

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 310 of 2019

Muhammad Younas
Vs
The State & another

Appellant By: Mr. Hassan Raza Pasha, Advocate.
Complainant By: Raja Shahzad Javed, Advocate
State by: Mr. Khalique Siddiqui, State
Counsel with Munir Ahmad Inspector.
Date of Hearing: 29.07.2020

Crl. Revision No. 98/2019

Mst. Akhtar Jabeen
Versus
The State & others

Petitioner By: Raja Shahzad Javed Advocate
Date of Hearing: 29.07.2020

Ghulam Azam Qambrani, J.: Through this single judgment I shall decide the Criminal Appeal No. 310/2019 and Criminal Revision No. 98/2019, being outcome of one and the same Judgment, dated 07.09.2019 passed by the learned Additional Sessions Judge-IV, Islamabad-East, whereby the appellant was convicted under Section 316 PPC and sentenced to pay Diyat amount i.e. Rs.2,055,936/- mentioned in notification, dated 01.07.2018 issued by the Federal Government of Pakistan, to the legal heirs of the deceased, whereas the convict was acquitted from the charge under Section 201 PPC levelled against him.

2. Brief facts of the case as per complaint are that on 18.03.2019 at about 05:30 p.m. she got recorded her statement before the police, stating therein that earlier, she was married with Muhammad Younas convict/ appellant. Out of said wedlock, a son namely, Muhammad Yousaf and two daughters namely, Hafifa Sofia and Ghanwa Jabeen were born. Thereafter, she got divorced from him as he used to quarrel and give beatings to her but the children remained in his custody. The appellant contracted second marriage with Sabiha Bibi and out of the said wedlock the appellant has three children. Afterwards, complainant also contracted second marriage with Haji Sarfaraz and she is living with her second husband; that on 12.03.2019, her son Muhammad Yousaf, telephonically informed her about death of Mst. Ghanwa Jabeen and he also informed that they were shifting her dead body to Chakwal for burial. The dead body was shown to her by the convict /appellant and his family members and it came to her knowledge that Muhammad Younas convict /appellant murdered her daughter in the name of 'honour', levelling allegation of bad character upon her.

3. After registration of case, investigations was carried out and, thereafter, report under section 173 Cr.P.C. was submitted before the learned trial Court by placing convict in column No.3. After fulfilling codal formalities, charge was framed against the appellant/convict, to which he pleaded not guilty and claimed trial. In order to prove the guilt against the appellant, prosecution examined the following witnesses:-

(i)	PW.1	Shafqat Ullah Khan- ASI,
(ii)	PW.2	Munir Ahmad- SI,
(iii)	PW.3	Niaz Muhammad 3743/LHC,
(iv)	PW.4	Mst. Jabeen Akhtar,
(v)	PW.5	Munsabdar ASI,
(vi)	PW.6	Dr. Dr. Ishtiaq Ahmad Awan DMS,
(vii)	PW.7	Muhammad Anees Akbar Inspector/IO,
(viii)	PW.8	Dr.Mehwish Abbas WMO,
(ix)	PW.9	Haji Sarfaraz Khan,

4. Statement of the convict under Section 342 Cr.P.C. was recorded, wherein all the incriminating evidence recorded in his presence was put to him, he claimed innocence, however he deposed on oath as his own witness as per Section 340 (2) Cr.P.C. He opted to produce defence evidence and produced Khalid Imran DW-1 as his witness. In reply to a question "*why the case has been registered against him and why the prosecution witnesses deposed against him*", the convict /appellant, Muhammad Younas, replied as under.-

"The complainant managed to get registered a false and frivolous case against me, due to personal grudge as I divorced her in past and got married again and living a happy married life with my second wife. I have nothing to do with the alleged murder of my beloved daughter who was very dear to me and all the witnesses appeared in the witness box on behest of complainant just to strengthen the case against me. Further the investigation officer detained me in his illegal custody for two days which is proved in evidence of the complainant; hence he shall be dealt with relevant law of illegal detention."

5. After recording evidence and hearing arguments of the learned counsels for the parties, the learned Additional Sessions Judge-IV, Islamabad-East, passed impugned judgment, dated 07.09.2019, hence this appeal. On the other hand, Mst. Akhtar Jabeen, being aggrieved of the said judgment filed Criminal Revision Petition No.98/2019, for enhancement of punishment.

6. Learned counsel for the appellant, Muhammad Younas contended that the appellant is totally innocent; that he had committed no offence; that his daughter had died a natural death, but the complainant has falsely involved him in the instant case due to personal grudge to take revenge of her divorce; that there is an inordinate and unexplained delay of six days in lodging the FIR; that the prosecution has failed to prove the case against him beyond any shadow of doubt, which is very much clear from the medical report of PW-8; that the recovery of Danda has been planted upon him; that

the Investigating Officer intentionally did not obtain the Forensic Report about the said recovery of Danda; that in spite of manipulations, the prosecution has failed to prove the case against the appellant; that there is no eye witness of the alleged occurrence, therefore, the conviction and sentence passed through the impugned judgment is based upon the presumptions. It is further contended that the prosecution story has been totally negated through the statement of PW-1 Khalid Imran; that the prosecution also failed to produce Haroon, who allegedly sent the pictures of the deceased on cell phone number of Mst. Jabeen Akhtar, which also makes the prosecution story doubtful. Lastly prayed for acquittal of the appellant from the instant case.

7. On the other hand, the learned counsel for the complainant contended that it is not a case of ocular account, where eye witnesses are required to appear before the Court to prove the prosecution case; that the onus shifts upon the appellant/convict, in whose custody, death of such person has been caused and being father of deceased Ghanwa Jabeen, for proving that who is the murderer or how the death has been caused; that the prosecution has proved the case against the appellant/convict beyond any shadow of doubt. Further contended that the judgment passed by the learned trial Court is against the law to the extent of awarding lesser punishment under Section 316 PPC; that the convict, Muhammad Younis, has intentionally committed the murder of his daughter, therefore, he was liable to be punished under Section 302 PPC; that on the basis of available prosecution evidence, charge against the appellant/convict has been proved; the convict in his application submitted to the SP (R), Koral, Islamabad, admitted that there was an injury on the head of the deceased; that the convict/appellant has also levelled allegation against one Jameel but he has not moved any application against the said Jameel; that the convict admitted that there were stains of blood on the mattress which were taken into possession by the investigating officer; that

the prosecution has successfully proved the case against the appellant/convict, but he has only been convicted under Section 316 PPC and awarded sentence of Diyat, whereas Section 201 PPC was also attracted in the instant case; hence prayed for dismissal of the instant appeal and acceptance of the revision petition.

8. The learned State Counsel did not support the impugned judgment and submitted that it is a case of no evidence; that there is no admission on the part of the appellant; that the pictures of the deceased have not been got exhibited.

9. I have heard the arguments of the learned counsels for the parties and have perused the available record with their able assistance.

10. Before discussing merits of the case, it would be appropriate to give gist of the prosecution evidence.

- PW.1, Shafqat Ullah Khan ASI, registered FIR No.96/2019 on the complaint forwarded by the Anees Akbar Inspector/Incharge.
- PW.2, Munir Ahmad-SI, is the witness of blood stained pieces taken from the mattress from the place of occurrence. He is also witness of recovery of shalwar P2, Qameez P3, recovery of danda which were taken into possession vide recovery memo Ex.PD. He was also the witness of photographs of the grave of the deceased (P4 to P11). He has also taken the blood stained three pieces to Punjab Forensic Science Agency, Lahore.
- PW.3, Niaz Muhammad 3743/LHC is also witness of three blood stained pieces, shlawar P2, qameez P3, mobile phone and original CNIC of convict P13.

- PW.4, Mst. Jabeen Akhtar is the complainant of the case and while appearing in the witness box, she deposed in line with the prosecution case.
- PW.5, Munsabdar ASI kept in his safe custody blood stained cotton, road certificate/receipt and specimen/pieces taken from different body parts of the deceased. He also got recorded his statement under Section 161 Cr.PC.
- PW.6, Dr. Ishtiaq Ahmad Awan DMS supervised the collection of samples from post-mortem examination of the dead body of deceased.
- PW.7, Muhammad Anees Akbar, Inspector was Investigating Officer of the case, who completed investigation and prepared report under Section 173 Cr.PC.
- PW.8, Dr. Mehwish Abbas WMO, got conducted exhumation of the grave of deceased and conducted her post-mortem examination under the supervision of Dr. Ishtiaq Ahmad Awan and prepared post-mortem report Ex.PN (1-6).
- PW-9, Haji Sarfraz Khan, is the witness of exhumation. He stated about the marks of injury present on the body of deceased at the time of exhumation.

11. The allegation against the appellant/ convict Muhammad Younas is that he has allegedly committed Qatl-e-Amd of his daughter namely, Mst. Ghanwa Jabeen by Danda blows in the name of 'honour' and the complainant was informed telephonically by her son namely Muhammad Yousuf about the death of Mst. Ghanwa Jabeen and that the dead body of the deceased was shown to her from a distance. After registration of F.I.R. investigation was carried out. The appellant was arrested on 20.03.2019. As per prosecution

case, during the course of investigation, the appellant allegedly confessed the guilt before the police and on his pointation on 26.03.2019 Danda/crime weapon was recovered by the Investigating Officer.

12. Perusal of the record reveals that there is no eye witness of the alleged occurrence. The prosecution case is based upon circumstantial evidence, medical evidence and the recovery of Danda. For proving the charge, the prosecution has produced PW.2, PW.3 and PW.7, who produced articles P-1 to P-14 and the documents Ex.PA to Ex.PR. The prosecution proved the recoveries through the above mentioned witnesses also proved the blood stained mattress and got positive report from PFSA, Lahore, beyond any shadow of doubt that the said pieces were stained with human blood. The second limb of the prosecution case is recovery of crime weapon "Danda". It was in the evidence of PW-2 and PW.3 that the appellant led the police party inside the house and got recovered weapon of offence "Danda". It is also important to mention here that in the statements, the witnesses have not specifically stated that from which point the alleged weapon/Danda was recovered. It was not possible that the appellant committed murder of his daughter by means of "Danda" and still kept the same in the house. It is also imperative to note that recovery of article cannot be termed as discovery, when it was not recovered from any hidden place and if in normal course, the Investigating Officer/agency was able to see it and takes its possession without any statement of the convict for pointing it out. Reference in this context can be made to "Mst. Askar Jan and others v. Muhammad Daud and others" (2010 SCMR 1604). Even otherwise, the recovery of danda was not helpful to the case of prosecution due to the reason that no injury was pointed out by the lady Doctor, which was caused by the alleged danda.

13. PW.8, Dr. Mehwish Abbas WMO, in her examination-in-chief has stated that on the external examination of the body of deceased like wrist, abdomen, thoracic area, spine, legs, no marks of violence were found either externally or internally and further has clearly deposed that on examination of upper and lower limbs, she found no injury, fracture and dislocation. During cross-examination, in reply to a question she has stated that it is incorrect to suggest that the death of deceased Ghanwa Jabeen was result of violence and injuries. To another question by the learned counsel for the complainant, she denied that there was head injury to the deceased Ghanwa Jabeen. During cross-examination, she has admitted that at the time of post mortem examination of the deceased Ghanwa Jabeen except their team members, no private person was inside the tent. She unambiguously gave her opinion that death of the deceased had occurred naturally.

14. Minute perusal of the record reveals that it is an un-witnessed occurrence. The FIR has been lodged after an inordinate and unexplained delay of six days on the complaint of ex-wife of the appellant. The entire prosecution case is based upon circumstantial evidence and recovery of the weapon of offence Danda and blood stained mattress. It is the case of prosecution that the appellant allegedly confessed the guilt before the police and on his pointation on 26.03.2019, Danda/weapon of offence was recovered, but no disclosure memo was prepared by the Investigating Officer in this regard. Under Article 39 of the Qanun-e-Shahadat Order, 1984, confession made by convict of his guilt under custody of the police, which is not made in the presence of Magistrate, is inadmissible in evidence. In the present case, admittedly, there is no disclosure memo on the record in proof of such alleged confession. Further, it is also not confirmed by any kind of report that whose blood was present on the mattress, except the report that it was human blood.

15. The entire case of the prosecution is based on circumstantial evidence. The principle of law, consistently laid down by the superior Courts is that different pieces of such evidence have to make one chain, where one end of it touches the dead body and the other the neck of the convict. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment. This principle is fully attracted to the facts and circumstances of the present case.

16. It is also well settled principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to a convict person being inalienable and indefeasible right of a convict. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty.

17. In the case reported as "Azeem Khan and another Vs. Mujahid Khan and others" (2016 SCMR 274), it has been held as under:-

"In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt

of an convict person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the convict. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."

In another case reported as Hashim Qasim and another Vs. The State (2017 SCMR 986), it has been held as under:-

"In cases of circumstantial evidence, there are chances of procuring and fabricating evidence, therefore, Courts are required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the Investigators. If there are apparent indications of designs on part of the investigating agency in the preparation of a case resting on circumstantial evidence, the court must be on its guard against the trap of being deliberately misled into a false inference. If the court fails to observe such care and caution and hastily relies on such evidence, there would be a failure of justice. Reference may be made to the case of Fazal Elahi v. Crown (PLD 1953 FC 214) and of Lejzor v. The Queen (PLD 1952 PC 109), it was held therein with considerable emphasis that circumstantial evidence may sometimes appears to be conclusive but it must always be narrowly examined, if only because this count of evidence may be fabricated in order to cast suspicion on another, therefore, it is all the more necessary before drawing inference, if the accused's guilt from circumstantial evidence to be sure and that there are no other co-existing circumstances, which weaken or destroy the inference then, in that case alone it may be relied upon otherwise, not at all.

18. It is a general principle of criminal jurisprudence that prosecution has to prove its case against the convict beyond doubt and this burden does not shift from prosecution, even if the convict takes up any particular plea and fails in it and that in case of any doubt in the prosecution case, the benefit of the same will go to the convict and not to the prosecution. In the instant case, the prosecution has also failed to prove the motive by leading any

evidence or any circumstance except application (Ex.PM) allegedly submitted by the appellant to the S.P. (R), Koral, Islamabad.

19. That through PW-7, the application Ex.PM written by the appellant has been brought on record by the prosecution that the same application has been sent to the S.P (R) Koral, Islamabad for taking action against one, Jameel son of Zaman, who had committed rape with his deceased daughter and also tortured her and probably during the scuffle with said Muhammad Jameel, the deceased sustained injuries on her face and head, which the appellant himself has mentioned in the said application, which fact was told by the deceased to her father before her death, but the appellant remained mum due to his honour. Admittedly, in those days, the appellant was detained in jail, it has also not been proved through evidence that the said application was moved by the appellant through Jail, but the investigating officer did not join the jail authorities for proving the authenticity of the said application. Admittedly, the said application is not attested by the Superintendent Jail, therefore, it cannot be relied upon. The prosecution has tried to shift the burden upon the shoulder of appellant by producing such application (Ex.PM). If any such document is taken in evidence, then the contents whereof must be considered in toto. The prosecution has intended to pick and choose the relevant portion in support of its version, even the authenticity whereof is not proved. The contents of this application/Ex.PM, if considered in toto and believed to be true, then no offence is made out at all against the appellant. So far as, contention of the learned counsel of the complainant that the appellant was answerable for the death of the deceased is concerned, in this regard, there is evidence that in the said house, the step-mother of the deceased, real sister and brother of the deceased were also residing. In such circumstances, only appellant could not be held responsible/answerable for death of the deceased. There is no evidence that the appellant and deceased were only

residing in the house who could be answerable for the death of deceased.

20. DW-1, Khalid Imran, who was given up by the prosecution and he appeared as defence witness stated that he received a telephonic call from his father at about 5:00 p.m. about the unconscious condition of the deceased and when he reached home, his sister had already died. He further deposed that he did not saw any mark of violence on her face. The name of the said witness was originally shown in the list of prosecution witnesses and his statement under Section 161 Cr.P.C. was also attributed to him, but thereafter, he was given up by the prosecution. In cross-examination, he denied about making of any statement under Section 161 Cr.P.C. before the investigating officer. The learned trial Court, while relying on highly cryptic, infirm and incredible evidence, only on hypothesis, convicted the appellant under Section 316 PPC and awarded the sentence of Diyat, resulting into miscarriage of justice, which cannot sustain. Further PW.8 Dr.Mehwish has clearly stated that no private person associated them during post-mortem examination of the deceased, therefore, the statement of PW.9 Haji Sarfraz Khan is not supported by the medical evidence, as such, his statement is not trust worthy.

21. Admittedly, the appellant divorced the complainant about 14 years ago, thereafter the children from the wedlock of the appellant and complainant have been residing with the appellant, therefore, false implication of the appellant cannot be ruled out. The prosecution has failed to bring on record any piece of evidence with regard to any kind of torture by the appellant upon his children whereas the relationship of the appellant and his children was quite cordial and loving. All these facts and circumstances show that the prosecution case is not free from doubts.

22. The Hon'ble Supreme Court of Pakistan in the case reported as "Muhammad Karim Vs. The State" (2009 SCMR 230) has held as under:-

"in case of doubt, the benefit thereof must be given to convict as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of convict makes him entitled to benefit, not as matter of grace and concessions, but as matter of right."

23. In the case of "Ghulam Akbar and another Vs. The State" (2008 SCMR 1064), it has been held as under:-

"It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the convict securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof."

24. In the case reported as "Sanaullah Vs. The State through Prosecutor General" (2015 P.Cr.L.J. 382 (Balochistan)), it has been held that as under:-

"Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Convict had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of convict and not otherwise."

25. In the case reported as "Raheel and others Vs. The State and others" (2015 P.Cr.L.J. 470), it has been held that:-

"If any doubt would arise from the prosecution evidence, benefit of same was to be extended to convict."

26. In view of the facts and circumstances mentioned above, Criminal Appeal No.310/2009 filed by the appellant, Muhammad Younas, is **allowed**, whereas the criminal revision No.98/2019) filed by the complainant is **dismissed**. Resultantly, the conviction and sentence of the appellant recorded by the learned trial Court, is **set aside** and he is **acquitted** of the charge by extending the benefit of

doubt to him. He shall be released from the jail forthwith, if not required to be detained in connection with any other case.

~~- Ghulam Azam Qambrani~~
Judge

Announced in Open Court, on this 19th day of August, 2020.

Judge

S.Akhtar