

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

CRIMINAL JAIL APPEAL NO.74 OF 2021.
(ID# 100107404983)

MUHAMMAD HASSAN VS. THE STATE

J U D G M E N T

Date of hearing: 21st September, 2022. Announced on: 30th September 2022.

Appellant by : Ms. Fatima Nazar, Advocate.

State by : Mr. Yahya Baloch, DPG.

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MUHAMMAD KAMRAN KHAN MULAKHAIL, J: Through this jail appeal, the convict/appellant *Muhammad Hassan* son of *Piran Bakhsh* has called in question the validity of judgment dated 25th August, 2017 (“**impugned judgment**”) passed by learned Additional Sessions Judge, *Dalbandin* (“**trial court**”), whereby, he was convicted under Section 302(b) of Pakistan Penal Code 1898 (PPC) and sentenced to imprisonment for Life with fine of Rs.200,000/- (rupees twenty thousand) to be paid to the legal heirs of deceased. In default whereof, to further undergo six months S.I. with benefit of Section 382-B Cr.P.C. was also extended to him.

2. Brief facts of the prosecution case are that an FIR bearing No.05 of 2014 was lodged under Section 302 PPC (Q&D Ordinance), with police Station *Dalbandin* by complainant IP/SHO *Abdul Quddoos* with the allegation that on the said date, he along with other police officials were present at the office of Police

Station, *Dalbandin*, when a person namely *Muhammad Hassan* son of *Piran Bakhsh* (appellant) came and stated that he has murdered his wife viz *Aziza Bibi* daughter of *Mittal Khan* with a knife and strangled her with a *Dupatta*. He also produced the blood stained knife, which was taken into possession and the accused/appellant was arrested. Consequently, the instant FIR was lodged.

3. After completion of investigation, *challan* was submitted before the trial court, charge was framed against the accused/appellant, to which he did not plead guilty and claimed trial and the prosecution in order to prove the case against the appellant produced eight witnesses. After completion of the prosecution evidence, the convict/appellant was examined under Section 342 Cr.P.C. He once again denied the allegation and professed his innocence. However, he did not opt to record his statements on oath as envisaged under Section 340(2) Cr.P.C. nor produced any defence witness. The learned trial Court, on completion of the trial by means of impugned judgment, convicted and sentenced the appellant in the above terms. Hence, this appeal.

4. Learned counsel for the pauper appellant argued that the incident was unseen and there was no direct evidence against the appellant in respect of commission of alleged offence, except his statement recorded under Section 164 Cr.P.C, which too was recorded after the remand period; that admission of the appellant before the police authorities and production of alleged knife has not been proved by the prosecution through independent and reliable

evidence; that the police report, medical evidence, medical report and the prosecution evidence are not in line with each other, rather are varied on material points, creating a serious dent in the prosecution case, benefit whereof was required to be extended in favour of the appellant, but the learned trial court failed to apply its judicious mind, and has awarded sentence to the appellant, which is not sustainable; she finally urged for acquittal of the appellant.

Conversely, the learned Additional Prosecution General stated that the prosecution has been able to prove the charge against the appellant beyond any shadow of doubt; he therefore, urged for dismissal of the appeal.

5. We have heard the learned counsel for the parties at length and perused the record with their able assistance.

6. Resume of facts as emerged from the case file indicates that the appellant has allegedly murdered his wife by inflicting knife blows and strangulating her with her *dupata* and thereafter, appeared before the Police Station, *Dalbandin*, District *Chaghi* and reported the matter to the police by producing the crime weapon; that on his pointation the dead body of his deceased wife was also recovered from his house. The prosecution case mainly rests upon the confession of the appellant firstly at the time of registration of FIR, production of knife to the police at the time of arrest, recovery of the dead body on his pointation and his statement recorded under Section 164 Cr.P.C. The main question arises that whether the admission/disclosure of the appellant at the time of his arrest can be

termed as voluntarily and relevant to the fact and falling with the definition of *res-gestae*. The word *res gestae* has been defined in the Black's Law Dictionary, which states as follows:

"(Latin: 'things done') The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the res gestae are usually admissible under a hearsay exception (such as present sense impression or excited utterance)."

Similarly, any evidence is relevant if it assists in the process of proving or disproving a fact in issue; but where the line is drawn. It can be of particular importance in similar situations. For the proof of fact in issue, relevant facts are admissible in evidence which have been counted in *Qanun-e-Shahadat* Order 1984. The Article 19 is first in line to throw light on relevancy of facts which says;

"Facts, which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places"

The Article 19 of the *Qanun-e-Shahadat* Order 1984 requires to give evidence of facts forming part of same transaction occurred at the same time and place or at different times and places. A person after committing any crime, immediately approaches the police authorities and disclosing the incident by producing the crime weapon, while his such disclose also leads to the recovery of the dead body of the deceased, such person stating fact of occurrence to the police officials in the form of '*res gestae*' is

admissible evidence if brought through the testimony of those police officials. If a fact is explained by the accused before any person, it becomes a relevant evidence, thus admissible, citation in this respect is “*C.N. Peters vs The State*” (AIR 1959 483) [Allahabad High Court]. The appellant giving spontaneous explanation right after commission of offence, therefore, his first explanation amounted to *res-gestae* within the meaning of Article 19 of the *Qanun-e-Shahdat* Order 1984. Albeit, in our law of evidence, such informal admission is known as extra judicial confession regulated under Article 19 (a) of *Qanun-e-Shahdat* Order 1984. To regard a fact as a *res gestae* evidence, it is essential that it must qualify the characteristics which include (i) Spontaneous exclamation (ii) Contemporaneous physical condition (iii) Present intention (iv) Statement accompanying an act. While, following are the principles relatable to the rule of *res gestae*:

- I. *The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto.*
- II. *The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.*
- III. *The declaration and the act may be by the same person, or they may be by different persons, eg, the declarations of the victim, assailant and by-standers.*
- IV. *Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated."*

The incident took place in the midnight of 07th and 08th March 2014 and the appellant on the morning reported the matter to the Police Station, without any delay. Thus, spontaneity and immediacy of the statements or facts in relation to the fact in issue which are made without premeditation or artifice and without a view to the consequences are admissible, because they are the natural result of the act they characterize or elucidate. To form a particular statement as a part of the same transaction, utterances must be simultaneous with the incident or soon after it so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. To put it simply: Everything that may be fairly considered an incident of the event under consideration would be admissible. However, it has to be guarded that there should be no time interval to allow fabrication or to reduce the statements to the mere narrative of a past event. If there is an interval, however slight it may be, which was sufficient for fabrication then the statement is not a part of *res gestae*. The statement/confession of the appellant initially before the police authorities prior to commencement of the investigation is a *res gestae*, as till then neither the FIR was registered nor any investigation had started, however, his statement was followed by the recovery of the dead body and thereafter, his such statement was corroborated by the PWs during the trial.

7. The case of the prosecution has also been corroborated by the judicial confession of the appellant recorded by Judicial Magistrate, *Sui*, (PW-7), on 24th March 2014. PW-7, deposited before

the court that after removing the handcuffs, the Court staff and the Investigating Officer were sent out of the Court. He disclosed his identity and informed the accused that he was not bound to make confession and if he makes a confession, it will be used against him as evidence and thereafter, when he was satisfied, he recorded the confessional statement and after completing all the legal formalities, the appellant signed the confessional statement. There is no cavil with the legal proposition that while evaluating the confessional statement main object of law is to ensure the voluntariness and truthfulness of the statement. If a statement is found to have been made voluntarily, without duress, coercion and inducement and simultaneously rings true, there is no hurdle to accept the same irrespective of delay (if any), if recorded within the period of legal physical remand with police. No doubt, there is delay in recording of confessional statement being recorded on the last day of his physical remand i.e. 14th day and the same has also been retracted by the appellant in his statement under section 342, Cr.P.C., but mere delay in recording the confessional statement or subsequent retraction by the accused from his confessional statement, by itself, is not sufficient to affect its validity because it has now been settled that conviction can be based on confession alone even though retracted, if the same is found to be true and voluntary. Reliance is placed on “*Miss Najiba and another v. Ahmed Sultan alias Sattar and 2 others*” (2001 SCMR 988). Regarding delay in recording confessional statement, the Hon’ble Supreme Court, in a case of “*Muhammad Ismail and another v. The*

State” (1995 SCMR 1615) held that “delay for recording confession per se is no ground to discard it unless it is proved or emerges from the circumstances that it was obtained by coercion, threat, pressure etc”. Indeed, the learned Magistrate after observing formalities recorded his confession and certified that it was true and voluntary. Similarly, in a case of “Muhammad Amin v. The State” (PLD 2006 Supreme Court 219) it has been held by the honourable, Apex Court that “confession, judicial or extra-judicial, whether retracted or not retracted, can in law validly form the sole basis of conviction of its maker, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture, coercion or inducement”. In the present case, the Magistrate, who recorded the confessional statement, deposed that he has recorded the confession after observing all legal formalities. Nothing favourable to accused was brought on record during cross-examination that the confession was either as a result of coercion and torture of police or inducement. Even the appellant has not specifically stated in his statement under section 342, Cr.P.C., that confessional statement was obtained through coercion, torture, physical or mental inducement and only made simple denial from the confessional statement.

8. Besides the above, the story of prosecution and confessional statement of the appellant is further corroborated by the medical evidence. Lady Dr. *Mumtaz Sahiba* (PW-5), who conducted the medical examination of the dead body of deceased *Aziza* daughter of *Methal Khan*, and found flaccid and bruises, face

swollen, tongue swollen and blue between the teeth, chin, neck and front chest scratched, two wounds on abdomen from which faisa and left intestine bulging out, tongue is swollen and blue, and the nature of wound was stated to be sharp edges regular. The defence remains failed to bring anything in his favour from the testimony of the doctors. The ocular account and confessional statement are in consonance with the medical evidence. Furthermore, the case of prosecution was further supported by the recovery of blood stained knife "*churri*", blood stained cloth and *duppata* of the deceased, and its positive reports Ex-P/8.

After examining the entire evidence, we are confident that the prosecution has been able to bring home the guilt against the appellant. The trial Court after proper appreciation and analysis of the material available on record has rightly found the appellant guilty of the offence, thus, the findings so arrived at and, the conclusions so drawn are proper, legal, justified and need no interference, therefore, the appeal is dismissed.

Quetta.

Announced in open court:

On 30th September 2022.

JUDGE

JUDGE