

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Sardar Tariq Masood
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.36-Q of 2012

(Against judgment dated 25.4.2012 passed by Balochistan High Court, Quetta in Cr. Appeal No.375/2009 along with MR No.25/2009)

Dad Muhammad

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Ms. Aisha Tasneem, ASC

For the State Mr. Baqar Shah, ASC/State Counsel

Date of hearing: 6.11.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J. Dad Muhammad, petitioner, indicted for being privy in the murder of Mst. Ayesha, no other than his real daughter, in connivance with his absconding son-in-law Muhammad Ismail alongside two other unknown culprits, was returned a guilty verdict by a learned Additional Sessions Judge at Kalat vide judgment dated 13.11.2009; convicted under Clause (b) of Section 302 of the Pakistan Penal Code, 1860, he was sentenced to death, altered into imprisonment for life with pre-trial commutation, vide impugned judgment dated 25.4.2012 by a Division Bench of High Court of Balochistan, Quetta, *vires* whereof are being challenged with a delay of 30 days, condoned in the interest of justice in view of corporal consequences of the conviction.

2. It is alleged that the deceased, blamed for being unchaste, was strangled to death both by petitioner's son Taj Muhammad as well as son-in-law Muhammad

Ismail with the assistance of unknown co-accused, during the night intervening 15/16-7-2009 whereafter she was buried within the area of *Shekhri* at an unspecified place. It is prosecution's case that subsequently the corpse was disinterred by the accused and thrown into a well, wherefrom it was discovered, pursuant to petitioner's disclosure; according to the autopsy findings recorded by Dr. Sadia Sarwar (PW-6), it was a decomposed body with unidentifiable facial features; barring a fracture in the skull and a ligature mark around the neck, no other sign of violence was observed by the Medical Officer; strangulation was opined as cause of death. In order to drive home the charge, prosecution has primarily relied upon the evidence of motive and disclosure, leading to the recovery of dead body; according to statement of Pir Muhammad (PW-4), the accused had confronted the deceased on the following day of her marriage to inquire about her affair with her cousin Abdul Manan; she vanished subsequently, to be finally found lying dead in a well as testified by Naqib Ullah, ASI (PW-5). The petitioner confronted the prosecution evidence by entering the witness-box in disproof of the charge; cross-examination comprises denied suggestions alone.

3. Heard.

4. Homicidal death of a teenage girl, that too, on the following day of her marriage on the suspicion of her being unchaste, though shockingly abhorrent, nonetheless, we have not been able to find any piece of evidence to even obliquely connect the petitioner with the crime; evidence of discovery of dead body, in the wake of a disclosure, when examined in its totality also fails to sustain the charge inasmuch as it is prosecution's own case that the deceased was deceitfully taken to the venue where after her murder, she was buried in a graveyard. It is quite intriguing as to why the accused after they had surreptitiously accomplished their purpose, disinterred the corpse, so as to dump it once again in a well. Ghulam Ali

(PW-2), a witness of discovery of dead body, did not utter a single word about any disclosure. Statement of Manzoor Ahmad, SHO (PW-1) is hit by Article 38 of the Qanun-e-Shahdat Order, 1984 and, thus, is liable to be excluded from consideration. Volume and standard of evidence, even otherwise, is far from being sufficient to sustain the capital charge. The petitioner had picked up the courage to enter the witness-box in disproof of the charge; on oath and with vehemence, he denied his complicity in the crime and prosecution encountered him merely with bald suggestions alone, each denied. In this backdrop, it would be grievously unsafe to maintain the conviction without potential risk of error. Criminal Petition is converted into appeal; allowed; impugned judgment is set aside; the appellant is acquitted of the charge and shall be released forthwith, if not required in any other case.

Judge

Judge

Judge

Islamabad
6th November, 2019
Azmat/-