

JUDGMENT

ATHAR MINALLAH, C.J.---Through this consolidated judgment, we will decide Jail Appeal No.107/2015 titled 'Gul Muhammad v. The State, Jail Appeal No.108/2015 titled 'Mst Eid Un Nisa v. The State' and answer Murder Reference No.11/2015 titled 'The State v. Gul Muhammad'.

2. In the case in hand, Gul Muhammad, son of Muhammad (hereinafter referred to as 'Appellant No.1') and Ms. Eid Un Nisa, wife of Saeed ur Rehman (hereinafter referred to as 'Appellant No.2'), were charged on 16-11-2011 for the murder of Saeed ur Rehman (hereinafter referred to as the 'Deceased') and on conclusion of the trial they were convicted and sentenced by the learned Additional Sessions Judge vide judgment, dated 22-05-2015, in the following terms.

"For above reasons, this court has come to the conclusion that prosecution proves its case against accused Gul Muhammad for commission of Qatl-i-amd of deceased Saeed (father of three minors) after trespassing the house and caused disappearance of cell phone of accused Eid Un-Nisa beyond reasonable shadow of doubt. Therefore, he is convicted and sentenced under section 302, P.P.C. to death as Ta'zir and he shall be hanged by his neck till he is dead subject to confirmation of death reference by Honourable Islamabad High Court, Islamabad within the meaning of section 374, Cr.P.C. In addition to the above, accused Gul Muhammad is also directed to pay compensation to the tune of Rs.400,000/- under section 544-A, Cr.P.C. to the legal heir of deceased Saeed which shall be recoverable as arrears of land revenue. In default of payment of recovery of compensation, the convict shall suffer S.I. for a period of six months. Separate Reference be sent to Honourable Islamabad High Court, Islamabad for confirmation of death sentence as required under section 374, Cr.P.C.

Accused Gul Muhammad is also convicted under section 201, P.P.C., imprisonment for a period of seven years and fine of Rs.100,000/- and in case of default in payment of fine to further undergo 03 three months' S.I.

Accused Gul Muhammad is also convicted under section 449, P.P.C. for imprisonment for life with fine of Rs.100,000/- and in case of default in payment of fine to further undergo 03 three months' S.I. It is also note worthy to mention here that all the sentences of accused Gul Muhammad shall run concurrently.

Accused Eid-Un-Nisa is held guilty of offence under section 201, P.P.C. and convicted for imprisonment of seven years with fine of Rs.100,000/- and in case of default in payment of fine to further undergo 03 three months' S.I. Both the convicts are extended benefits of section 382-B, Cr.P.C."

3. The necessary facts are that Ghulam Shabbir, Sub-Inspector (PW-15), received information and pursuant thereto he reached the crime scene. Appellant No.2, who was the wife of the Deceased, narrated the facts which were reduced into writing and the said complaint (Exh.P-D/1) was sent by the Investigation Officer to the concerned Police Station which led to the registration of FIR No.212, dated 14-05-2011 (Exh.P-D). According to the facts narrated in the written complaint, the Deceased was sleeping in one of the rooms of his house with the Appellant No.2 and their two children, namely Mehwish Bibi (PW-1) and Ali Raza. The occurrence took place on 14-05-2011. According to the initial version of Appellant No.2, at about 10 pm she woke up on hearing a shot fired from a firearm weapon. She saw two men taking out Rs.50,000/- and a cell phone from the pockets of the clothes of the Deceased. When they were leaving they also removed a ring which Appellant No.2 was wearing and took it with them. The Investigating Officer, namely Ghulam Shabbir, S.I. (PW-15), prepared the inquest report (Exh.P-U) and rough site plan (Exh.P-D/2). The last worn clothes of the Deceased were taken into possession. One crime empty fired from a .30 bore firearm weapon, a pair of slippers, blood on cotton wool and a motor vehicle designated as a taxi were taken into possession vide recovery memos i.e. Exh.P-1, Exh.P-F/1, Exh.P-J and Exh.P-E/1, respectively. An application (Exh.P-R/1) for conducting a postmortem of the Deceased was also submitted by the Investigating Officer. The body of the Deceased was taken to the Pakistan Institute of Medical Sciences (hereinafter referred to as the 'Hospital') where an autopsy was performed

by Dr. Farrukh Kamal, MLO (PW-11). The latter prepared a postmortem report (Exh.P-R) wherein he, inter alia, described the nature of the injuries. On 19-05-2011, Amir Shahzad, Draftsman (PW-13), visited the crime scene and prepared a scaled site plan (Exh.P-V). On 31-05-2011, Appellant No.2 along with her brother-in-law appeared before the Investigating Officer and she informed him that she wanted to make a confessional statement. She was sent to the Dar-ul-Amaan by the learned Magistrate and her confessional statement under section 164 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Cr.P.C.') was recorded by Malik Farrukh Nadeem, Assistant City Magistrate, Islamabad Capital Territory on 01-06-2011. The statement was tendered in evidence and placed on record as (Exh.P-Y). On 01-06-2011, the Investigating Officer was informed that Appellant No.1 was arrested by officials of Police Station Westridge, Rawalpindi in another criminal case i.e FIR No.1172, dated 27-12-2010. The latter was formally arrested in the instant case on 03-06-2011. The Investigating Officer also took into possession the crime weapon which was recovered during the investigations in case FIR No. 1172, dated 27-12-2010. On 03-06-2011, the Investigating Officer filed an application before the learned Magistrate for conducting an identification parade of Appellant No.1 (Exh.P-AA/1). The identification parade was conducted on 11-06-2011 and Appellant No. 1 was identified by Habib Ur Rehman (PW-2) and Mehwish Bibi (PW-1). The cell phone used by Appellant No.2 was identified by her daughter Mehwish Bibi (PW-1) and on 04-07-2011, the Investigating Officer took in possession the data relating to the SIM used in the said phone vide recovery memo (Exh.P-L). The Forensic Science Laboratory Punjab, Lahore (hereinafter referred to as 'Laboratory') vide a report, dated 26-09-2011 (Exh.P-X), confirmed that the crime empty matched the firearm weapon. The Chemical Examiner for Punjab, Lahore, also submitted reports (Exh.P-FF, P-GG and P-HH). It is noted that the statement of Ms. Mehwish Bibi (PW-1), which was recorded by the Investigating Officer under section 161 of the Cr.P.C. was brought on record with the consent of the learned counsel (Exh.D-A). The said statement was recorded on 14-01-2011 i.e. when investigations had commenced. After considering the report under section 173 of the Cr.P.C., a charge was framed against the appellants on 16-11-2011. The prosecution produced twenty-two witnesses. Appellant No.2 preferred not to be examined under oath and, therefore, her statement under section 342 of the Cr.P.C. was recorded. Appellant No.1 opted to be examined under oath and he entered the witness box as DW-1. Two other witnesses also deposed in his favour. The learned trial Court, after the recording of evidence and affording an opportunity of hearing to the parties, convicted and sentenced the appellants in the terms which have been reproduced above.

4. The learned Counsel, who appeared for Appellant No.1, has argued that; the prosecution had failed to prove its case beyond reasonable doubt; there was no reference in the complaint filed in the instant case to Habib ur Rehman (PW-2) nor was he present at the crime scene; no source of light was mentioned in the room; Mehwish Bibi (PW-1) was also not present at the crime scene; the latter, being a child witness, was tutored and influenced by her elders and, therefore, her testimony required strong and independent corroboration; the identification parade was not conducted in accordance with law; during the identification parade, no role was attributed to Appellant No.1; the statement of Appellant No.2 under section 164 of the Cr.P.C. is not admissible because she was an accused; the report of the Laboratory is not reliable because the firearm weapon was not recovered from Appellant No.1; it is not clear from the record as to who had deposited the firearm weapon at the Laboratory; reliance was placed on the cases of 'Ulfat Hussain v. The State' [2010 SCMR 247], 'Lal Khan v. The State' [2008 SCMR 1846] 'Muhammad Ali v. The State' [2017 SCMR 1468], 'Riaz Ahmed v. The State' [2010 SCMR 846], 'G. M. Niaz v. The State' [2018 SCMR 506], 'Sardar Bibi and another v. Munir Ahmed and others' [2017 SCMR 344], 'Muhammad Asif v. The State' [2017 SCMR 486], 'Ulfat Hussain v. The State' [2018 SCMR 313], 'Khalil v. The State' [2017 SCMR 960], 'Arshad Khan v. The State' [2017 SCMR 564], 'Zahir Yousaf and another v. The State and another' [2017 SCMR 2002], 'Muhammad Ashraf Javeed and another v. Muhammad Umar and others' [2017 SCMR 1999], 'Nazir Ahmed v. Muhammad Iqbal and another' [2011 SCMR 527], 'Gulfam and another v. The State' [2017 SCMR 1189], 'Dr Israr Ul Haq v. Muhammad Fayyaz' [2007 SCMR 1427] and 'Riaz Masih alias Mithoo v. The State' [1995 SCMR 1739].

5. The learned counsel who was requested to assist us at the State's expense on behalf of

Appellant No.2 has argued; the latter was forced to give a confessional statement in order to deprive her of her share in inheritance; the sole witness was a child and her testimony is not trustworthy; the prosecution could not prove the case against the Appellant No.2 beyond reasonable doubt.

6. The learned State counsel was also heard at length. He has stressed that the prosecution was successful in establishing the guilt of both the accused beyond reasonable doubt.

7. The learned Counsels and the learned State Counsel have been heard and the record perused with their able assistance.

8. It is not disputed that Appellant No.1 was closely known to the Deceased and his family members. The Investigating Officer had recorded the statement of Appellant No.2's daughter, namely, Mehwish Bibi (PW-1) soon after commission of the offence and when he had commenced the investigations on 14-05-2011. The said statement was brought on record with the consent of the learned counsel and exhibited as Exh.D-A. A plain reading of the said statement unambiguously shows that Ms. Mehwish Bibi (PW-1) had named Appellant No.1 and had also narrated the facts which were later reiterated by her when she entered the witness box as a witness. This statement was consistent with her testimony as PW-1. There was no reason for Ms. Mehwish Bibi (PW-1) to have falsely implicated her mother and Appellant No. 1. Moreover, the statement recorded under section 161 of the Cr.P.C. was of significance because it was a spontaneous narration of the facts as they took place on the fateful night of the occurrence which had led to the murder of her father. Reading her statement recorded under section 161 of the Cr.P.C. with her testimony as a witness it undoubtedly negates the argument raised by the learned Counsel for Appellant No.1 that she was influenced because after the occurrence she had been living with her uncles. Her consistent stance and confidence inspiring deposition leaves no doubt that she had truly narrated the events without being influenced or tutored. There is no plausible explanation for falsely involving her mother i.e Appellant No. 2. It is also alarming as to how the Investigating Officer could have ignored the crucial statement made by Mehwish Bibi (PW-1) on the day when he had commenced investigations. Moreover, Appellant No.2 had voluntarily opted to record her confessional statement and it is obvious from the record that she had approached the Investigating Officer and, thereafter, was given sufficient time to reflect. The deposition of Mehwish Bibi (PW-1) is corroborated by other unimpeachable, credible and trustworthy evidence. The learned Counsel for Appellant No.1 has laid great stress on the weaknesses while conducting the identification parade. In the facts and circumstances of the instant case, the identification parade was inconsequential because Appellant No.1 was a close family friend of the Deceased and known to every member of his family, including Mehwish Bibi (PW-1). The crime empty recovered from the crime scene by the Investigating Officer had matched the crime weapon which was taken into possession during the course of investigations. The report submitted by the Laboratory was positive. The data of the cell phone which was in the use of Appellant No.2, read with the testimony of Mehwish Bibi (PW-1), substantiated that Appellant No.1 and Appellant No.2 were in contact with each other and that the latter had visited the house of the Deceased during the day on the date when the occurrence had taken place. We have carefully gone through the evidence brought on record and we are satisfied that the prosecution had established the guilt of both the appellants beyond reasonable doubt.

9. The learned counsel for the appellants have laid great stress on the reliability of the testimony of Mehwish Bibi (PW-1) who, at the time deposing under oath, was fifteen years old. They have argued that it was not safe to place reliance on her statement. The law relating to admissibility of deposition of a child witness is settled by now. It would, therefore, be beneficial to examine the precedent law in this regard.

10. The august Supreme Court, in the case titled 'Abdullah Shah v. The State' [1968 SCMR 852], has observed and held that all persons are competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or prevented from giving rational answers to those questions due to tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. The child witness was held to be competent and her testimony was also relied upon. In the case titled 'Muhammad Ismail and another v. The State' [1995 SCMR 1615], it was held that evidence of a child witness who possesses sufficient understanding can be relied upon for handing down a conviction. In the case of 'Ameer Umar v. The State' [1976 SCMR 338], it has been observed and held that there are no particular questions which could be put to a child witness to test the latter's intelligence and

understanding. The Court has merely to be satisfied as to the child witness being capable of giving rational answers to questions put by the Court. In the facts and circumstances of the case decided by the august Supreme Court in the case titled 'Muhammad Jamal and others v. The State' [1997 SCMR 1595], the deposition of a child witness was found reliable and worthy of being relied upon. The principles and law regarding the testimony of a child witness have been highlighted by the august Supreme Court in the case titled 'Maqsood Khan v. The State' [1982 SCMR 757] as follows.-

"In a case of a child witness it is immaterial whether he can understand and answer in a rational manner the questions put to him. No general rule of universal application can be laid down that in no case should the evidence of a child witness be believed. Each case depends upon its particular facts and circumstances. The evidence of a child witness, before it is acted upon should, however, be subjected to a close and careful scrutiny. The mere fact that the evidence of the only eye-witness of a crime is that of a child of 10 years of age is not a ground for not relying upon it especially when the evidence was given without hesitation and without slightest suggestion of tutoring anything of the sort and there is corroboration of the evidence in so far as it narrates the actual facts or the child's subsequent conduct immediately afterwards. The real tests are; how consistent the story is with itself ; how it stands the test of cross-examination and how far it fits with the evidence and circumstances of the case".

11. The august Supreme Court, in the case titled 'The State through Advocate-General Sindh, Karachi v. Farman Hussain and others' [PLD 1995 SC 1], has dealt in detail with the principles and law relating to the evidentiary value of a child witness and has held and observed that it is to be assessed with care and caution. It has been further held that, since the testimony of a child witness is a delicate matter, therefore, normally it is not safe to rely upon it unless corroborated. Moreover, as a rule of prudence, great care has to be taken that in the case of evidence of a child, the element of coaching is not involved. Dilating upon the nature of the child testimony, it has been observed that, on account of tender age, a child could mistake a dream for reality and, therefore, it is for this reason that the rule of prudence requires corroboration of the testimony of a child.

12. On the touchstone of the above principles and law enunciated by the august apex Court, we have no hesitation in concluding that in the case in hand the testimony of Ms. Mehwish Bibi (PW 1) was consistent, reliable and trustworthy. She definitely appears to be intelligent and does not suffer from any disability to justify discarding her testimony. Her deposition was corroborated by cogent and confidence inspiring evidence that was brought on record by the prosecution. Appellant No. 2 had recorded her statement under section 164 of the Cr.P.C. and later also recorded her version under section 342 of the Cr.P.C. The presence of Appellant No. 1 in the house on the day and at the time of occurrence was established beyond doubt. The testimonies of the prosecution witnesses were reliable and inspired confidence. The learned trial Court appears to have handed down a lesser sentence in the case of Appellant No. 2 because she had voluntarily come forward and had disclosed some crucial facts. Appellant No. 2 had indeed taken the life of an innocent human being and she does not deserve to be treated leniently. Her guilt was established beyond reasonable doubt and there are no mitigating circumstances to hand down a lesser sentence.

13. For what has been discussed above, we answer the Murder Reference No.11/2015 titled 'The State v. Gul Muhammad' in the affirmative and uphold the conviction and sentence handed down by the learned trial Court. Consequently, Jail Appeal No.107/2015 titled 'Gul Muhammad v. The State' and Jail Appeal No.108/2015 titled 'Mst. Eid Un Nisa v. The State' are hereby dismissed.

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