

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

(1) Murder Reference No. 22 of 2019
The State
Versus
Saeed Ullah

(2) Jail Appeal No. 345 of 2019.
Saeed Ullah
Versus
The State

Appellant by: Mr. Awais Arshad Advocate,
Complainant by: Nemo,
State by: Mr. Zohaib Hassan, State Counsel,
Date of Hearing: 20.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J.-Through this single judgment, we intend to decide above captioned murder reference and the jail appeal, which have arisen out of single judgment dated 22.04.2019, passed by the learned Sessions Judge, Islamabad-West, whereby appellant Saeed Ullah was convicted under section 302 (b) P.P.C, and sentenced to death with a fine of Rs.5,00,000/- as compensation to the legal heirs of deceased and in default thereof, the appellant had to undergo six months simple imprisonment, in F.I.R. No. 536, dated 22.11.2018 under Section 302 P.P.C, Police Station Tarnol, Islamabad.

2. Briefly, the facts as per prosecution are that on 22.11.2018, Riaz Gondal Inspector (PW-12) on receipt of information regarding the present occurrence reached Pakistan Institute of Medical Sciences (PIMS) at about 01:00 pm, where the dead body of Mst.Tasleema Bibi was lying

having firearm injuries on left arm, left leg, abdomen and left side of chest. Mst. Sobia (PW-11) was also there who told to PW-12 that Saeed Ullah (appellant) at about 11:00 am had committed the murder of his real mother by causing firearm injuries with pistol in her residential house situated in Dhoke Tammal.

3. On the basis of above complaint Ex.PE, F.I.R Ex.PE/1 was registered. PW-12/Inspector then drafted application for postmortem examination Ex.PG, inquest report Ex.PH besides identification memo of dead body Ex.PI. After the postmortem examination, he took into possession last worn clothes of the deceased i.e. shirt P1, shalwar P2, and vest P3 vide memo Ex.PJ and thereafter handed over the dead body to Zeeshan and Bilal sons of the deceased vide receipt Ex.PK.

4. After undergoing the above proceedings, PW-12 then proceeded to the place of occurrence where he collected blood with cotton and took the same into possession vide memo Ex.PL. In addition, the witness also collected seven empties of .30 caliber pistol through sealed parcel Ex.PM. The witness then drafted rough site plan Ex.PN and on return to the police station handed over the case property to the Moharrir. The investigation was then handed over to Haider Ali Inspector PW-8.

5. After due investigation, report under Section 173 Cr.P.C was submitted against the appellant where he was formally charge sheeted on 17.04.2019 and thereafter, the prosecution produced 12 witnesses in all, in support of its case.

PW-1 Munir Khan SI deposed to prove the delivery of blood stained cotton on 07.01.2019, 30 caliber cartridge-cases on 04.12.2018 and 30 caliber pistol on 23.01.2019 in the office of Punjab Forensic Science Agency (PFSA).

PW-2 Muhammad Asif handed over parcel containing blood stains cotton to Munir Khan SI for onward transmission to the office of PFSA Lahore.

PW-3 Mubarak Ali Moharrir kept case property i.e. blood stained cotton, last worn clothes of deceased and cartridge-case in safe custody in malkhana and dispatched empty and the parcel of pistol to PFSA Lahore through Munir Khan SI PW-2 on 04.12.2018 and 23.01.2019 respectively.

PW-4 Ameer Hamza on 27.11.2018 produced call data record (CDR) of mobile of appellant before Abdul Ghafoor Inspector who took the same in possession vide memo Ex.PB. The witness also deposed to prove the recovery of pistol P1 along with a live bullet P2 from the appellant on 09.01.2019 which the I.O. had taken into possession through recovery memo Ex.PA.

PW-5 Arshad Mehmood received postmortem report from the hospital on 15.01.2019 and handed over it to the Investigating officer.

PW-7 Abdul Ghafoor Inspector on 23.11.2018, recorded statement of Inspector Riaz, Amir Shahzad draftsman, Munir Khan SI and Mubarik Constable.

PW-8 Haider Ali Inspector on 05.01.2019 arrested the appellant and on 09.01.2019, recovered .30 bore pistol P1 with one live bullet P2 from the appellant from a jungle lying under a stone and took the same into possession vide

memo Ex.PA. The witness also challenged the appellant on being found guilty.

PW-9 Syed Sadat Ali on 22.11.2018 drafted formal F.I.R Ex.PE/1 on the basis of complaint Ex.PE.

PW-10 Dr.Hina Medico Legal Officer, PIMS Islamabad stated, on 22.11.2018 at about 12:00 midnight she conducted postmortem examination of Mst.Tasleema deceased and noted one entry wounds on left breast, one entry and exit wound on right forearm, one entry wound on right thigh, exit wound on right buttock, five entry wounds on abdomen and three wounds of exit on back, one of them on pelvis area. The cause of death, according to the witness was the result of firearm injuries and excessive bleeding internal. She tendered postmortem report Ex.PF, sketch of injuries Ex.PF/1 and Ex.PF/2. She also signed application for postmortem examination and inquest report Ex.PH and PG respectively.

PW-11 Mst. Sobia Bibi is an eyewitness and wife of elder brother of accused/appellant. She deposed to prove the ocular account set forth in the complaint Ex.PE.

PW-12 Muhammad Riaz Gondal Inspector deposed to prove the initial investigation conducted by him, details whereof have been mentioned above.

6. On 22.04.2019, the learned SSP by tendering reports of PFSA Ex.PO and Ex.PP, closed the prosecution evidence.

7. After the recording of the prosecution evidence, appellant was examined under Section 342 Cr. P.C, wherein he denied the prosecution evidence and has taken a plea that *"he was married with phophi-zad with whom he was living happily. Sobia complainant started instigating her and due to*

said reason, family affairs were disturbed and ultimately on the asking of his ex-wife, he had divorced her. Since then, he had dispute with Sobia. He did not commit murder of his mother as there was no reason for him to do so. It was a blind murder. Sobia having a grudge with him opted to come forward as a false witness. He is innocent." However, he opted not to make his statement on oath under Section 340(2) Cr. P.C. or to adduce any defence evidence.

The learned Trial Court, after hearing both sides and going through the evidence on record, convicted & sentenced the appellant as mentioned above.

8. The learned counsel for the appellant, in support of this appeal, argued that there is a delay of about two and half hours in lodging the F.I.R; that the sole statement of PW-11 Mst. Sobia Bibi in presence of specific plea of the appellant, is not worthy of credence; that the site plan did not indicate the place of the appellant, while the motive, as alleged has also not been substantiated, therefore, impugned conviction is not sustainable in the eye of law.

9. Learned State Counsel, on the other hand, repelled the above submissions by arguing that there is no delay in reporting the matter to the police; the sole eye witness had given the true account of the occurrence, whereby the appellant committed murder of his real mother; that the postmortem report and the recovery of crime weapon coupled with the report of PFSA, fully establishes the guilt of the appellant, therefore, appeal is liable to be dismissed.

10. Heard the learned counsel for the appellant, learned State Counsel and examined the record with their able assistance.

11. Judicial scrutiny of the record shows that the conviction in the instant case is based upon the (i) testimony of PW-11 Mst. Sobia Bibi, who is eye-witness of the occurrence and (ii) upon the report of the PFSA. Said PW-11 (Mst.Sobia Bibi) deposed to prove the ocular account in the following terms:-

"On 22.11.2018, I along with my mother in law Mst.Tasleema Bibi were sitting in the courtyard of the house; accused is an addict; on that day at about 10:30 am he came and asked money from deceased which she refused; appellant then made firing with pistol on mother who was seriously injured; with the help of other persons we had taken her to hospital on Suzuki carry; when doctor checked her and declared that she had died; police came in hospital and I narrated these facts to him."

12. In her cross-examination, in a question that, there was a dispute between her and accused, she straightly termed it as incorrect, similarly regarding a question of divorce by accused to his ex-wife on her instigation she termed the same as incorrect as well.

13. In response to a question, she stated that deceased used to ask the accused/appellant to work and earn for livelihood but accused always refused.

14. The contention that Sobia/PW-11 had any dispute/enmity with the appellant/accused cannot be adhered too, because as to why the appellant chose to murder his real mother instead of taking any action against said Sobia/PW-11 seems to be against the logic.

When examined it reveals that the distance told by said PW-11 from place of occurrence to hospital of 30 minutes is factually correct. The stance of the PW-11 remained unshaken in cross examination. Her answer to the questions put to her appear to be natural and confidence

inspiring. She got recorded a comprehensive examination in chief without irrelevant details and upon the questions put to her in cross examination she remained firm and unshaken on her statement.

15. PW-11 has not been cross examined on the material point of her examination-in-chief wherein she stated that accused/appellant who is an addicted person, came and demanded amount from the deceased and on her refusal he opened fire upon her, wherein she got seriously injured, needless to be mentioned that any portion of the statement of a witness which remained un-questioned during cross-examination then such portion of a statement is deemed to be admitted by the other side and is correct.

16. While considering the facts narrated above, it seems that Article 70 of the Qanun-e-Shahadat Order 1984 (Order of 1984) is relevant and for convenience same is reproduced as under:-

"70. Proof of facts by oral evidence. All facts, except the contents of documents, may be proved by oral evidence."

17. It appears that all facts, except the contents of documents, may be proved by oral evidence.

Similarly, Article 71 is also relevant and for convenience same is reproduced here under:-

71. Oral evidence must be direct. Oral evidence must, in all cases whatever; be direct; that is to say-----

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

18. It reveals that said Article lays down, that oral evidence must, in all cases whatever be direct. It is mandatory that for proving a capital punishment charge in a

criminal case, the best evidence should be available on record. The witness, who had seen the occurrence, is required to be produced as a witness. The statement of PW-11, if seen on the touchstone of the principles on the subject, side by side above stated articles of the Order of 1984 guides to hold that the same qualifies the criteria of direct evidence which is considered to be the best evidence. She, being the natural witness had given the truthful, natural and confidence inspiring account of occurrence as herself being one of the inmates of the abode, where the occurrence had taken place. This direct evidence rules out any remote possibility to exonerate the real culprit on any account.

19. The Hon'ble Supreme Court of Pakistan in a judgment reported as "**Anwar Shamim and another v. The State**" (2010 SCMR 1719) while expounding the principles on direct evidence that when direct evidence is credible, truthful and trustworthy is considered to be sufficient for award of capital punishment although having no corroboration. Hon'ble Apex Court held in paragraph-6 as under:-

"The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Both the courts below have come to the conclusion that their statements are of such a nature that their testimony must be given due weight and were believed. It is also settled law that if court is satisfied about the truthfulness of direct evidence then the requirement of corroborative evidence is not of much significance. Corroboration is not a rule of law but is that of prudence. As mentioned above, the statement of eye-witnesses was not only corroborative by medical evidence but also motive as set up in the F.I.R. had been proved against the

petitioners. In such a situation, prosecution had successfully established the guilt of accused."

20. The Hon'ble Supreme Court of Pakistan in another judgment reported as "**Ghulam Abbas v. The State**" (2008 SCMR 1352) wherein, petitioner/accused was charged in the offence of murder on the basis of direct eye-witness/evidence and was convicted for the murder of his step-mother, held that:-

"The eye-witnesses were most natural witnesses who having deposed in straightforward manner, corroborated each other on each material point and trial Court as well as the High Court, have found them truthful and confidence-inspiring."

21. The Hon'ble Apex Court of the country also expounded the law in a judgment reported as "**Qaiser and another v. The State**" (2006 SCMR 1147) wherein direct evidence of the occurrence was available and Hon'ble Apex Court held in the following manner:-

"This is settled principle of law that in case of interested and inimical witnesses the Court should look for the independent corroboration but this rule is not an inflexible rule of criminal administration of justice rather the rule of corroboration is a rule of abundant caution which is to be necessarily followed to ensure the correctness of the allegation and if the direct evidence was confidence-inspiring there would be no need of corroboration. We may observe that mere relationship or enmity is not always enough to declare a witness partisan or interested or that he was not a truthful witness. The Court in the light of the attending circumstances if feels satisfied that a witness was truthful and straightforward, his evidence would be believed without looking for any other corroboration, therefore insistence for independent corroboration in each case would not be necessary. In the present case we having gone through the record have not been able to locate any infirmity in the statement of the eye-witnesses to doubt their

veracity and exclude their evidence from consideration for want of corroboration." [Emphasis added]

22. The Hon'ble Apex Court in case law reported as "***Muhammad Riaz v. The State***" (2004 SCMR 897) maintained the conviction of an accused and held in following terms:-

"The eye-witnesses being inmates of the house narrated the occurrence in detail in each material point without any describable contradiction. The deceased was fired at by the accused twice when he was sitting in the company of witnesses in the courtyard of their house." [Emphasis added]

23. The Hon'ble Sindh High Court in a judgment reported as "***Yakoob v. The State***" (2013 MLD 1778 Sindh), held ***that a single truthful witness is sufficient to warrant conviction that accused and deceased were closely related having blood relationship, living in one and same house and they were natural witnesses.*** Incident being a broad day light occurrence resultantly death penalty was confirmed and jail appeal was dismissed.

24. When dictum of the case laws (supra) are applied to the case at hand then it transpires that confidence inspiring evidence of direct eye-witness of the incident/occurrence is available which is not only quite natural and confidence inspiring but fully corresponds to the legal requirements. By any stretch of imagination, statement of the eye-witness Sobia Bibi (PW-11) could not be described as untruthful. She is inmate of the house residing with the deceased who stated the occurrence which she had seen with her naked eye.

25. Facts of the case in hand have been examined from all possible angles, that, whether, any dent could be witnessed in the direct available evidence of PW-11 i.e. eye-witness, but such quality/compelling evidence is available which leads to hold that if this evidence is not considered to be the best evidence, then no other evidence could be declared as the best direct evidence regarding the case in hand. It means that available evidence by any canon of law could be termed as the best evidence to qualify the spirit of above referred Articles of Order of 1984, including principles of law expounded by the Hon'ble Supreme Court of Pakistan in quoted case laws.

26. It is a well-trodden legal path to base findings upon the evidence that the quality matters the most and not the quantity. Undoubtedly, the brevity of statement circumventing the criteria of important, necessary and relevant facts is of paramount importance as compared to the voluminous factual details which lack to figure out the required material to base findings for reaching a well-reasoned judgment. Thus, it unequivocally determines the much celebrated evidentiary rule that '**quantity has to give way to quality**'.

27. There is no occasion to disregard that statement of eye-witness in the instant case is not a quality evidence.

28. Now coming to the next important factor i.e. recovery of cartridge-cases from the scene and crime weapon.

29. The appellant fired seven fire shots out of which six were fired on vital part of the body i.e. chest and abdomen. After first fire shot, he did not stop but pressed the trigger time and again which reflects his callousness and

ruthlessness attitude towards his own mother. The pistol 30 caliber got recovered by the accused tendered as Ex.PA, when transmitted to the PFSA for its report in respect of item C1 to C7 cartridge cases, already transmitted to the said PFSA, has been examined by the said PFSA and conclusion vide Ex.PP, it is mentioned that said C1 to C7 cartridge cases were fired from the said pistol. Instant piece of evidence how could not be weighted. This important piece of evidence, adds more to make the case of the prosecution on sound footings.

30. The motive is also surfaced in the evidence that appellant is an addict who demanded money from deceased and on refusal, committed instant ruthless act, although a question had been put to PW-11 that the appellant had a quarrel with her. Said question was expressly answered as incorrect and thereafter no material was brought on record to substantiate this mere alleged assertion.

31. The witness PW-11 Sobia Bibi further elaborated in cross-examination that the deceased used to ask the appellant time and again to do some work for living, which seems quite natural as for the society structure that exists, where mothers for welfare and better future of their sons force them by such acts and words to do work for a living. However, unfortunately in a case at hand, things have gone otherwise and a son (appellant) has committed a grave act of murder of his own mother.

32. Facts of the case as per contents of F.I.R Ex.PE/1 and other material show that accused/appellant is a single nominated accused in the case and no material is available on record which could demonstrate that any substitution

was made. In a similar case, Hon'ble Lahore High Court in a judgment reported as "**Ahmad Ali v. The State**" (2020 PCr.LJ Lahore 964), wherein ***an accused was charged with murder of his own minor son, being a single nominated accused, was awarded death penalty and his appeal was dismissed.***

33. Admitted position on the record is, as supported by both ocular and medical evidence, that the deceased was shot by firearm and died on account of the firearm injuries which she received on the spot at about 11:00 am on a broad-day light of 22.11.2018.

34. It is also borne out from record that the appellant has three brothers and a sister but none from them has come forward to support the defence plea of the appellant regarding his innocence.

35. The importance of occurrence becomes more significant for the whole society that a son, who committed such brutal/ruthless act, should face exemplary punishment for all times to come, that an individual of guilty mind could not think of offence of "murder of a mother".

36. Status of the mother is of such major significance that it is stated in the Holy book "Al-Quran" at many places and as a reference only translation of two directions by Allah Almighty are narrated here:-

'اور ہم نے انسان کو اس کے ماں باپ کے بارے میں سمجھایا کہ اس کی ماں نے اسے پیٹ میں اٹھائے رکھا۔ ایک کے بعد ایک کمزوری دیکھی یوں دودھ چھوٹنے تک دو سال گزر جاتے ہیں۔ یہ کہ حق ماں میرا اور اپنے ماں باپ کا میری طرف ہی لوٹ کر آنا ہے۔ (پارہ نمبر ۲۱) سورۃ لقمان آیت نمبر ۱۴۔
اور تیرے رب نے حکم دیا ہے کہ اس کے سوا کسی کی عبادت نہ کرو اور ماں باپ کے ساتھ اچھے رہو۔ اگر تیرے سامنے ان میں سے ایک یادوں بڑھاپے کو پہنچ جائیں تو ان کے لئے زبان پر اف تک نہ لاؤ اور نہ ہی ان کو جھڑکو اور ان کے لئے گفتگو میں ایسا لہجہ اختیار کرو جس میں عزت ہو۔ (پارہ نمبر ۱۵) سورۃ بنی اسرائیل آیت نمبر ۲۳۔

37. Holy Prophet Muhammad (ﷺ) on many occasions emphasized the status and importance of the mother. Just for reference two Ahadith are quoted as under:-

"ایک آدمی، رسول اللہ ﷺ کی خدمت میں حاضر ہوا اور عرض کیا کہ یا رسول اللہ ﷺ میرے اچھے سلوک کا سب سے زیادہ حقدار کون ہے؟ فرمایا کہ تمہاری ماں ہے۔ پوچھا اس کے بعد کون ہے؟ فرمایا کہ تمہاری ماں ہے۔ اس نے پھر پوچھا اس کے بعد کون؟ نبی کریم ﷺ نے فرمایا کہ تمہاری ماں ہے۔ اس نے پوچھا اس کے بعد کون ہے؟ نبی کریم صلی اللہ علیہ وسلم نے فرمایا کہ پھر تمہارا باپ ہے۔ ابن شبرمہ اور یحییٰ بن ایوب نے بیان کیا، کہا ہم سے ابو زرہ نے اسی کے مطابق بیان کیا۔ (صحیح بخاری ۵۹۷۱)

نبی کریم ﷺ نے فرمایا کہ اللہ تعالیٰ نے ماؤں کی نافرمانی تم پر حرام فرمائی ہے نیز عام ضرورت کی چیزیں نہ دینے اور لڑکیوں کو زندہ درگور کرنے سے منع فرمایا ہے۔ اس نے تمہارے لیے بیکار گفتگو، سوال کرنے کی کثرت اور مال ضائع کرنے کو ناپسند کیا ہے (صحیح بخاری ۵۹۷۵)

38. Indeed this is a heart breaking incident, where a mother has been killed by most unfortunate son for whom she had become a blissful source for coming into this world.

39. In backdrop of above, this Court has come to the irresistible and definite conclusion that in presence of direct eye-witness of the occurrence i.e. Mst. Sobia Bibi (PW-11) in whose presence accused/appellant fired upon the deceased, remained consistent in her testimony in all material aspects, happened to be a truthful witness, was the inmate of the same house being sister-in-law (بھابی) of the accused/appellant, her presence cannot be doubted on any pretext whatsoever and by seeking further guidance from the judgments of Hon'ble Supreme Court of Pakistan, on the same principles reported as **(2006 SCMR 1786 titled Sikandar v. The State, 2007 SCMR 455 titled Ranjha**

v. The State, 2007 SCMR 1296 titled Umar Hayat v. The State and 2017 SCMR 713 titled Muhammad Ismail v. The State), this is sufficient for conviction, because same is supported by the recovery of the crime weapon duly matched with the cartridge cases collected from the spot, besides the medical evidence, provides ample support to the same and appellant was a single nominated accused, prosecution has proved its case beyond any shadow of doubt.

40. In these circumstances, while maintaining the conviction and sentence of appellant under Section 302(b), P.P.C. the appeal filed by him (Jail Appeal No. 345 of 2019) is hereby **dismissed**.

41. Resultantly, death sentence awarded to the appellant is confirmed and murder reference i.e. Confirmation of Case No. 22 of 2019 is answered in the **positive**.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

Imran

Announced in open Court on **11.11.2020**

JUDGE

JUDGE

Approved for reporting.