

(Judgment Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.83 of 2017

Muhammad Ehsan Shah

Versus

The State, etc.

Appellant by:	M/s Sardar Muhammad Hafeez Khan and Zofishan Sadique, Advocates.
Respondent No.2 by:	Sheikh Khizer -ur- Rasheed and Ms.Shahina Shahab-ud-Din, Advocates.
State by:	Mr. Zohaib Hassan Gondal, Advocate alongwith Gulfaraz, Inspector.
Date of Hearing:	22.10. 2020.

Ghulam Azam Qambrani, J.:- Through this single judgment, I intend to dispose of Criminal Appeal No.83/2017 filed by convict/ appellant, Muhammad Ehsan Shah, for his acquittal and Criminal Revision No.108/ 2017, filed by Raja Muhammad Hanif/ complainant for enhancement of sentence of convict/ appellant from life imprisonment to death penalty.

2. Succinct facts of the case are that on 03.06.2015 complainant Raja Muhammad Hanif filed a complaint before S.H.O Sihala Police Station, Islamabad, stating that last night, he alongwith his wife, went to the house of their daughter (Javeria) to settle her family disputes with her in-laws. After settlement of the disputes, they came back to their house; that next morning, he, four times, called his son-in-law on his cell phone, but he disconnected his calls. On the next call, the appellant asked the complainant to come to the Fauji Foundation Hospital as his daughter Javeria was in a serious condition. He, alongwith his wife, went to the Fauji Foundation Hospital and found that their daughter had already died. He requested for conducting her postmortem examination. According to the complainant, earlier there had been altercations between Javeria and her in-laws and she had also written a stamp paper stating therein that she had threat to her life at the hands of her husband

and in-laws. He expressed suspicion that her husband, his two brothers and their wives had killed his daughter.

3. On submission of the complaint, F.I.R No.154/ 2015 dated 03.06.2015 was registered with Police Station Sihala, Islamabad, under Sections 302 & 34 P.P.C. During course of investigation prosecution found the convict/ appellant Muhammad Ehsan Shah responsible for committing the Qatl-e-Amd of his wife and submitted Challan under Section 173 Cr.P.C against him before the learned trial Court.

4. The record deciphers that the deceased had sworn an affidavit on 17.01.2015, wherein she expressed apprehension of her death at the hands of convict/ appellant and his two brothers i.e. Muhammad Imran Shah, Muhammad Nouman Shah and his wife Mst. Saleha Nouman, owing to which the complainant also expressed his suspicion and nominated them in the F.I.R. However, no incriminating material came on record qua Muhammad Imran Shah, Muhammad Nouman Shah and his wife Mst. Saleha Nouman, as such, their names were placed in Column No.2 and supplementary challan was submitted. Later on, the learned trial Court vide order dated 17.01.2017 discharged these three accused persons from the case.

5. After completion of all codal formalities by the learned trial Court, charge was framed on 07.01.2016 under Sections 302 & 34 P.P.C against the convict/ appellant to which he pleaded not guilty and claimed trial. In order to prove the guilt against convict/ appellant, prosecution examined as many as eight witnesses. On closure of the prosecution evidence, statement of appellant/ convict under Section 342 Cr.P.C was recorded wherein all the incriminating evidence recorded in his presence was put to him, which he denied and claimed innocence. He neither produced any witness in his defence nor opted to give statement on oath as envisaged under Section 340 (2) Cr.P.C.

6. After recording evidence and hearing arguments of learned counsel for the parties, learned trial court convicted and sentenced

the appellant vide impugned judgment dated 23.5.2017 to undergo R.I for life under Section 302-(b) P.P.C and also ordered to pay compensation of Rs.2,00,000/- under Section 544-A Cr.P.C or in default to suffer S.I for six months. Benefit of Section 382-B Cr.P.C was also extended to him. Feeling dissatisfied with the same, he has preferred the instant appeal.

7. Learned counsel for the appellant (Muhammad Ehsan Shah) contended that deceased Ms. Javeria had contracted love marriage with appellant without the consent and permission of her parents; that there were no disputes or differences between them and they had been living a very happy matrimonial life; that the deceased wanted to separate her portion of residence from that of the brothers of appellant by raising a partition wall in the house; that the appellant and parents of the deceased forbade her to do so, due to which, she was very angry and used to remain under stress; that on the night of incident there was no dispute between them and the parents of the deceased had not come to their house for any settlement; that as the deceased was unhappy with the non-construction of the partition wall, therefore, probably due to anguish and tension, she had decided to put an end to her life and committed suicide by hanging with the hook of the ceiling fan. Further contended that the appellant is innocent and is not involved in the commission of offence; that rather on coming to know about the suicide, he immediately shifted her to Fauji Foundation Hospital for medical treatment, but unfortunately she could not survive; that the entire prosecution story has been fabricated by the parents of the deceased, as they wanted to take revenge from him of their love marriage; that F.I.R was lodged with an inordinate and un-explained delay; that prosecution has not brought on record any proof of the call record allegedly made by complainant to the accused on the day of occurrence. Next contended that on 08.06.2015, complainant produced an affidavit (Ex.PF) claiming to have been executed by the deceased, however, the report of hand writing expert shows that the thumb impression of the deceased, available on the record of NADRA, did not match with her thumb impression as available on the stamp paper, allegedly executed by the deceased regarding apprehension to her life.

Further contended that the police has also registered an F.I.R No.79/ 2018 against Raja Muhammad Hanif with Police Station Sihala, as such, Muhammad Hanif/ complainant has lost its credibility and his statement cannot be relied upon for passing any conviction or sentence against the appellant. Further submitted that it has also created a serious doubt in the prosecution case and its benefit goes to the appellant. He also argued that no motive has been proved against the appellant for commission of the alleged offence; that prosecution failed to prove its case warranting conviction or sentence to the appellant; that the entire prosecution story is false and fabricated and on the basis thereof, no conviction/ sentence can be passed against the appellant. Further argued that learned trial Court has not appreciated the material available on record in its true perspective and has passed the impugned judgment in a slip shod manner, due to which, grave miscarriage of justice has been caused to the appellant, as such, the findings recorded by the learned trial Court cannot be sustained. Lastly, prayed for setting aside of the impugned judgment and acquittal of the appellant.

8. On the other hand, learned counsel for the State assisted by learned counsel for the complainant vehemently opposed the arguments advanced by learned counsel for the appellant contending that the appellant and his two brothers live in their ancestral house; that there were serious family disputes between the deceased, appellant and his other family members, as such, the deceased wanted to save her house and to separate her portion by raising a partition wall in the house, while the appellant did not agree with her; that on the last night of the occurrence, parents of the deceased had gone to their house for amicable settlement of the disputes. After their departure, appellant killed the deceased after perpetrating severe torture on her; that the report of postmortem sufficiently proves that deceased has been killed by torture and strangulation; that unnatural death of the deceased is also corroborated by the circumstantial evidence like recovery of knife, azar-band (shalwar string) and pictures of the deceased, taken from the room of the appellant. Next contended that the appellant has

committed Qatl-e-Amd of the deceased and the prosecution has proved its case against him beyond all reasonable shadows of doubt; that there is sufficient evidence on record for enhancement of the sentence from life imprisonment to that of death penalty.

9. I have heard the arguments of the learned counsel for the parties and carefully gone through the available record.

10. Perusal of the record reveals that Raja Muhammad Hanif, father of the deceased is the complainant of this case. He has specifically nominated the convict/ appellant in the commission of the offence. According to him, there were family disputes between deceased and the convict/ appellant over partition of the house. On the last night of the occurrence, the complainant and his wife had gone to the house of their daughter to settle the dispute but next morning, he called by phone to the appellant four times but he did not attend his calls and on the next call he told the appellant that condition of the deceased was not good and asked him to reach Fauji Foundation Hospital, but his daughter had already died before his arrival at the said hospital.

11. Dr. Saima Najeeb, Medical Officer, Federal Government Services Hospital Islamabad, who conducted postmortem of the deceased, appeared before the Court as PW.2 and stated that on 31.05.2015 at about 03:30 p.m., the dead body of deceased was brought to the hospital by Muhammad Gulfraz, Sub-inspector, Police Station Shehzad Town, she conducted her postmortem on 01.6.2015 at about 10.00 p.m., and observed following injuries:-

- i. Ligature mark on the middle & left side of neck transversely in its middle 1/3rd area deeply seted creating the contusion collar measuring 14 cm x 1 cm diameter of whole neck=38 cm;*
- ii. Lacerated wound on the vertex about 1x1.5 cm in size and bone exposed & actively bleeding + bruise mark inside scalp when opened;*
- iii. Bruise mark on the front lower 1/3rd of right thigh 18 cm above the right knee joint 3x2 cm in size;*
- iv. Bruise mark about 1.5x2 cm on the lateral aspect of right lower thigh above right knee joint;*

- v. Bruise mark on the medial aspect of left thigh 2x3 cm in size 14 cm above left knee joint;
- vi. Bite mark about 0.25cm x 0.25cm on the inner surface of lower lip (bruise)

On dissection of Neck:-

Skin & sub ataneoos tissue of the ligature mark area injured, compressed & contused, hyoid bone intact, tracheal rings intact, lumen contained blood.

- vii. There are 03 nail marks present 02 just below the inferior angle of chin & over the upper 1/3rd of medial aspect of right side of neck.

Internal examination

Pleurae healthy & slightly congested, larynx and tracheae healthy but tracheae cavity contained blood stained fluid, walls, ribs & cartilages healthy, right & left lungs congested, pericardium & heart, blood vessers, walls, peritoneum, mouth pharynx & Oesophagus, diaphragm, liver, spleen, kidneys are healthy, stomach & its contents healthy & some semi digested food particles present, pancreas healthy, small intestine & their contents healthy but some semi digested food particles present, large intestines & their contents healthy some fecal matter present, bladder healthy & empty and organs of generation external & internal healthy, uterus healthy.

OPINION

In my opinion deceased sustained ligature mark on the middle front & left side of the neck which caused obstruction of the upper respiratory tract creating hypoxia firstly & later on anoxia leading to death. All injuries are ante-mortem in nature and sufficient to cause death in ordinary course of life.

Time between injury and death

3-4 minutes.

Time between death and postmortem

24 hours approximately.

12. Dr. Saima Najeeb also filled-in postmortem report alongwith pictorial diagram/ Skia-gram as Ex.PB and Inquest Report as Ex.PC. During cross-examination, while answering to a question, she stated that it is correct that if the ligature mark is not round the neck, eyes are closed, ribs are not fractured and hands are not clenched then

the case will be one of suicide and that in case of strangulation, chances of damage to tracheae and larynx are there.

13. PW.1, Malik Aamir Shahzad, Draftsman visited the place of incident on 06.6.2015 in the company of Muhammad Gulfraz, Sub-Inspector, and on the pointation of Muhammad Hanif, about the place of incident prepared site plan, Ex.PA.

14. PW.3, Saqib Zareen A.S.I, posted as Moharrar Malkhana at Police Station Sihala, received a sealed parcel containing blood stained cotton from one Gulfraz Sub-Inspector, which he kept in Malkhana. On 30.6.2015, he handed over the same to Naveed Ahmed 7672/LHC for its further transmission to Punjab Forensic Science Agency, Lahore, vide Road Certificate No.204/ 15, Ex.PE, who delivered the said parcel at Punjab Forensic Science Agency, Lahore, returned on same day and handed over a receipt to Saqib Zareen, which he pasted in Register No.21, maintained for the said purpose. Defence could not shake his testimony during cross-examination.

15. PW.4, Ehsan Ahmed Qureshi is the Stamp Vendor. According to him, the deceased had bought a stamp paper from him in the year 2015 for executing an affidavit (Ex.PF). She was having some dispute with her husband and in-laws and was apprehending threat to her life. On her instruction, he prepared an affidavit and she inscribed her signatures and put her thumb impression on it. He also identified his signatures on the Ex.PF. During cross-examination, he denied the suggestion that he had made improvements in his examination-in-chief to strengthen the case of prosecution.

16. Raja Muhammad Hanif, complainant/ father of the deceased, got recorded his statement as PW.5. He has narrated the same facts as mentioned in his complaint (Ex.PG); that in his presence Muhammad Gulfraz SI/ IO recovered the baton/ danda (Ex.PH) used in the commission of offence at the pointation of appellant, lying underneath the double bed of the room, where the incident had taken place; that PW.1 Malik Aamir Shahzad prepared the site plan Ex.PA, in his presence. Lengthy cross-examination was conducted

upon the complainant by the defence but could not bring on record anything favourable to its stance. The complainant denied the suggestion that during verification of the thumb impression of deceased on the Ex.PF, it did not match and was found fake. He also denied the suggestion that the deceased had committed suicide, as she was angry because he (complainant) had instructed her not to insist for partition of their house by construction of a partition wall.

17. PW.6, Haris Ali is the brother of deceased. He alongwith Naveed Ahmed, Constable and Investigation Officer, visited the crime spot and in their presence, the Investigation Officer took the blood stained cotton from the dead body of deceased Ex.PK and last worn clothes of the deceased vide Ex.PL. In his presence, pictures were taken from the place of occurrence, which are Ex.P2 to Ex.P20, Azar band Ex.P21, Dupatta in cut form in two pieces Ex.P22, a knife Ex.P23, one Pent Belt as Ex.P 24, one Moorra/ stool Ex.P 25 and one glass bangle Ex.P 26 vide recovery memo Ex.PM. He was subjected to lengthy cross-examination by the learned defence counsel, but nothing favourable could be extracted from him. He also denied the suggestion that he was got appointed on the job by the appellant. He also denied the suggestion that at the time of recovery of above articles, from the place of incident, his parents were also present. He also denied that his sister had committed suicide, as she was annoyed over the issue of construction of partition wall.

18. PW.7, Muhammad Amin, Assistant Sub-Inspector, was posted as Moharrar at Police Station Sihala. In his presence the appellant identified the Azar Band (Ex.P21) and dopatta (Ex.P22) lying in the Malkhana. He is also marginal witness of the recovery memo (Ex.PH) of these two articles. He alongwith Naveed Ahmed/LHC, are the witnesses to the recovery memo (Ex.PH). He was also cross-examined by the learned counsel for the appellant, but he denied the suggestion that the accused did not identify anything in the Malkhana and that he was deposing falsely.

19. PW.8, Muhammad Gulfraz Sub-Inspector is the Investigation Officer of the case, who deposed that he was posted at Police Station Sihala when on 31.05.2015, on receiving information about the arrival of dead body in the Poly Clinic Hospital, he reached there. At that time, CMO was available, therefore, he examined the dead body through a lady doctor. He moved an application (Ex.PN) for keeping the dead body in the mortuary and prepared Inquest Report (Ex.PC). He prepared site plan, without scale (Ex.PD). He examined the room where the incident took place and recovered "Azar-Band" attached with a hook affixed in the roof, one cut piece of Dopatta (Ex.P/ 22) lying on the floor was, taken into possession through recovery memo Ex.PM in presence of witnesses. Iron stand and knife Ex.P23 were taken into possession vide recovery memo (Ex.PM). No person from the locality came up to provide any detail about the incident. He prepared memo of identification of the dead body (Ex.PI). On 01.06.2015, after conducting the post-mortem, he handed over the dead body to Haris Hanif and Malik Bazaib Ayaz. After the postmortem, CMO handed over the last worn clothes of deceased to him vide recovery memo (Ex.PL). He also recorded statements of witnesses under Section 161 Cr.P.C. He took photographs of the deceased and the place of incident (Ex.P/ 2 to Ex.P/ 20) through his mobile phone and filed them with the report under Section 173 Cr.P.C. He also took PW.1 Aamir Shahzad to the place of incident on 06.6.2015. On 08.06.2015, complainant/ M.Hanif gave him a supplementary statement in the Police Station. He produced affidavit of Mst. Javeria Ex.PF and also nominated three accused namely, Muhammad Nouman Shah, Syed Imran Shah and Mst. Saleha Nouman. He arrested appellant Muhammad Ehsan Shah on 09.6.2015.

20. He further deposed that during investigation, the appellant disclosed about the commission of offence. On his pointation, he recovered the danda through which, he inflicted injury on the head of deceased. He also recorded statements of witnesses. Accused was shifted to judicial custody on 14.6.2015; that on 23.06.2015, he arrested the accused Muhammad Nouman Shah and Muhammad Imran Shah. During investigation, no incriminating evidence could

come on record against the brothers of the appellant. He further deposed that at the conclusion of investigation, he found the appellant guilty for committing Qatl-e-Amd of deceased, therefore, his name was placed in Column No.3 and the names of other accused were placed in Column No.2, as such, report under Section 173 Cr.P.C was submitted before the competent court for trial.

21. During cross-examination, PW.8, Muhammad Gulfray Sub-Inspector explained the nature of the incident and different steps taken by him during investigation. He remained firm during cross-examination and no contradiction or anything favourable to the defence could be brought on record during lengthy cross-examination.

22. First of all coming to the motive for commission of the alleged offence, it may be seen that the appellant alongwith deceased were living in a house where his other brothers alongwith their wives (two bhabees) were also residing. According to the complainant, the deceased wanted to separate her portion by raising a partition wall, but appellant did not agree the proposal. On the night of incident, parents of the deceased had gone to the house of their daughter to settle the differences. Therefore, motive according to the complainant was dispute on construction of a partition wall. Appellant did not deny the existence of a dispute over construction of a partition wall, but has also admitted. He, however, took a stance that she had committed suicide in anger. Therefore, it is proved that the motive for the murder was a dispute over construction of a partition wall.

23. Scrutiny of the site plan reflects that the iron stand is not lying direct beneath the ceiling fan hook affixed in the roof. It was lying at a distance of about 01 to 1-1/2 feet aside. It seems to be hardly possible for the deceased to first of all fasten knot of the dopatta with the hook of the ceiling fan to enable it to bear the burden of her body for hanging. For doing so, firstly her hands should reach comfortably to the roof level, which does not seem to be possible for a person of about 5ft-4 inch in height (as the deceased was) specially when the iron stool/ moorra was placed right beneath the hook of the ceiling

fan. Picture of the stool/ moorra (Ex.PM.9) also shows that it was in a good condition. It is made up of delicate sticks and it does not seem to be too strong to bear the weight of standing up of a person of 5ft-4 inch in height. Even its upper cover is not pressed or torn. Its upper cover also did not show any compression. Therefore, the site map lends no support to the version advanced by the defence that the deceased had committed suicide by hanging her from the hook of the ceiling fan through a ligature/noose by standing on the Stool/Moorra.

24. In the instant case, injury No.1 describes that the mark of ligature was present on the middle & left side of neck transversely in its middle 1/3rd area deeply seted creating the contusion collar measuring 14 cm x 1 cm diameter of whole neck=38cm. According to the postmortem report, there are signs of strangulation on the body of deceased.

25. According to MODI, medical jurisprudence and toxicology, the sure signs of hanging are that the neck is found stretched and elongated and the head is always in-clined to the side opposite to the knot. The tongue drawn in or caught between the teeth. Bloody forth is sometimes seems at the mouth and nostrils. Saliva is often found dribbling out of an angle of the mouth down on the chin and chest. Ligature mark/ Ovlique non-continues placed high-up in the neck between the chin and the larynx, the base of groove are furrow being hard, yellow and parchment like while, in case of strangulation, the ligature mark horizontal or transverse continues, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and radish. It is sufficient to establish that as per the contents of postmortem report Ex.PB and in the opinion of doctor, this is not a case of suicide, but a case of homicide, i.e. she was killed by some other person.

26. There were seven injuries on her body. The opinion of the doctor also confirms that all the injuries were ante-mortem in nature (caused before death) and sufficient to cause death in ordinary course of life. Appellant has not put up any defence regarding the ante-mortem injuries, present on the person of deceased.

27. The occurrence took place in the house of the convict-accused. If the deceased had committed suicide, then the accused ought to have reported this fact immediately to the Police and his failure to do so depict unnatural conduct on his part. No plausible explanation has been offered by him in this behalf. Instead the matter was reported by father of the deceased to the police. The accused-appellant has taken a bald defence that the deceased has committed suicide. Article 122 of the Qanun-e-Shahadat Order, 1984 stipulates that if a particular fact was especially within the knowledge of any person the burden of proving that fact was upon him.

Illustrations:-

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

Since, the accused-appellant has taken a particular plea that the deceased committed suicide, therefore, he was bound to prove his this plea but except his bald narrative of commission of suicide, he failed to adduce any convincing evidence of unimpeachable character to prove his stance. He has also not opted to make statement on oath under Section 340 (2) Cr.P.C to disprove the allegation against him. All these facts go a long way to establish the guilt of the accused-appellant.

28. Admittedly, the deceased and appellant lived in the same room. There were other 3/4 family members living in the same house. The incident has taken place during the night when the appellant was also present in the room. The appellant has not denied his presence in the room. It does not appeal to a prudent mind that the deceased would make arrangement for her hanging with the hook in the roof when her husband was also present in the same room and he did not try to restrain her from committing suicide, according to the defence point of view. None of the family members of the deceased has come before the court to give

statement to that effect. There are two injuries on the head (vertex) of the deceased, which are also ante-mortem in nature. Danda used in inflicting injuries on the head of deceased has also been recovered. Azar band, used as noose to strangle her, has also been recovered from the place of incident. Injuries No.3, 4 & 5 available on the legs are also ante-mortem in nature. Reliance in this regard is placed upon the judgment of august Supreme Court of Pakistan reported as "Muhammad Akram V. State" (2003 SCMR 855) wherein it has been held as under:-

"The petitioner has neither denied his presence at his house on the fateful day nor offered any explanation that how and under what circumstances Mst. Salma while sleeping with him in a room of his house sustained injuries with the sharp-edged weapon on the sensitive part of her body. The bare denial of the petitioner of knowledge of occurrence and not offering any explanation that how Mst. Salma sustained injuries would be a strong corroborative circumstance provided to the eye-witness account to prove the guilt of the petitioner."

In another case reported as "Arshad Mehmood v. State" (2005 SCMR 1524), the Hon'ble Supreme Court of Pakistan held as under:-

"It may be noted that dead body of deceased was recovered from the house of the petitioner where Mst. Safia was living with him as his wife. Therefore, it is not possible to disbelieve the story of the prosecution. Besides it medical evidence, fully corroborates to the statement of Mst. Zainab Bibi mother of deceased."

29. Another important aspect of the case is that no malafide or ill-will has been attributed by the appellant to the complainant or the prosecution for his false involvement in the case, which also strengthens the case of prosecution against appellant.

30. From the facts, circumstances and medical certificate shows that before the death of Mst. Javeria, she was mercilessly beaten by the appellant with danda, due to which, she received injuries on her head and legs, and the same injuries were found ante-mortem. This fact is also proved from the medical certificate, wherein, nature of injuries are stated ante-mortem on the person of deceased, which fact was further proved after recovery of danda and Azar-Band from

the place of incident and it further shows that thereafter, she was throttled to death by applying Azar-Band around her neck by the appellant. Even otherwise, the appellant has not denied his presence in the said room during the whole trial. He was failed to explain whether he made effort to prevent the deceased from hanging particularly during night time. The onus lies upon the shoulder of appellant to explain how his wife met with unnatural death specially, when there are ante-mortem injuries on the person of deceased.

31. It has also come on record that Muhammad Hanif submitted complaint (Ex.PG) on 31.5.2015, i.e. on the day of incident, while F.I.R was registered on 03.06.2015, after three days of submission of complaint in the Police Station. The said information was incorporated in the daily diary. There is an un-explained delay of three days in registration of the F.I.R. In my opinion, this delay cannot be attributed to the complainant, as he had performed his duty by submitting the complaint promptly with the police. Therefore, it would be unfair and unjust, if due to the lapse on the part of police any undue advantage is extended to the convict/ appellant when sufficient incriminating evidence in the form of ocular, medical and circumstantial evidence has come on record, coupled with the fact that no specific malafide or ill-will either to the complainant or prosecution has been attributed by the appellant for his false involvement in the offence. So far as the arguments of the learned counsel for appellant that the thumb impression of deceased on affidavit on Ex.PF did not match with the NADRA record. Appellant failed to produce any such report in his defence in this regard.

32. Although in the case in hand, murder of the deceased Mst.Javeria is an unseen incident and only circumstantial evidence is available against the appellant but it is by now a well settled law that an accused can be convicted/ sentenced on the basis of circumstantial evidence, even if the incident is unseen. The ocular, Medical and circumstantial evidence leads this Court to hold that the offence of Qatl-e-Amd has been proved against the appellant beyond any reasonable shadow of doubt. The august Supreme

Court in case titled 'Talib Hussain vs The State' (**1995 SCMR 1538**), has held that in cases where there is no direct evidence to show in what manner the offence had been committed, the Courts must examine the probabilities in the light of indirect evidence of the injuries on the deceased, the nature and condition of the place, where the incident had taken-place, the articles secured found there, the motive for the crime and the other surrounding circumstances proved. Mere occurrence of circumstances unless based on proved facts is not enough to draw inference. The august Supreme Court has held that the coincidence should be un-designed and not maneuvered or planted. Reliance is placed on 'Talib Hussain Vs The State' (**1995 SCMR 1538**). It has also been held by the august Supreme Court that capital punishment can be awarded, if circumstantial evidence is strong enough to persuade the Court that the person charged with the offence has committed the same. The circumstantial evidence, however, must be so clear, cogent and convincing that the facts could not be accounted for or any other rational hypothesis could be arrived at other than the guilt of the accused. It has also been held that if the place of incident is a place where no witness was available and the accused had the exclusive knowledge about the incident, mere denial on the part of the accused will not be sufficient to nullify the circumstantial evidence of the nature, which directly connects him with commission of the offence charged. Reliance is placed on "Muhammad Latif vs. The State" (**PLD 2008 SC 503**) 'Akbar Ali vs. The State' (**2007 SCMR 486**), 'Khurshid vs. The State' (**PLD 1996 SC 305**), 'Khuda Bukhsh vs. The State' (**2004 SCMR 331**) 'Talib Hussain vs. The State' (**1995 SCMR 1538**) and 'Saeed Ahmed v. The State' (**2015 SCMR 710**).

33. From bare reading of all the above said facts and circumstances of the case, no material contradictions are found in the statements of the prosecution witnesses. Careful examination of the prosecution evidence reveals that the witnesses have fully proved the prosecution case, supported by the medical evidence, which has confirmed that the death of the deceased was not natural. The witnesses remained consistent and firm on material aspects of the case. All the prosecution witnesses are reliable and nothing

favourable could be extracted from them during the cross-examination in favour of the defence.

34. In view of the above, it is established that the prosecution has succeeded to prove its case against the appellant through reliable and trustworthy evidence. Involvement of the appellant/ convict in the commission of the offence has been proved beyond any shadow of doubt and the learned trial Court has rightly appreciated the prosecution evidence in its true perspective and correctly convicted the appellant to which no exception could be drawn by this Court. Having scanned the entire prosecution evidence, prosecution has successfully proved the charge of homicidal death of Mst.Javeria at the hands of the appellant. All these facts and circumstances, ruled out the possibility of fabrication and consultation prior to the registration of the crime report. The complainant and the other eyewitness remained firm and consistent on all material particulars of the incident including the role of the appellant, which is fully supported by the medical evidence.

35. The learned counsel for the appellant has failed to point out any illegality, irregularity, mis-reading, non-reading or any infirmity or defect in the impugned judgment passed by the learned trial Court, calling for interference by this Court. The convictions and sentences awarded to the appellant by the learned trial Court are, therefore, upheld. Learned counsel for the petitioner in criminal revision has failed to point out any justification for enhancement of sentence, recorded by the learned trial Court, against the appellant.

36. For the foregoing discussion, the above mentioned criminal appeal and the criminal revision are **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 27th day of January, 2021.

JUDGE

Approved for reporting.