

Stereo. H C J D A 38
Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No.2841 of 2023

Muhammad Ashraf	versus	The State etc.
Date of hearing		<u>17.11.2025</u>
Appellant by		<u>M/S Syed Hasan Mehdi Rizvi and Alia Hassan, Advocates/ Defence Counsels.</u>
The State by		<u>Mr. Humayoun Aslam, Deputy Prosecutor General</u>
Complainant by		<u>Hafiz Ahmad Naeem, Advocate.</u>

=====

Asjad Javaid Ghural- J. Through the afore-titled criminal appeal, appellant Muhammad Ashraf has challenged the vires of judgment dated 23.12.2022 passed by the Additional Sessions Judge, Gujranwala in case FIR No.374/21, dated 20.09.2021, P.S. Eminabad, District Gujranwala whereby he was convicted and sentenced as under:-

Under Section 302(b) PPC

Imprisonment for life as Ta'zir and to pay the compensation amounting to Rs.3,00,000/- to the legal heirs of deceased Mst. Musarat Bibi under Section 544-A Cr.P.C. and in default thereof, to further undergo SI for six months.

Benefit of section 382-B Cr.P.C. was extended to the convict.

2. Faisal Sohail (PW-1)/complainant set the law into motion by filing application (Ex.PA) for registration of case before the SHO, P.S. Eimanabad, Gujranwala alleging therein that on 31.08.2021 at about 10.00 a.m. his neighbour Muhammad Nawaz (PW-2) telephonically informed him that on hearing the noise from my house, he entered into it and witnessed my father (appellant) beating my mother. On this news, he arrived at his house and found his mother smeared with blood in unconscious condition. He took his mother to Civil Hospital, Gujranwala wherefrom she was referred to General Hospital, Lahore. Upon the said application formal FIR (Ex.PD),

was registered against the appellant U/S 324 PPC, however, subsequently on the death of the injured, offence U/S 302 PPC was added.

3. After framing of formal charge, recording the prosecution evidence and statement of the appellant U/S 342 Cr.P.C. the Trial Court convicted and sentenced the appellant as stated above. Hence, this appeal.

4. I have heard learned counsel for the appellant, learned Law Officer appearing for the State assisted by learned counsel for the complainant and gone through the record.

5. In order to prove the charge against the appellant Faisal Sohail (PW-1) by appearing in the witness box reiterated the contents of crime report (Ex.PD) which itself are indicative of the fact that he was not eye-witness of the occurrence and what he stated was based upon hearsay, as such needs no further discussion.

6. The only star witness of the occurrence was Muhammad Nawaz (PW-2), who by appearing in the witness box deposed that on 31.08.2021 he was present in his house. On hearing the noise and hue and cry from the house of the complainant, who happened to be his neighbour, he went there and saw appellant beating Mst. Musarrat Bibi mercilessly with Danda. He accordingly informed the complainant about the occurrence. Despite lengthy cross-examination the defence could not shatter his credibility on material points. He was an independent witness having no nexus with the complainant or animus with the appellant. Even the appellant in his statement U/S 342 Cr.P.C. did not raise any finger over neutrality of this witness. In the absence of any ill will on the part of such independent witness to falsely involve the appellant in the case of capital charge, his testimony deserves credence.

7. Learned defence counsel mainly argued that the incident has allegedly taken place on 31.08.2021 but the matter was reported to the police on 20.09.2021 i.e. with an unexplained and inordinate delay of twenty days which is fatal to the prosecution's case. Generally setting the law into motion with such lethal delay was considered fatal to the prosecution's case but here in the instant case the situation is entirely different. Culprit was the real father of the complainant, whereas, victim was his real mother, who was battling for her life in the hospital. In such situation, expecting a son to

promptly set the law into motion against his father was quite unrealistic. It seems that he kept on waiting with a bleak hope of survival of his mother and then resolve the issue without resorting to legal action but once the police resorted to record the statement of the injured by way of moving application (Ex.PP) and the doctor opined that she was not in a position to get record her statement, then keeping in view worsened condition of his mother, he persuaded to formally lodge the FIR. The shock, fear and hesitation arising from accusing one's own father of such a grave offence naturally explain the delay. It is, therefore, held that in cases involving such close familial ties, the delay in setting the law into motion, alone cannot cast doubt on the credibility of prosecution's case.

8. Learned counsel further emphasized that the deceased lady was survived by one other son and two daughters but none of them came forward to speak against the appellant, which raises serious question mark qua authenticity of the prosecution story. This submission has no force. In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is important. There is no requirement under the law that a particular number of witnesses are necessary to prove/disprove a fact. It is time honoured principle that evidence must be weighed not counted. One can easily understand that where the father was accused of murdering the mother, the children are placed in an extremely distressing and emotionally conflicted position. It cannot be expected that every child will have the same strength or willingness to testify against a parent, regardless of the circumstances. Fear, trauma, loyalty and psychological shock can all influence their conduct. Therefore, mere fact that some children did not come forward to depose against their father does not weaken the prosecution's case or undermine the credibility of the complainant, who took such a daring step to take his own father to task for committing the murder of his mother. Moreso, if the defence was so sure that other children were not ready to support the prosecution story, it has ample opportunity to examine them in their defence but no such effort was made, in the absence whereof, no premium can be extended to the appellant on that basis.

9. Learned defence counsel stressed that acclaimed eye-witness namely Muhammad Nawaz (PW-2) during cross-examination admitted that his statement U/S 161 Cr.P.C. was recorded after twenty days, therefore, such belated statement lost its evidentiary value. I am not in agreement with the submission for the sole reason that as has been discussed supra, the crime report was got lodged after twenty days of the occurrence, as such recording of the statement of the eye-witness on the same day of the lodging of the crime report has no adverse effect qua veracity of prosecution's case.

10. Dr. Momina Ijaz, (PW-5) had conducted post mortem examination of deceased Mst. Musart Shaheen on 13.10.2021 at about 0.13 p.m. and observed single injury on the left side of skull 2 cm above the left ear. According to her opinion this injury caused massive hemorrhage which leads to cardiopulmonary arrest and subsequent death. Probable duration between injury and death was roughly two months and between death and postmortem six to eight hours.

Learned defence counsel while referring to the statement of the eye-witness (PW-2) that he saw appellant mercilessly beating the deceased laid much emphasis that observance of single injury on the person of deceased by the Medical Officer is sufficient to bely the ocular account. I am not in agreement with this submission for more than one reasons. *Firstly*, connotation of mercilessly beating does not *ipso facto* constitute that all the injuries inflicted by the appellant should have been detected by the Medical Officer at the time of post mortem examination of the deceased which was conducted after two months of the occurrence. The deceased while in injured condition remained under treatment for almost two months. There is every probability that during the intervening period minor injuries inflicted by the appellant would have healed, as such merely due to non-observance of other injuries at the time of post mortem examination report of the deceased, it cannot be said that the medical evidence is in contradiction to the ocular account. *Secondly*, it is a matter of common observance that sometimes witnesses exaggerate the statements in desperation of justice and to emphasize on the intensity of their words, therefore, variation if any is not sufficient to grant any premium to the appellant. Reliance is placed on case reported as “*Sher Afzal and another ..Vs.. The State (2025 SCMR 894).*”

Thirdly, it is well settled by now that in the presence of convincing ocular account, single ground of conflict between ocular account and medical evidence cannot be made basis for acquittal of an accused. Reliance is placed on case reported as “*Akbar Saeed ..Vs.. The State and another (2025 SCMR 935)*”.

Learned counsel while referring to admission chart (Ex.PE) argued that according to said chart date of admission of the injured in the hospital was 21.08.2021 i.e. ten days prior to the alleged occurrence, which raised serious question mark qua the mode and manner of the occurrence. This submission is repelled. This seems to be a clerical mistake as in the history of said chart it was specifically written “assault on 31.08.2021.” When the assault was made on 31.08.2021 then admission in the hospital on that basis ten days prior to it was not possible. Moreover, this fact was got clarified by the defence itself by putting question to the Medical Officer (PW-5), who during cross-examination deposed that “*It is correct that according to Ex.PE the date of admission of the injured is 21.08.2021. The date 21.08.2021 has been mentioned mistakenly and wrongly in Ex.PE.*”

11. Appellant was arrested on 30.09.2021 and during investigation he led to the recovery of “pawa” (P-2), which was taken into possession vide recovery memo (Ex.PL). Admittedly, neither said “pawa” was stained with blood nor sent to the office of Punjab Forensic Science Agency, Lahore for analysis, in the absence whereof, case property being of same pattern cannot be safely connected with the appellant.

12. Neither any motive was set out in the crime report nor any reason was explained by the complainant by appearing in the witness box for committing the murder of deceased by the appellant, however, it has no adverse affect upon the case of the prosecution as the motive is not *sina qua non* for the commission of the offence. There are many instances where the crime was committed without any motive, as such lack of motive alone cannot be made basis for acquittal of an accused. Reliance is placed on case reported as “*Hameed Khan alias Hameedai ..Vs.. Ashraf Shah and another (2002 SCMR 1155)*”, wherein it has been laid down as under:-

“Sometimes atrocious crimes are committed without any motive or for every minor motive as such adequacy or weakness of the motive or where motive is alleged but not proved, in

such cases it is the duty of the Court to scrutinize the prosecution evidence carefully. If the ocular evidence is trustworthy and reliable the motive part becomes immaterial as motive is a guess of the complainant who speculates that such motive might have motivated the assailant to commit the crime as the real motive is only known to the offender being within his exclusive knowledge. Absence of motive or failure to prove the motive would not adversely affect the prosecution case if prosecution has proved its case by reliable evidence.”

13. Appellant being the father of the complainant was solely charged for committing the murder of his own wife. The acclaimed eye-witness by appearing in the witness box fully implicated the appellant for committing this sad incident. Though the complainant was not the eye-witness of the occurrence but he set the law into motion on the basis of what an eye-witness narrated to him and remained steadfast on it till culmination of the trial. In our society a father is traditionally placed on a high pedestal, regarded with deep respect, authority and reverence. It cannot be assumed that a son would falsely implicate his own father in the murder of his mother. No son would ordinarily take such an extreme step unless there were compelling reasons or circumstances pointing towards father's implication. Therefore, when a son himself names his father as the perpetrator, it carries a strong presumption of truth and cannot be dismissed as a fabrication without substantial evidence to the contrary. Here in the instant case, neither the appellant in his statement U/S 342 Cr.P.C. explained any solid reason for his false implication by his son qua the murder of his own wife nor he produced any evidence in defence or opted to appear as his own witness as required U/S 340(2) Cr.P.C. in the absence whereof, keeping in view such trustworthy and strong prosecution evidence, I have no hesitation in holding that the prosecution has successfully proved the charge against the appellant for committing the murder of his own wife, as such the Trial Court was fully justified in awarding him conviction and sentence and no exception can be drawn therefrom.

14. Resultantly, instant appeal being devoid of any force stands **dismissed.**

(Asjad Javaid Ghural)

Judge

Approved for Reporting

Azam*

Judge