

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

Jail Petition No.403 of 2022

Against the judgment dated 08.09.2022
passed by the High Court of Sindh, Circuit
Court Hyderabad in Criminal Jail Appeal
No.D-130/2014 and Confirmation Case
No.28/2014

Qurban Ali

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Syed Khawar Ameer Bukhari, ASC

For the State:

Ms. Rahat Ehsan, Addl.PG, Sindh

For the Complainant:

Nemo

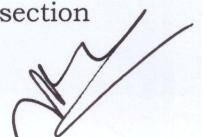
Date of Hearing:

06.05.2025

JUDGMENT

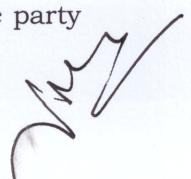
Irfan Saadat Khan, J.- The instant Jail Petition has been filed by the petitioner, who was charged for the offences under sections 302/34 of the Pakistan Penal Code, 1860 (hereinafter referred to as “PPC”) for allegedly killing his wife, namely, Mst. Zamiran, aged thirty years, Baby Ramsha aged three years and Master Bilawal aged 1 ½ years.

2. Briefly stating the procedural facts, the learned Additional Sessions Judge, Kotri in Sessions case No. 343 of 2013, *vide* judgment dated 03.12.2014, convicted the petitioner under section 302 PPC and sentenced him to death on three counts as *Tazir* with the further direction to pay compensation of Rs.200,000/- to the legal heirs of the deceased, under section



544-A of the Criminal Procedure Code, 1898 (hereinafter referred to as "**Cr.P.C.**"). Thereafter, the petitioner filed Criminal Jail Appeal No. D-130 of 2014 before the High Court, which was dismissed *vide* the impugned judgment dated 08.09.2022 and the corresponding Confirmation Case No. 28 of 2014, sent by the trial Court, was therefore answered in the affirmative. It is this judgment of the High Court which is now impugned before us.

3. Briefly stating the material facts of the case, the FIR bearing No.500/2010 was registered on 23.12.2010 at 0600 hours on the complainant of Kamal Khan, in respect of an incident, which took place on 22.12.2010 at 2300 hours. The complainant resides with his family in Karachi, while his younger sister Mst. Zamiran resided in Pathan Colony Tando Allahyar with her husband/the accused Qurban Ali, to whom she got married some five years ago and since then has been blessed with one daughter namely Ramsha, aged three years, and one son Bilawal, aged 1 $\frac{1}{2}$ years. During the nighttime on 22.12.2010, the complainant, present at Karachi, received a call on his cellphone from Qurban Ali informing him that he had killed his sister and both the children and had directed him to collect their dead bodies from his house at Tando Allahyar. Kamal Khan immediately called his younger brother, namely Gul Muhammad Mugheri and told him about the phone call and in reply, Gul Muhammad Mugheri informed him that he had also received a similar phone call from Qurban. Thereafter, Gul Muhammad came to him and both of them left Karachi for Tando Allahyar and straightaway headed towards the house of Sikandar Ali Mugheri (father of the accused) to inquire about the matter. Sikandar Ali was initially hesitant in disclosing what had happened but eventually informed them that at about 11:00 (p.m.) during the night his son Qurban Ali intoxicated and poisoned his wife and children and had then fled away. The complainant then informed the police about the incident and took the dead bodies to the Civil Hospital, Tando Allahyar, where the police party



was already present. The dead bodies of Mst. Zamiran, Rimsha and Bilawal were later placed in the mortuary. After the postmortem the police handed over the dead bodies to the complainant for funeral purposes. The complainant stated that thereafter, he left the bodies with Gul Muhammad and proceeded to the police station to lodge the FIR and reported that due to the domestic differences and quarrels between his late sister and the accused Qurban Ali, who with the assistance of his father (Sikandar Ali), mother (Mst. Aziza), and his sister-in-law (Mst. Pathani), had premeditatedly caused the death of his wife and children by intoxicating them, using a poisonous substance and afterwards killing them by way of strangulation.

4. Subsequently on 30.12.2020 police arrested Qurban Ali, who as per the police report was about to make his escape good. Qurban Ali was then produced before the trial Court, when on 31.12.2020, he made a judicial confession with regard to killing the three persons, however during the trial he retracted from his confessional statement and stated that the same was made under duress, since the police had arrested his father, mother and sister-in-law/ *bhabi*; and was maltreating them hence in order to save them from the clutches of the police he made the alleged confession. It would not be out of place to mention that Sikandar Ali, Mst. Aziza and Mst. Pathani were joined in the trial on 04.12.2014, pursuant to an application under section under section 193 Cr.P.C. filed by the complainant, however they were acquitted of the charges levelled against them, by extending the benefit of doubt, under section 265-H(i) Cr.P.C. to them, who thereafter were released by the trial Court. The trial Court's judgment acquitting Sikandar Ali, Mst. Aziza and Mst. Pathani was subsequently challenged in a Criminal Appeal which was also dismissed by the High Court.



5. Syed Khawar Ameer Bukhari, learned ASC has appeared on behalf of the petitioner and stated, at the outset, that the accused has been wrongly implicated in the instant matter as the incident had remained unseen. He submitted that the medical evidence conflicts with the ocular evidence; all the witnesses were chance witnesses and that there were marked contradictions in their depositions. He further stated that no independent witness was arrayed in the instant matter and the three other alleged co-accused persons namely, Sikandar Ali, Mst. Aziza and Mst. Pathani were acquitted by the trial Court, as they were found to be innocent. He further argued that the prosecution has also failed to prove any motive against the accused as to why would he kill his own wife and two innocent children. Building upon this line of argument, he stated that it was admitted by the complainant and his brother Gul Muhammad that there was no previous enmity between the parties. He also argued that though it was alleged by the complainant that the deceased were poisoned by the accused however it is surprising to note that no traces of poison were found from the contents of their stomach in the FSL report. Moreover, the police has neither recovered any packet/bottle etc. which could have been used to poison the deceased nor any teacup/kettle etc. from the room so as to connect the accused with the allegation of poisoning the deceased. On the contrary in the postmortem report, it has been mentioned that these persons had died due to the strangulation, which aspect according to him has totally been ignored by the Trial Court as well as the High Court, which in his view is a major blow to the case of prosecution. According to him there is a discrepancy in the description of the cause of death given by the police and the complainant in their ocular evidence; and in the medical evidence as opined by the Dr. Yasmin (PW-2) and Dr. Qasim Ali (PW-3). Concluding his submissions, the learned counsel prayed for acquittal of the accused, as according to him these aspects cast heavy doubts on the case of

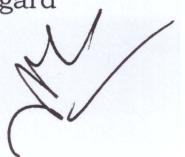


the prosecution hence the benefit of such may be extended to him and he be released forthwith, if not required to be incarcerated in any other case.

◦

6. Ms. Rahat Ehsan, learned Additional Prosecutor General ('AGP') has appeared on behalf of the State and has vehemently refuted the arguments of the learned counsel appearing on behalf of the accused. She stated that on the very next day of his arrest, the accused made a confessional statement before the concerned Magistrate (PW-1) and accepted his guilt, with respect to killing three innocent persons. She stated that the trial Court as well as the High Court after considering all the pros and cons of the matter have rightly awarded and upheld the sentence of death, under section 302 PPC, to the accused since he, in a very gruesome and horrific manner, had killed his own wife and two innocent children. She stated that the cause and motive of the murder is evident from the fact that the accused doubted the character of his wife that she had illicit relations with her maternal cousin namely Golo Mughari and that Baby Ramsha was not his daughter but the illegitimate child of Golo. She stated that in his statement the accused has stated that two-three days prior to the incident he had seen his wife with Golo in a compromising state but had kept quiet, however subsequently proceeded to kill her, alongwith the children, by firstly intoxicating them through tea laced with poison and then strangulating them, while they were intoxicated. The learned AGP stated that the trial Court and the High Court have considered the matter at great length and it was only after examining the deposition of various prosecution witnesses, which had remained consistent and trustworthy, that they have awarded him death sentence.

7. The learned AGP further stated that the cases of Sikandar Ali, Mst. Aziza and Mst. Pathani were quite different from that of the accused Qurban Ali and that they were rightly acquitted by the trial Court, hence no lease in this regard

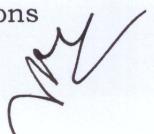


could be claimed and given to the accused, whose role was altogether different from those persons as it was he who had firstly poisoned the deceased and thereafter killed them by way of strangulation. She stated that on the very next date of his arrest, Qurban Ali made a confessional statement before the concerned Magistrate of which though he subsequently retracted but equally true is the fact that he admitted his guilt at the initial stage, which cannot be taken lightly or ignored. She further stated that the prosecution has proved its case beyond reasonable shadow of doubt and that there was an obvious motive for committing the brutal murders. She stated that if the entire case is examined in juxtaposition by looking at the circumstantial evidences, medical evidences, confessional statement, evidences of the prosecution witnesses, these connect the accused with the commissioning of the offence without any iota or shadow of doubt and that he does not deserve any leniency in this behalf. She lastly prayed that this appeal being devoid of any merit may be dismissed and the punishment and fine imposed by the two Courts below may be affirmed.

8. We note that nobody has appeared on behalf of the complainant.

9. We have heard the learned counsel for the petitioner as well as the learned AGP, at considerable length and have also perused the record with their able assistance.

10. The record reveals that though the accused had made a confessional statement on 31.12.2020 before the concerned Magistrate but subsequently retracted from it by stating that the police had arrested his father Sikandar Ali, Mst. Aziza and Mst. Pathani and was maltreating them, so in order to save them from the clutches of the police he made the said confessional statement. According to him, he was given an assurance by the police that if he makes a confessional statement before the concerned Magistrate, the other persons



implicated in the case of killing the three persons will be let off by the police. It is worthwhile to note that in the accused's statement under section 342 Cr.P.C., recorded by the Sessions Judge, Jamshoro at Kotri, while answering to the question No.5, the accused categorically stated that the confessional statement recorded on 31.12.2020 was under duress. He further explained, by answering to the question No.10, that he was present at village Haji Wadero Ghulam Qaqir Thebo to look after his land, where he was informed that his wife and two children had passed away. Thereafter, he went to his home where the police arrested him. The deposition of Mumtaz Ali Solangi (PW-1) (Judicial Magistrate), who recorded the accused's confessional statement reveals that the column of length of time of the confessional statement was left blank by him and further that he had not obtained the thumb impression of the accused on the first page of the alleged confessional statement.

11. Dr. Yasmin (PW-2) and Dr. Qasim (PW-3) have also categorically stated that chemical examiner's report with regard to intoxication and poisoning of the three deceased persons returned as negative. It also transpires from the record that there was no evidence of strangulation on the bodies of the deceased persons; no cellphone call data record was collected by the police; so as to connect the calls made by the accused-Qurban Ali to either Kamal Khan or Gul Muhammad (PWs). Arshad Hassan Khan, SI (PW-7) has stated in his deposition that he visited the place of incident before the lodging of the FIR and then again after formal lodging of the same, which naturally raises a question as to why and for what purpose did he visit the place of incident before the lodging of the FIR, this question however has remained unexplained.

12. The statement of Gul Muhammad (brother of Mst. Zamiran) also casts doubt as according to him Qurban Ali told him that he had killed the three persons by way of throttling and strangulation whereas according to the



complainant-Kamal Khan, the deceased were killed by way of poisoning. Gul Muhammad also stated that Sikandar Ali, Mst. Aziza and Mst. Pathani aided Qurban Ali in killing the deceased persons, whereas it is a matter of record that these three persons were found to be innocent and acquitted by the Court. It is also a matter of record that neither the complainant-Kamal Khan nor Gul Muhammad or any other person, either of the family/neighbor etc., were eyewitnesses of the occurrence. It has also come on the record that there was no previous enmity between the family of the accused and the deceased.

13. In our view, if all these factors, as noted above, are considered it could not be said that the prosecution has proved its case beyond reasonable doubt. The depositions of various prosecution witnesses, complainant etc., as noted above, do reflect contradictions and doubts. It is a settled proposition of law that in case of contradictions and doubts the benefit of the same must be extended to the accused. Reference in this regard may be made to the case reported as **Abdul Jabbar and another versus The State** (2019 SCMR 129) wherein it was observed that:

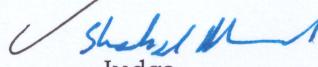
"it is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."

14. We, therefore, in view of the facts and the circumstances noted above, are of the candid view that the prosecution has failed to prove its case against the accused beyond reasonable shadow of doubt and hence convert this criminal petition into an appeal and allow the same by extending the benefit of doubt to him. Appellant if not required to be incarcerated in any other matter, shall be released forthwith.



15. Above are the reasons of our short order dated 06.05.2025, which is reproduced hereinbelow:

"For reasons to be recorded later, the petition is converted into appeal and allowed. The impugned judgment is set aside. The appellant is acquitted from the charge framed against him by extending him the benefit of doubt. In case the appellant is not required to be incarcerated in any other matter then he shall forthwith be released".


Judge
Judge
Judge

ISLAMABAD
06.05.2025
arshed

"Approved for Reporting"