth and a wooden stick as a lever to tighten the ligation is used)
>
> • Accidental strangulation (can arise in the course of a person's occupation when a neck tie or scarf is caught in moving machinery or belts as in mill

> workers or in an epileptic or an intoxicated person who may be helpless in extricating himself from such tight encirclement of the neck or in utero when the movements of the foetus cause the umbilical cord to be wound round into neck."

In the same Chapter 20 '*Deaths from Asphyxia* ", from page 516 to page 517 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018) it has been discoursed as under:-

> "(2) If fingers are used (throttling), marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be distinguished separately. These fingertip bruises, each disc-shaped and 1-2 cm in diameter, look like red bruises (six penny bruises) if examined soon after death, but they look brown, dry and parchment-like sometimes death. One should refrain from drawing inference from the direction of curved abrasion, as to how the hand of the assailant might have been applied to the neck of victim. The inherent quality of the victim's skin, the shape, and length of the fingernails of the assailant render such inferences extremely tenuous. This linear or crescentic marks produced by the fingernails are occasionally present, if the fingertips are pressed deeply into the soft tissues of the neck. A body, which is wet, may not reveal fingernail marks until drying of the skin of the body. When both hands are used to grasp and compress the throat, the thumb mark of one hand and the finger marks of the other hand are usually found on either side of the throat. Sometimes, both thumb marks are found on one side and several finger marks on the opposite side. If the throat is compressed between two hands, one being applied to the front and the other to the back, bruises and abrasions may be found on the front of the neck, as well as on its back.

> Besides these marks, there may be abrasions and bruises on the mouth, nose, cheeks, forehead, lower jaw or any other part of the body, if there has been a struggle. Similarly, fractures of the ribs and injuries to the thoracic and abdominal organs may be present, if the assailant kneels on the chest or abdomen of his victim while pressing his throat"

As narrated above, had the deceased been throttled in the manner as stated by Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) and Muhammad Jalal (PW-12) then Dr. Afroze Gul (PW-8) must have observed the evidence of marks of pressure by the thumb and the fingertips, fingertip bruises, linear or crescentic marks produced by the fingernails, abrasions and bruises on the mouth, nose, cheeks forehead, lower jaw or any other part of the body, however she did not. The oral account of the occurrence, as given by Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12), cannot be said to be in accordance with the medical evidence, rather is proved to be contrary to it.

18. It is also a fact of the prosecution case that Ghulam Rasool and Mst. Shamo Mai (already acquitted) were also named as accused by the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) as well as the prosecution witness namely Muhammad Jalal (PW-12) and specific roles were also attributed to them of holding the deceased during the incident, however, both Ghulam Rasool and Mst. Shamo Mai, the co-accused of the appellant, were acquitted by the learned trial court after their application under section 265-K Cr.P.C. was accepted. I have queried the learned Deputy Prosecutor General and the learned counsel for the complainant regarding the filing or otherwise of an appeal against the acquittal of the said co-accused of the appellant, who have stated that the acquittal of Ghulam Rasool and Mst. Shamo Mai had attained finality as neither the State nor the complainant or any other aggrieved person had filed any appeal against

the acquittal of the said co-accused of the appellant. The question for determination before this Court now is that whether the evidence of the prosecution witnesses which has been disbelieved qua the acquitted co-accused of the appellant can be believed against the appellant. The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. I have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting the accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim *falsus in uno falsus in omnibus*. The august Supreme Court of Pakistan in *Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013* reported as **PLD 2019 Supreme Court 527** has enunciated the following binding principles:-

> *"The Pakistan Penal Code, 1860 (P.P.C.) contains many offences dealing with perjury and giving false testimony. The very fact that there is a whole chapter, numbered XI, dedicated to such offences amply testifies to the fact that matters relating to giving of testimony were taken very seriously by those who drafted the P.P.C. and their continued retention in the P.P.C. ever since reflects the will of the legislature, which is the chosen representative body of the people of Pakistan through which they exercise their authority within the limits prescribed by Almighty Allah. The following sections, listed under Chapter XI titled "Of False Evidence And Offences Against Public Justice", highlight the fact that giving false testimony has been treated to be a very serious matter entailing some serious punishments.*

……

Holding that the rule falsus in uno, falsus in omnibus is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country. A court of law cannot permit something which the law expressly forbids.

……

……

21. ***We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."***

Guided by the said judgment of the august Supreme Court of Pakistan, I have examined the prosecution evidence. I have scrutinized the statements of prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) as well as the prosecution witness namely Muhammad Jalal (PW-12), the eye witnesses of the occurrence. Muhammad Bukhsh (PW-4) in his statement before the learned trial court got recorded as under:-

"**while Ghulam Rasool was catching her both legs, whereas Mst.Shamoo Mai were catching her arms**." (emphasis supplied)

Similarly, Nasrullah (PW-5) in his statement before the learned trial court stated as under:-

> "**Mst.Shamoo Mai were holding the arms of Mst.Kalsoom Mai and Ghulam Rasool was holding the legs of Mst.Kalsoom Mai**." (emphasis supplied)

Likewise, the prosecution witness namely Muhammad Jalal (PW-12) in his statement before the learned trial court stated as under:-

> "Ghulam Rasool my paternal grandfather and paternal grandmother Mst. Shamo Mai helped Mst. Nado Mai. Mst. Nado Mai was pressing the throat of my mother whereas **Ghulam Rasool my paternal grandfather was holding my mother from her legs and Mst.Shamo Mai my paternal grandmother was holding my mother from her arms**" (emphasis supplied)

All the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) and the prosecution witness namely Muhammad Jalal (PW-12) attributed specific roles to both Ghulam Rasool and Mst. Shamo Mai, the co-accused of the appellant, of holding the deceased during the incident, however, the prosecution witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) were found to have made false statements with regard to Ghulam Rasool and Mst. Shamo Mai, the co-accused of the appellant. The prosecution witness namely Muhammad Bukhsh (PW-4) during cross-examination, admitted as under:-

> "**We have implicated Ghulam Rasool father in law of deceased and Shamoo Mai mother in law of deceased** but they have been found not involved in the occurrence. The police, found them not involved in the occurrence and the said Ghulam Rasool and Shamoo Mai were not arrested by the police. They have however appeared before the court. **They had filed an application u/s 265-K Cr.P.C and the court has accepted the same and acquitted them.** We did not file any appeal against acquittal of said Ghulam Rasool and Shamoo Mai before the Hon'ble High Court." (emphasis supplied)

I am unable to find any independent corroboration of the prosecution case against the appellant and I am unable to distinguish the case of the appellant from the case of the acquitted co-accused namely Ghulam Rasool and Mst. Shamo Mai as the prosecution evidence with regard to the appellant and with regard to her co-accused namely Ghulam Rasool and Mst. Shamo Mai(both since acquitted), is similar. I find no reason to believe the statements of the witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) with regard to the appellant in the absence of any reason to do so. This lying on the part of the witnesses with regard to Ghulam Rasool and Mst. Shamo Mai(both since acquitted), the co-accused of the appellant ,has vitiated my trust in them. I am thus satisfied that the evidence of Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) has no worth and deserves outright rejection. Reliance in this regard is placed on the case of *Tariq Vs. The State* (**2017 S C M R 1672**) wherein the august Supreme Court of Pakistan has held as under: -

> *"So the conviction of the appellant can only be sustained if there is independent corroboration to the said witnesses who had been disbelieved to the extent of majority of the accused which presently is lacking because the motive asserted by the prosecution indicates that there was enmity of murder between the parties and the said enmity, being double edge, could be reason for false implication of the appellant."*

Reliance in this regard is also placed on the case of *MUNIR AHMED and others Vs. the State and others* (**2019 S C M R 2006**) wherein the august Supreme Court of Pakistan has held as under: -

> *"Loss of precious lives, within a family fold, though on rocks, confirmed by the witnesses including the one with a stamp of injury, notwithstanding, there are certain intriguing aspects, haunting the prosecution, in the totality of circumstances, a hugely large number of assailants, including the*

unknown, being the most prominent. In the face of indiscriminate firing, a case unambiguously put forth by the prosecution, receipt of single shot by each deceased as well as the injured belies the hypothesis of massive indiscriminate firing by each member of unlawful assembly comprising no less than 26, the unknown included; from amongst the volley of assailants, precision attribution, in an extreme crisis situation, is a feat, beyond human capacity, it sans forensic support as well; quite a few from amongst the array were let off at investigative stage, on the basis of an affidavit sworn by no other than the injured himself; prosecution's dilemma is further compounded by acquittal of four accused, framed through the same set of evidence by the Trial Court; a severer blow came from the High Court that acquitted all others except the petitioners. The petitioners, though distinctly assigned single shot qua the deceased and the injured, nonetheless, are identically placed with those by now, off the hook. Inclusion of the unknown, eight in numbers, if factually correct was certainly not without a purpose; if at all, they were there, the petitioners and other known members of the family had no occasion to carry out the assault without being out of mind. Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case."

Reliance is also placed on the case of *SAFDAR ABBAS and others Versus The STATE and others* (**2020 S C M R 219**) wherein the august Supreme Court of Pakistan has held as under: -

"Petitioners' father, namely, Charagh co-accused is assigned multiple club blows to Muhammad Bukhsh deceased; same is charge against Muzaffar co-accused; remainder of the accused, though assigned no harm to the deceased, nonetheless, are ascribed effective roles to the PWs; they are closely related being members of the same clan and in the totality of circumstances given the accusation, their roles cannot be bifurcated

without nullifying the entire case. Motive cited in the crime report is non-specific; investigative conclusions were inconsistent with the case set up by the complainant. Recoveries are inconsequential. Complainant abandoned his case against the acquitted co-accused after failure of his petition seeking leave to appeal in the High Court. In this backdrop, no intelligible or objective distinction can be drawn to hold the petitioners guilty of the charge in isolation with their co-accused. Prosecution evidence, substantially found flawed, it would be unsafe to maintain the conviction without potential risk of error. Criminal Petition No.955-L/2016 is converted into appeal and allowed, impugned judgment is set aside, the petitioners/appellants shall be released forthwith, if not required to be detained in any other case."

19. The learned Deputy Prosecutor General has also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by the prosecution witness namely Muhammad Bukhsh (PW-4), was that the deceased and the appellant had an altercation just before the occurrence due to the damage to the plate (*Thaal*) put on the oven by the deceased which resulted in the said incident. I have perused the statements of the prosecution witnesses namely Muhammad Bukhsh (PW-4) , Nasrullah (PW-5) and Muhammad Jalal (PW-12) and find that they failed to prove the motive of the occurrence as stated by them. Sajjad Hussain, Inspector (PW-9), the Investigating Officer of the case on his visit to the place of occurrence, did not find any such damaged plate (*Thaal)* present at the place of occurrence nor any such damaged plate (T*haal*) was produced before him during the investigation of the case as proof of the motive of the incident. Sajjad Hussain, Inspector (PW-9), the Investigating Officer of the case on his visit to the place of occurrence, took into possession, all the available evidence from the place of occurrence, however, did not take any such damaged plate (*Thaal)*

or even observed any such damaged plate (*Thaal)* , amply proving that the motive alleged was absolutely false. A perusal of the statements of the prosecution witnesses amply proves that there is no evidence on record that Kalsoom Mai wife of Muhammad Iqbal (deceased) was facing any threat to her life at the hands of the appellant prior to the occurrence rather, to the contrary, she was living with the appellant and other relatives till her tragic death. The prosecution witnesses failed to provide evidence enabling this Court to determine the truthfulness of the motive alleged and the fact that the said motive was so compelling that it could have led the appellant to have committed the *Qatl-i-Amd* of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

> "*The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case.*"

20. It has been argued by the learned Deputy Prosecutor General and the learned counsel for the complainant that where any person dies an unnatural death in the house of such accused, then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in her house, therefore, it must be she

and none else who would have committed that murder. The learned Deputy Prosecutor General submits that it was in the knowledge of the appellant how the deceased died so it was the appellant who was responsible, in the absence of any explanation. The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. The said provision provides:

> ***"117. Burden of proof**:- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused that the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Article 122 of Qanun-e-Shahadat,1984 reads as under:

> *"122. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden to proving that fact is upon him."*

It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by producing sufficient evidence, except the facts referred to in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove her innocence, but only to produce evidence enough to create doubts in the prosecution's case. It may be noted that this issue was also dilated upon by the august Supreme Court of Pakistan, in the case of "*Rehmat alias Rahman alias Waryam alias Badshah v. The State"* (**PLD 1977 SC 515**), where, while deliberating upon Section 106 of the Evidence Act, which is *para materia* with Article 122 of the Qanun-e-Shahadat, 1984, held as under:

> *"Needless to emphasis that in spite of section 106 of the Evidence Act in criminal case the onus rests on the prosecution to prove the guilt of the accused beyond reasonable doubt and this section cannot be construed to mean that the onus at any stage shifts on to the accused to prove his innocence or make up for the inability and failure of the prosecution to produce evidence to establish the guilt of the accused. Nor does it relieve! the prosecution of the burden to bring the guilt home to the accused. It is only after the prosecution has on the evidence adduced by it, succeeded in raising reasonable inference of the guilt of the accused, unless the same is rebutted, that this section wherever applicable, comes into play and the accused may negative the inference by proof of some facts within his special knowledge. If, however, the prosecution fails to prove the essential ingredients of the offence, no duty is cast on the accused to prove his innocence."*

The *ratio decidendi* of the above decision was further developed in the case of "*Nasrullah Alias Nasro Versus The STATE* (**2017 S C M R 724**) , wherein, it held as under:

> *"It has been argued by the learned counsel for the complainant that in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) this Court had held that where a wife of a person or any vulnerable dependent dies an unnatural death in the house of such person then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The learned counsel for the complainant has maintained that the stand taken by the appellant regarding suicide having been committed by the deceased was neither established by him nor did it fit into the circumstances of the case, particularly when the medical evidence contradicted the same. Be that as it may holding by this Court that some part of the onus lies on the accused person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this*

> *nature. It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts presence of some eye-witnesses and such claim of the prosecution is not established by it there the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and none else who would have committed that murder.*
>
> *……*
>
> *In a case of this nature the appellant could not have been convicted for the alleged murder merely because he happened to be the husband of the deceased."*

In a criminal case, the burden of proof is on the prosecution and Article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that she did not commit the murder because who could know better than she whether she did or did not. Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts. Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained. As discussed above, the prosecution witnesses namely Muhammad Bukhsh (PW-4), Nasrullah (PW-5) and Muhammad Jalal (PW-12) failed miserably to prove their presence at the place of occurrence, at the time of occurrence. In a case of this nature, the appellant could not have been convicted for the alleged murder merely because she happened to be one of the residents of the place of occurrence.

An accused person cannot be convicted merely because she did not explain the circumstances in which the deceased had lost her life. The august Supreme Court of Pakistan has held in the case of "*MUHAMMAD JAMSHAID and another vs. The State and others"* (**2016 SCMR 1019**) as under:

> *"only circumstance relied upon by the prosecution was that the deadbody of the deceased had been found inside the house of the appellant and, hence, it was concluded by the courts below that it must be none other than the present appellant who had done the deceased to death. We have found such an approach adopted by the courts below to be nothing but speculative".*

The august Supreme Court of Pakistan has held in the case of "*Arshad Khan vs. The State"* (**2017 SCMR 564**) as under:

> *"It may be true that it has been held by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) that in such cases some part of the onus lies on the accused person to explain as to how and in which circumstances the accused person's wife had died an unnatural death inside the confines of the matrimonial home but at the same time it has also been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the prosecution completely fails to discharge its initial onus there no part of the onus shifts to the accused person at all."*

The august Supreme Court of Pakistan has held in the case of *Nazeer Ahmed vs. The State* (**2016 SCMR 1628**) as under:

> *"It may be true that when a vulnerable dependant is done to death inside the confines of a house, particularly during a night, there some part of the onus lies on the close relatives of the deceased to explain as to how their near one had met an unnatural death but where the prosecution utterly fails to prove its own case against an accused person there the accused person cannot be convicted on the sole basis of his failure to explain the death. These aspects of the legal issue have been commented upon by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524), Abdul Majeed v. The State (2011 SCMR 941) and Saeed Ahmed v. The State (2015 SCMR 710)."*

The august Supreme Court of Pakistan has held in the case of *Asad Khan vs. The State* (**PLD 2017 Supreme Court 681**) as under:

> *"It had been held by this Court in the case of Arshad Mehmood v. The State (2005 SCMR 1524) that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the later case of Saeed Ahmed v. The State (2015 SCMR 710) the said legal position had been elaborated and it had been held that an accused person is under some*

> *kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the confines of his house; It had, however, been held in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the entire case of the prosecution stands demolished or is found to be utterly unbelievable there an accused person cannot be convicted merely because he did not explain the circumstances in which his wife or some vulnerable dependent had lost his life. In such a case the entire burden of proof cannot be shifted to him in that regard if the case of the prosecution itself collapses. The present case is a case of the latter category wherein the entire case of the prosecution has been found by us to be utterly unbelievable and the same stands demolished and, thus, we cannot sustain the appellant's conviction and sentence merely on the basis of an inference or a supposition qua his involvement."*

The august Supreme Court of Pakistan has held in the case of *Abdul Majeed vs. The State* (**2011 SCMR 941**) as under:

> *"The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one. The strangulation to death of the appellant's wife in his house may be a circumstance to be taken into account along with the other prosecution evidence. However; this by itself would not be sufficient to establish the appellant's guilt in the absence of any other evidence of the prosecution connecting him to the crime. The prosecution has also not been able to establish that the appellant was present in the house at the time his wife was murdered. This, perhaps, distinguishes this case from that of "Afzal Hussain Shah v. The State" (ibid) where the accused admittedly was present in the house when his wife was killed."*

21. The learned Deputy Prosecutor General and the learned counsel for the complainant have also laid much premium on the abscondence of the appellant namely Nadia alias Nadu Mai as proof of her guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence. The august Supreme Court of Pakistan has held in the case of *Asadullah v. Muhammad Ali* (**PLD 1971 SC 541**) that both corroborative and ocular evidence are to be read together and not in isolation. As regards abscondence, the august Supreme Court of Pakistan has held in the case of *Rasool Muhammad v. Asal Muhammad* (**1995 SCMR 1373**) that abscondence is only a suspicious circumstance. In the case of *Muhammad Sadiq v. Najeeb Ali* (**1995 SCMR 1632**) the august Supreme Court of

Pakistan observed that abscondence itself has no value in the absence of any other evidence. It was also held in the case of *Muhammad Khan v. State* (**1999 SCMR 1220**) that abscondence of the accused can never remedy the defects in the prosecution case. In the case of *Gul Khan v. State* (**1999 SCMR 304**) it was observed by the august Supreme Court of Pakistan that abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the cases of *Muhammad Arshad v. Qasim Ali* (**1992 SCMR 814**), *Pir Badshah v. State* (**1985 SCMR 2070**) and *Amir Gul v. State* (**1981 SCMR 182**) it was observed that conviction on abscondence alone cannot be sustained. In the present case, the substantive piece of evidence in the shape of the ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone. Reliance is also placed on the cases of "*Muhammad Farooq and another Vs. The State"* (**2006 SCMR 1707**) and "*Nizam Khan and 2 others Vs. the State*" (**1984 SCMR 1092**) and *Rohtas Khan vs. The State* (**2010 SCMR 566**).

22. Considering all the above circumstances, I entertain serious doubt in my mind regarding the involvement of the appellant namely Nadia alias Nadu Mai wife of Muhammad Bilal, in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case of "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the*

> *benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akramv.The State (2009 SCMR 230) and Muhammad Zamanv.The State (2014 SCMR 749)."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan *Najaf Ali Shah Vs. the State* (**2021 S C M R 736**) in which case it has been observed as under :-

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

23. For what has been discussed above, the instant Criminal Appeal No.10-J of 2021 lodged by Nadia alias Nadu Mai wife of Muhammad Bilal (appellant) is **allowed** and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 14.12.2020 are hereby **set-aside**. Nadia alias Nadu Mai wife of Muhammad Bilal (appellant) is ordered to be acquitted

by extending her the benefit of the doubt. Nadia alias Nadu Mai wife of Muhammad Bilal (appellant) is in custody and is directed to be released forthwith if not required in any other case.

(SADIQ MAHMUD KHURRAM)
JUDGE

APPROVED FOR REPORTING

JUDGE

T.A.Alvi/*