

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

Criminal Appeal No.125/2018
Chanzeb Akhtar v. The State & another

Jail Appeal No.130/2018
Chanzeb Akhtar v. The State

and

Murder Reference No.8/2018
The State v. Chanzeb Akhtar

Appellant by: Raja Muhammad Farooq, Advocate.
Respondents by: Mr. Zahid Asif Chaudhary, Advocate for
Respondent No.2/ Complainant
Barrister Qurat-ul-Ain, State Counsel.
Date of Hearing: 15.04.2020.

MOHSIN AKHTAR KAYANI, J: Through this common judgment, we intend to decide the captioned criminal appeal, jail appeal and murder reference as the same have arisen out of criminal case FIR No.51, dated 06.02.2015, under Section 302 PPC, P.S. Koral, Islamabad.

2. Through the captioned criminal appeal and jail appeal, Chanzeb Akhtar/appellant has called in question judgment of the learned District and Sessions Judge (East), Islamabad, Islamabad, dated 17.07.2018, whereby the appellant has been convicted in the aforesaid case FIR and sentenced to death under Section 302(b) PPC along with payment of compensation to the tune of Rs.200,000/- to the legal heirs of deceased and fine of Rs.100,000/- , in default whereof, the appellant shall further undergo simple imprisonment for six (06) months.

3. Similarly, the State through the captioned murder reference preferred under Section 374 Cr.P.C. sought confirmation or otherwise of the death sentence awarded to Chanzeb Akhtar/appellant.

4. Brief facts referred in the captioned appeals are that on 06.02.2015, in the midnight, PW-11 Mirza Zafar Mehmood/complainant submitted a complaint (Exh.PL) to the S.H.O., P.S. Koral, Islamabad alleging therein that he had been

informed by CW-1 Pervez Akhtar, brother of Chanzeb Akhtar/appellant, that appellant had murdered his wife (Munaza Sultana) i.e. sister of complainant with .30 bore pistol and fled away. The complaint Exh.PL was converted into the case FIR No.51/2015 (Exh.PU) and formal investigation was started. The next day i.e. 07.02.2015, the appellant surrendered himself before the police and got recovered the weapon of offence i.e. .30 bore pistol, however when charge under Section 302 PPC was framed against the appellant, he pleaded not guilty. The prosecution in order to prove the case has produced 16 prosecution witnesses coupled with 02 court witnesses, whereafter the learned trial Court has recorded the statement of appellant under Section 342 Cr.P.C. and vide the impugned judgment dated 17.07.2018, sentenced the appellant to death under Section 302(b) PPC along with payment of compensation of Rs.200,000/- to the legal heirs of deceased and fine of Rs.100,000/- , in default whereof, the appellant shall further undergo simple imprisonment for six (06) months. Hence, the captioned criminal appeal, jail appeal and murder reference.

5. Learned counsel for appellant contended that the impugned judgment dated 17.07.2018 is patently illegal being not supported by scope of evidence and is not sustainable in the eyes of law; that the case in hand is a motive-less case from the very inception of its registration up till its conclusion as nothing in terms of motive had ever been surfaced on record during the course of entire investigation; that the learned trial Court and prosecution have mainly relied upon the testimony of CW-1 Mirza Pervez Akhtar, whose evidence remained totally different from the prosecution version as his evidence did not surface either in the investigation or at trial through report under Section 173 Cr.P.C., rather only reliance was placed on an affidavit filed by the said court witness, which could not substitute the due process of investigation and law; that the learned trial Court has not given due weightage to the statement of appellant recorded under Section 342 Cr.P.C. and resorted to passing the impugned

judgment in hasty manner, which is liable to be set-aside and the appellant may be acquitted of the charge.

6. Conversely, learned State Counsel as well as learned counsel for respondent No.2/complainant in support of the impugned judgment stated that prosecution has successfully proved the case by producing truthful witnesses; that the evidence produced by private PWs, Investigating Officer, witnesses of recovery coupled with the medical evidence and circumstantial evidence prove the case of prosecution against the appellant; that all the prosecution witnesses remained consistent and the defence has failed to shake their stance on material points, while the learned trial Court has rightly appreciated the evidence available on record and passed the impugned judgment in accordance with law.

7. Arguments heard, record perused.

8. Perusal of record reveals that PW-11 Mirza Zafar Mehmood/complainant submitted a complaint (Exh.PL) to the S.H.O. P.S. Koral having allegations that his younger sister Munaza Sultana (deceased) was married to his first cousin namely Chanzeb Akhtar (appellant) and on 06.02.2015, at about 12.15 a.m. in the midnight, when he was sleeping in his house, he was informed by CW-1 Pervez Akhtar, brother of appellant, regarding the death of deceased at the hands of appellant by way of firing with .30 bore pistol, whereafter the appellant fled away from the scene. The complainant along with CW-1 Pervez Akhtar went to the house of appellant to see his sister, where he saw the dead body lying on a cot. The complaint (Exh.PL) was converted into case FIR No.51/2015 (Exh.PU) and was lodged at about 02:15 a.m. in the midnight, whereafter PW-16 Muhammad Iqbal/I.O. immediately started investigating the crime and visited the place of occurrence along with the police party comprising of PW-7 Imran Shafique/constable, Arshid/constable and PW-1 Mst. Khadija-Tul-Kubra/LHC, where they found the dead body of deceased lying on a cot in a residential room of appellant's house. The said lady Head Constable inspected the dead body and

prepared the inquest report Exh.PJ, which was attested by PW-11 Zafar Mehmood Mirza and PW-12 Mirza Babar Iqbal. Application for the postmortem of deceased (Exh.PV) was drafted, however the Investigating Officer stated that the appellant's brothers were not allowing to escort the dead body of deceased to hospital on the ground of having the dispute between the relatives and there is no need of postmortem examination of deceased, due to which the dead body of deceased was escorted to hospital with delay i.e. at 09:00 a.m. in the morning, whereafter the postmortem of deceased was conducted.

9. PW-9 Dr. Kaneez Fatima, Medical Officer, Polyclinic Hospital conducted the postmortem examination of deceased and prepared the report (Exh.PH), which is reproduced as under.

“External Appearance:

A dead body of women wearing Gulabi color shalwar qameez with correspondence holes present on it, Jursy gray color, white buniyan two in number, pajama white color, kareem color brazier soaked with blood.

Injuries

1. *Fire-arm entry wound on the right upper arm below the right shoulder. Wound is on the lateral aspect about 1cmx1cm with blackening (pallet recover from the wound No.1)*
2. *Fire-arm entry wound on the same side on the injury No.1, 6cm below the wound No.1 with blackening around the wound.*
3. *Fire-arm exit wound on the medial aspect of the right arm about 01cmx01cm with everted edges.*
4. *Fire-arm entry wound in the right deltoid area of the right arm with blackening with 1 c.m. x 1 c.m. with inverted edges. Pallet recovered from the wound No.4.*
5. *Fire-arm entry wound on the right upper shoulder area with blackening 01 c.m. x 01 c.m. with inverted edges.*
6. *Fire-arm entry wound on the right back of the chest, lateral aspect of the right scapula just above the axilla with blackening 01 c.m. x 01 c.m. with inverted edges.*
7. *Fire-arm exit wound on the left front side of the chest above the breast near to nipple lateral aspect 01 c.m. x 01 c.m. with everted edges.*
8. *Fire-arm exit wound on the same side of the wound No.7, 03 c.m. away from the wound No.6 with everted edges 01 c.m. x to 01 c.m. Pallet recovered from wound No.8.*
9. *Fire-arm entry wound on the right front chest just below the posterior axillary line 01 c.m. x 01 c.m. with inverted edges.*

Cranium and Spinal Cord

Scalp, skull and vertebra, membranes, brain, spinal cord were found healthy.

Thorax

Walls, ribs and cartilages ruptured, walls ruptured, ribs healthy. Pleurae ruptured. Right lung and left lung both ruptured. Paricardium and heart ruptured.

Larynx and tracheae and blood vessels were found healthy.

Abdomen

Walls, peritoneum, mouth, pharynx and oesophagus, diaphragm, stomach and its contents, pancreas, small intestines and their contents semi digested particles, large intestines and their contents, liver, spleen, kidneys, bladders, organs and generation external and internal were found healthy.

My opinion

In my opinion deceased sustain multiple fire-arm over the upper part of the body, but the injury No.6 resulted ruptured both lungs and heart, most vital organ of the body leading to loss of function and death. All these injuries are antemortem in nature and are sufficient to cause to death in ordinary course of time.

Probable time b/w injury and death

Between injury and death three to four minute, and between death to postmortem ten (10) to twelve hours.

10. PW-16 Muhammad Iqbal/I.O. prepared the rough site plan, got recovered the fire empties from the place of occurrence (P7/1-2), bloodstained *Chadar* and recorded the statements of CW-1 Mirza Parvez Akhtar, Javed Akhtar (both sons of Muhammad Ashraf), Mirza Muhammad Ibrahim son of Muhammad Afzal, Mirza Abdul Qadeer son of Pervaiz Akhtar in the police diary, who affirmed the factum of murder of deceased by the hands of appellant. The Investigating Officer had also taken the last worn clothes of deceased comprising of *Shalwar Qameez* (P9&10), *Banyan* (P11), *Pajama* (P12), *Brazier* (P13), *Jersey* (P14), while the jersey (P14) contains the corresponding holes of fire-arm shots with burning. On 07.02.2015, the Investigating Officer arrested the appellant, who himself surrendered in the police station and during the course of investigation, the appellant disclosed about the weapon of offence i.e. .30 bore pistol that it has been concealed in under-constructed garage in *Haveli* near his house, which was recovered on his pointation, whereby .30 bore pistol (P15) along with magazine

(P16) were taken into possession, regarding which a separate case i.e. FIR No.54/2015, under Section 13/20/65 AO (Exh.PA), was registered and unscaled site plan (Exh.PZ) was prepared. The Investigating Officer also received an affidavit dated 10.02.2015 (Exh.CW-1/1-3) from appellant's brother namely CW-1 Pervez Akhtar. The Investigating Officer dispatched two recovered fire-arm empties of .30 bore pistol, three (03) lead bullets recovered from the dead body of deceased and .30 bore pistol (P15) to the Forensic Science Laboratory on 20.02.2015, 27.02.2015 and 10.03.2015, respectively.

11. It has been observed from the evidence that the appellant was seen by PW-12 Babar Iqbal i.e. brother of deceased, fleeing away from the scene of occurrence after commission of offence as he was living in a house adjacent to the appellant's house. The alleged incident was also notified by the appellant's real brother namely CW-1 Parvez Akhtar through an affidavit, though he was not made a witness by the Investigating Officer in the list of witnesses, but he has been summoned by the Court as CW-1.

12. The thorough inspection of entire record led this Court to the following facts.

- (i) The time of occurrence is referred as 12:15 a.m. in the morning on 06.02.2015, followed by registration of FIR (Exh.PU) at 02:15 a.m. on the complaint (Exh.PL) filed by PW-11 Mirza Zafar Mehmood, real brother of deceased.
- (ii) The deceased was allegedly murdered by her husband (appellant) as referred in the complaint Exh.PL.
- (iii) The inquest report (Exh.PJ) prepared by PW-16 Muhammad Iqbal/I.O., refers the place of occurrence as the residential room of appellant's house.
- (iv) Column No.7 of the inquest report (Exh.PJ) also refers the bloodstained clothes of deceased including jersey with

corresponding holes having burning marks thereon occurred through firing.

- (v) Column No.10 of the inquest report (Exh.PJ) refers 07 fire-arm injuries of .30 bore pistol.
- (vi) PW-9 Dr. Kaneez Fatima, Medical Officer, Polyclinic Hospital pursuant to postmortem examination (Exh.PH) of deceased referred 09 injuries, having 06 fire-arm entry wounds, on the dead body of deceased.
- (vii) Three (03) lead bullets were recovered from dead body of deceased, which were handed over to police.
- (viii) PW-14 Dr. Tanveer Afsar Malik, Medical Officer, Polyclinic Hospital issued the death certificate of deceased Exh.PK, with date of death as 06.02.2015, at about 10:25 a.m., and sent three (03) pellets/*Sikka* taken out from the dead body of deceased on 19.02.2015 to Forensic Science Laboratory, vide letter Exh.PT, for detection of weapon of offence.
- (ix) The Forensic Science Laboratory vide report dated 08.04.2015 (Exh.PAA) confirms that .30 bore pistol recovered at the pointation of appellant and the three (03) lead bullets recovered from the dead body of deceased are matched as the said empties recovered from the place of occurrence believed to have been fired from the weapon of offence.
- (x) PW-1 Khadija-Tul-Kubra/Lady HC examined the dead body of deceased on 06.02.2015 along with the Investigating Officer while preparing the inquest report.
- (xi) PW-6 Malik Amir Shahzad/Draftsman on the pointation of complainant and eyewitnesses prepared the scaled site plan of the place of occurrence (Exh.PE).

- (xii) PW-11 Mirza Zafar Mehmood/complainant, who is the elder brother of deceased, while appearing before the Court stated that her sister (deceased) was married to his paternal cousin Chanzeb Akhtar (appellant), and on 06.02.2015, at about 12:15 a.m. in the midnight, when he was sleeping in his home, CW-1 Parvez Akhtar, brother of appellant, came to his house and informed him about the murder of his younger sister (deceased) at the hands of appellant by way of firing.
- (xiii) PW-11 Mirza Zafar Mehmood/complainant has also explained the reasons of delay in conducting postmortem of deceased and held responsible the family members of appellant as they did not allow the dead body to be escorted for the purpose of postmortem or to initiate the legal proceedings, due to which dead body was escorted to hospital with delay at about 09 a.m. in the morning.
- (xiv) PW-11 Mirza Zafar Mehmood/complainant also became witness of two empties Exh.P7/1-2 of .30 bore pistol from the cot together with bloodstained *Chadar* (P8) and received the last worn clothes of deceased in hospital.
- (xv) PW-11 Mirza Zafar Mehmood/complainant has not suggested any motive for commission of murder/offence committed by the appellant.
- (xvi) He also stated that the rooftop of house of PW-12 Mirza Babar Iqbal, brother of deceased, is near to the house of appellant.
- (xvii) PW-12 Mirza Babar Iqbal acknowledged that three (03) brothers and three (03) of both the parties sisters are married to each other, while the deceased was married to appellant 20/22 years prior to the occurrence and were issueless.

- (xviii) PW-12 Mirza Babar Iqbal stated that houses are adjacent and roofs of both the houses are connected
- (xix) PW-12 Mirza Babar Iqbal on hearing the alarm of fire from the house of appellant went upstairs on the roof of house of CW-1 Parvez Akhtar, who is also his cousin/brother-in-law, and saw the appellant going out of his room holding a pistol in his hand towards outer gate of the Haveli, while at the relevant time, electric bulbs in the courtyard were switched on.
- (xx) The appellant surrendered himself before the police in police station on the next day of the occurrence.
- (xxi) On 09.02.2015, the appellant led the police party to a garage situated in *Haveli* near his house and in presence of PW-16 Muhammad Iqbal/I.O. and PW-13 Ehsan ul Haq/Constable got recovered.30 bore pistol (P15) beneath the seats of car, vide recovery memo Exh.PS.
- (xxii) No one was present inside the *Haveli* at the time of recovery and the garage was an open place.
- (xxiii) The *Haveli* has *Atta Chakki* and an unconstructed garage with a gate.
- (xxiv) The affidavit (Exh.P1/1-3) submitted by CW-1 Parvez Akhtar was taken into possession through recovery memo Exh.PB, attested witness PW-5 Ayyaz Akram, on which objection was raised, whereafter the matter was assailed by the appellant through Criminal Revision No.83/17, whereby this Court, vide judgment dated 20.07.2017, directed the learned trial Court to decide the fate of affidavit in accordance with law.
- (xxv) The affidavit (CW-1/1-3) of CW-1 Mirza Pervez Akhtar discloses that he nominated his brother (appellant) for the

murder of deceased after four days of occurrence and handed over the said affidavit to the Investigating Officer of this case, who made the affidavit as part of the record.

(xxvi) On the application of complainant, the learned trial Court has summoned appellant's real brother namely Mirza Parvez Akhtar as CW-1 to confront the affidavit (CW-1/1-3) submitted by him.

(xxvii) The learned trial Court has also summoned Sami Ullah/Stamp Vendor as CW-2 and confirms the copy of ID card referred as Exh.CW-2, register of stamp vendor, entry of affidavit on stamp vendor (Exh.CW-2/1) and issuance of stamp paper on its verso as Exh.CW-2/2 along with leaflets of stamp paper affidavit as Exh.CW-2/3-5.

(xxviii) Shan Muhammad/ASI, Moharrar Malkhana P.S. Khanna, appeared as PW-2, who handed over the parcels of empties of .30 bore pistol to PW-10 Abdul Haleem/constable for onward transmission to FSL.

(xxix) On 18.02.2015, PW-2 Shan Muhammad/ASI handed over three (03) led bullets of .30 bore pistol to Muhammad Haleem/constable, followed by handing over of .30 bore pistol on 27.02.2015 to PW-15 Shafaqat Ullah/constable for onward transmission to FSL. However during the course of cross-examination, PW-2 Shan Muhammad/ASI acknowledged that the pistol was handed over to him on the day of occurrence.

13. The above referred evidence clearly spells out that Munaza Sultan/deceased was living with her husband Chanzeb Akhtar/appellant on the fateful day i.e. 06.02.2015 and she was murdered with .30 bore pistol by causing 06 firearm injuries on vital parts of body at about 12:15 a.m. in the midnight. The

incident was unseen, however PW-12 Babar Iqbal i.e. brother of deceased, who was living next door had seen the appellant holding a pistol in his hand and leaving his house after the alleged firing. His statement to that effect has been recorded in the following manner:

"I heard the alarm of fire from the house of accused Chanzeb, whereupon I went up stairs on the roof of Pervez Akhtar who is also my cousin and brother in law at the time when the lights of their courtyard and room of accused were on through electric bulbs. I witnessed that accused Chanzeb was coming out of his room holding pistol in his hand and went out of the haveli through the outer gate. At that time the brother of accused Chanzeb Akhtar namely Pervez Akhtar was also present in the courtyard."

14. Similarly, as per complaint submitted by PW-11 Mirza Zafar Mehmood i.e. elder brother of deceased, appellant's brother i.e. CW-1 Parvez Akhtar informed him that the appellant after shooting dead his younger sister (deceased) has fled away from the spot. Both the said witnesses proceeded to house of deceased where dead body of deceased was lying in a cot, whereafter they proceeded to P.S. Koral for submission of complaint (Exh.PA), which was converted into FIR (Exh.PU), and as such, the prosecution story regarding the murder of deceased has been justified by PW-11 Mirza Zafar Mehmood, PW-12 Mirza Babar Iqbal and CW-1 Mirza Parvez Akhtar.

15. On receiving information about the incident, PW-16 Muhammad Iqbal/S.I. along with other police officials, including PW-1 Khadija-Tul-Kubra lady HC proceeded to the place of occurrence, whereafter inquest report Exh.PJ of deceased was prepared, which refers details of injuries in Column No.10 with observation that corresponding holes, including the burning marks, have been seen in the clothes of deceased.

REASONS OF DELAY IN SENDING THE DEAD BODY TO HOSPITAL

16. PW-16 Muhammad Iqbal/I.O. when tried to shift the dead body to hospital for postmortem examination, the family members of appellant interfered

and did not allow the police to proceed with their lawful duties. This aspect has been highlighted by PW-11 Mirza Zafar Mehmood in the following manner:

"The police tried to send the dead body to hospital for postmortem but the family of accused did not allow on the pretext that they would not like to disgrace the dead body of deceased and asked me not to initiate legal proceedings. I requested the police to postpone the escort of body to hospital till the matter is resolved between the family. Due to which the dead body of deceased was escorted to hospital at about 09:00 am on the same day."

PW-11 Mirza Zafar Mehmood on the question of appellant during the course of cross-examination has also explained the circumstances of delay in the following manner:

"I have stated before the police that the brother of the accused had resisted against taking the dead body to hospital for postmortem, on the pretext of its disgrace."

At another occasion, PW-11 Mirza Zafar Mehmood on the question of defence side in cross examination has further explained the delayed factor in the following manner.

"The dead body was dispatched to the hospital at about 09:00 am. We have consulted ourselves regarding the postmortem examination on the dead body of deceased, whereas two brothers of the accused were reluctant for sending the dead body for the postmortem examination. I have not move any application or stated this fact before the police about the resistance and reluctance for taking the dead body for autopsy."

17. Similarly, PW-16 Muhammad Iqbal/I.O. in his examination in chief has elaborated on the delayed factor in the following manner.

"The brothers of the accused were not allowing to escort the body of deceased to hospital, on the ground that dispute is between the relatives, therefore, there was no need for postmortem of deceased. Due to said reason, the dead body of deceased could not be escorted to hospital timely, however, at about 09:00 am, they allowed to escort the body of deceased for postmortem."

18. It is evident at this moment that appellant's real brothers had restricted the police officials to shift the dead body to hospital, rather they intended to hush up the matter on false pretext of disgrace. Hence, the ground of delay in shifting

the dead body to hospital as raised by the appellant has lost its worth and it is not safe to rely upon the same. Although, the police had not initiated any action against the family members of appellant in this regard despite the fact that they were well within their powers to initiate proceedings against the people interfering with the matter at the place of occurrence.

PRINCIPLE OF RES GESTAE

19. Learned counsel for respondent No.2/complainant has argued his case while highlighting the principle of *res gestae* i.e. the chain of circumstantial evidence in which CW-1 Mirza Parvez Akhtar had seen the appellant fleeing away from the place of occurrence after commission of offence. Similarly, PW-12 Mirza Babar Iqbal had also seen the appellant armed with pistol after commission of murder of deceased. Such testimonies fully attract the role of *res gestae* on the strength of Article 19 of the Qanun-e-Shahadat Order, 1984, which is as under:

19. *The facts which though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time or place or at different time and places.*

Illustration:

A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or, shortly before or after it as to form part of the transaction, is a relevant fact.

20. Similarly, Article 20 of the Qanun-e-Shahadat Order, 1984 also relates to similar proposition as it reads that:

20. Facts which are the occasion, cause or effect of facts in issue:-
Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

21. While dealing with the above provisions of Qanun-e-Shahadat Order, 1984, the fact in issue as narrated by PW-12 Mirza Babar Iqbal and CW-1 Mirza Pervaiz Akhtar that the appellant after resorting to firing upon his wife

(deceased) in his bedroom at around 12:15 a.m. in the midnight fled away from the scene while armed with .30 bore pistol has clearly been proved and is admissible evidence against the appellant. The said principle has also been discussed in cases reported as 2018 P.Cr.LJ 841 Islamabad (The State vs. Maheen Zafar), 2015 YLR 73 Peshawar (Feroz Khan vs. The State) and 1993 SCMR 654 (Sultan vs. The State), wherein it has been held that relevant facts before or immediately after the occurrence were to be applied to connect the same with original transaction and those circumstances could not be ignored, rather it creates an effect which was immediately notified by the witnesses to the Investigating Officer, in this case to PW-16 Muhammad Iqbal/S.I. hence, this portion of evidence stands proved and applied in this case.

MEDICAL EVIDENCE

22. The autopsy of deceased was conducted by PW-9 Dr. Kaneez Fatima, who described 09 injuries on the dead body of deceased, including 06 entry wounds on the upper part of the body of deceased, but the surprising feature highlighted in the medical evidence is regarding blackening of entry wounds i.e. Injuries No.1, 2, 4, 5 & 6 while the recovery of pellets from Injuries No.1, 4 & 8 further highlights the conduct of appellant that he had used the weapon of offence at closed range and as such, the blackening at entry wounds further justifies that fires were made from a close range.

23. This Court has taken into account the different citations while considering the question of distance of a firearm, whereby the Hon'ble Lahore High Court while replying upon the book "Medical Jurisprudence and Toxicology by Jaising P. Modi" has observed in case reported as 2018 MLD 410 [Lah] (Muhammad Rizwan vs. The State, etc.) that:

"A suicidal firearm wound is usually a contact wound situated on the side of the temple, depending on which hand was used to shoot himself, in the centre of the forehead, the roof of the mouth, in the

chest or epigastrium in front or the left side and sometimes under the chin. The firearm is usually fired at close range."

24. Similarly, the apex Court has also explained the concept of burning and blackening in PLD 2002 SC 786 (Muhammad Tufail vs. The State) in the following manner:

"Fire arm wound Absence of burning and blackening around the wounds Effect Where there was no burning and blackening present around the wound the same itself suggested that shot was fired from longer distance than nearer distance but such fact was also dependent upon the kind and quality of gun powder used in the cartridges and the length of barrel and its diameter at muzzle end."

25. We have also taken into account the view of the Hon'ble Peshawar High Court reported in 2018 YLR 282 [Peshawar] (Haji Qasim Kkhan vs. Kabir Khan, etc.) wherein it has been held that:

"11. In view of the Modi Medical Jurisprudence and Toxicology favorite sites of suicidal fire-arm are:-A suicidal firearm wound is usually a contact wound situated on the side of the temple, depending on which hand was used to shoot himself, in the center of the forehead, the roof of the mouth, in the chest or epigastrium in front or left side and sometimes under the chin. The firearm is usually fired at close range. A small weapon like a revolver or a pistol is held in the hand, while a rifle or a shot gun is supported on the ground or against the wall. Sometimes, the firing is done by pulling a string tied to the trigger by the big toe. The skin around the entry wound shows characteristics blackening."

26. Likewise, the Hon'ble Sindh High Court in recent judgment reported as 2018 PCr.LJ Note 52 (Nooro alias Noor Muhammad Sehar vs. The State) has observed that:

"Blackening on entrance wound---Effect---Principle---Blackening on entrance wound would show that fire shot was made from near range under three feet."

27. Similarly, the Hon'ble Lahore High Court had also taken a view regarding the concept of blackening in the case of Muhammad Riaz reported as (PLJ 1996 Cr.C (Lahore) 1789), wherein it has been held that:

"Blackening with pistol is present when it is fired from a distance of one foot and not from 4 or 5 feet."

28. Whereas, the Hon'ble Sindh High Court on the concept of distance has taken the view in the case of Mir Muhammad reported as (1972 PCr.LJ 1108 Karachi), wherein it has been observed that:

"The distance from which gun was fired can be estimated by blackening, burning, or the diameter of the wound caused by gun shot."

29. While considering the above effects highlighted in autopsy report (Exh.PH/1-4) by PW-9 Dr. Kaneez Fatima and Dr. Tanvir Afsar Malik/MLO, this Court confidently holds that the appellant had a clear cut intention to commit murder in a desperate manner having serious rage in back of his mind, which has otherwise been observed due to repetition of firearm injuries from a close range and causing immediate death of deceased in her bedroom on a cot. Similarly, PW-16 Muhammad Iqba/I.O. while preparing the inquest report Exh.PJ with the help of PW-1 Khadija-Tul-Kubra/LHC also confirmed the corresponding holes with feature of blackening in the following manner.

"خون آلودہ پرچاجات پوشیدنی میں اور جرسی پر فائرنگ سے سوراخ ہیں اور سوراخ کے نشانات جلے ہوئے ہیں۔"

The above referred aspect left nothing to disbelieve the intention of the appellant, who intended to commit murder of his wife by using a fire-arm from a close range.

RECOVERY OF WEAPON OF OFFENCE

30. PW-16 Muhammad Iqbal/S.I. stated that the appellant surrendered himself on 07.02.2015 in Police Station in connection with murder of his wife (deceased) and on 09.02.2015, the appellant got recovered .30 bore pistol used in the alleged occurrence from a garage situated in *Haveli*. PW-16 Muhammad Iqbal/I.O. has explained the recovery in the following manner.

"He concealed the weapon of offence .30 bore pistol in under constructed garage, in haveli, which is near to his house and he could recovered the same by leading police party. Upon said disclosure, I along with said police officials and accused left the Police Station through private

vehicle. The accused led the police party to his haveli where a machine of flour (atey ki chakki) was installed by him. The said haveli is situated in village Phind Malkaan, Islamabad. When we reached to said vehicle the accused got stopped the vehicle, we deboarded from the vehicle under the lead of accused who took us inside of said haveli and from under constructed garage, underneath the old seat of vehicle lying there, he got recovered .30 bore pistol (P15) along with magazine P16. I checked the magazine of said pistol which was found empty."

31. The above referred facts disclose the special knowledge of concealment of weapon of offence (P15) by the appellant, which was not known to anyone else, even the site plan of place of recovery (Exh.PZ), prepared by PW-6 Malik Amir Shahzad/Draftsman, discloses that the entire compound has a main gate and no one was present in the said compound as the same was being exclusively managed by the appellant.

32. The other recovery witness namely PW-13 Ehsan-ul-Haq/HC also narrated similar facts as brought on record by PW-16 Muhammad Iqbal/S.I. and nothing favourable was brought on record by the appellant in the cross examination. Although, it has not been denied that any notable person has not been joined in recovery proceedings by the Investigating Officer and even the garage from where the recovery of weapon of offence was effected, is an open place, although the place was open but the same was within the compound and the placement of weapon was in exclusive knowledge of the appellant, hence the recovery of weapon of offence could not be disbelieved.

33. We have also considered the objection raised by the appellant regarding the statement of PW-2 Shan Muhammad/Moharrar Malkhana, who is not a recovery witness, but during the course of cross-examination, when he was asked different questions regarding the sealed parcel of empties of .30 bore pistol, the answer has been written as, "*sealed parcel of pistol was handed over to me on the day of occurrence.*" This aspect has been considered minutely by this Court with reference to examination-in-chief and it has been observed that a

typographical error has been occurred as “sealed parcel of pistol” has been written instead of “sealed parcel of empties of .30 bore pistol”, therefore, this aspect could not be resolved in favour of the appellant on account of it to be a typo.

FORENSIC SCIENCE LABORATORY REPORT

34. We have gone through the Forensic Science Laboratory Report (Exh.PAA), dated 08.04.2015, whereby two crime cartridges of .30 bore pistol collected by PW-16 Muhammad Iqbal/I.O. from the place of occurrence through Exh.PN were found matched with the pistol (P15), which was dispatched to the FSL on 27.02.2015, even otherwise, the parcel contained three (03) *Sikka Goli* (pellets) recovered from the dead body of deceased also *“belong to one group and had been fired from the pistol recovered on the pointation of appellant”*. This aspect clearly establishes that .30 bore pistol (P15) was used by the appellant in the alleged crime and same has been found matched, even three (03) of the slugs/pellets recovered from the dead body of deceased were found to be fired from said pistol and as such, there is no discrepancy in the entire evidence of FSL. However, the appellant has highlighted one aspect that the weapon of offence was dispatched to the FSL with delay on 27.02.2015 and the weapon of offence remained in Police Station. This stance is just to be considered as procedural in nature and no benefit could be extended to the appellant, especially when three (03) slugs/*Sikka Goli* recovered from the dead body of deceased were found matched to be fired from same pistol got recovered by the appellant, therefore, the delay in sending the weapon of offence has no legal effect in favour of appellant in this case.

CONDUCT OF APPELLANT

35. The conduct of appellant is not above board as he had not brought on record any valid reason for non-submission of complaint regarding murder of

his wife (deceased) to the Police Station, rather he fled away from the scene. Similarly, the motive has not been established in this case nor brought on record by any of the party; therefore, the appellant is the best man to justify his position as his wife was murdered in his room at odd hours of the night. In such circumstances, the absence of motive or lack of motive or the cases where motive has been shrouded in mystery is immaterial as it will not affect the case of prosecution. Reliance is placed upon 2008 SCMR 1106 (Muhammad Latif alias Teeefa vs. The State). Even, the lack of motive is immaterial to withhold normal penalty of death in murder case, when trustworthy evidence had squarely brought home the guilt against the accused beyond any doubt. Reliance is placed upon PLD 2007 SC 453 (Nazakat vs. Hazrat Jamal, etc.). Similarly, this principle has also been discussed and appreciated in cases reported as 2006 SCMR 1796 (Nasir Shah vs. The State) and 2008 SCMR 997 (Musa vs. The State).

IDENTIFICATION OF APPELLANT/ACCUSED

36. Another important aspect argued by the appellant side is the identification of appellant by PW-12 Babar Iqbal, who had allegedly seen the appellant holding pistol in his hand after the alleged murder of deceased from his roof, which is next to the place of occurrence. We have gone through the scaled site plan of place of occurrence (Exh.PE/1-2), which discloses the availability of light at Points No.3 & 4, while these two points have also been referred in the unscaled site plan prepared by PW-16 Muhammad Iqbal/I.O., hence the prosecution has justified the presence of light in courtyard at the time of occurrence, when appellant was fleeing away from the scene after commission of offence, even otherwise, PW-12 Babar Iqbal, who is the cousin of appellant as well as (brother-in-law/سالا) and the next door neighbor, had seen the appellant from his roof after hearing the fire shots. There is no denial that appellant and PW-12 Babar Iqbal are close relatives and the identification of a close relative,

even in low light, is not a big deal. Reliance is placed upon 2019 SCMR 610 (Muhammad Akram alias Akrai vs. The State).

EFFECT OF STATEMENT OF CW-1 MIRZA PERVEZ AKHTAR

37. CW-1 Mirza Pervez Akhtar was called by the Court as his affidavit was appended with the final report submitted by PW-16 Muhammad Iqbal/I.O., which was taken into possession vide recovery memo Exh.PB, dated 11.02.2015, in the Police Station. Although, said court witness was not notified as a witness in the calendar of witnesses and this aspect was confronted to PW-16 Muhammad Iqbal/I.O. by the Court, to which the said PW had answered in the following manner:

"I did not state any reason for taking affidavit. It is incorrect to suggest that the affidavit had also been taken subsequently without the involvement of Mirza Pervaiz Akhtar. I did not array Pervaiz Akhtar and Javed Akhtar as witness in report U/S 173 Cr.P.C. I have not stated any potential reason for not arraying the said two persons as a witness in the calendar of witnesses.

(Court Question) (Why the above said witnesses were not arrayed as PW in the calendar of witnesses? Ans. I was apprehending that being brothers of the accused they might resile from evidence lateron).

The affidavit was given to me by PW Pervaiz Akhtar in police station, therefore, I placed the same in file. It is incorrect to suggest that any affidavit was given by the said witness which was fraudulently and with fait-comply managed by me as I.O. I did not record the statement of any stamp vendor. I did not take recourse in my investigation to record the family history of the parties. I do not remember as to whether in any other criminal case I had excluded the close relatives and brothers from the array of witnesses just because of close relationship."

38. The above referred admission is the turning point of this case as the statement of CW-1 Mirza Pervaiz Akhtar in shape of affidavit Exh.CW-1/1-3 was also assailed before this Court in Crl. Revision No.83/2017 by the appellant, which was decided by this Court vide order dated 20.07.2017, whereby the learned Trial Court was directed to decide the status of affidavit Exh.CW-1/1-3 before pronouncement of the final judgment, however the learned Trial Court

while deciding the matter received another application from the complainant side under Section 540 Cr.P.C. and declared that CW-1 Mirza Pervaiz Akhtar recorded his statement in the course of investigation in daily diary of the Investigating Officer and the said CW was summoned as court witness along with stamp vendor, who had issued the stamp papers. The said aspect is noted in order sheets of 26.01.2018, 30.01.2018, 10.02.2018 & 17.02.2018, and as such, no objection was raised by the appellant side in this regard, therefore, the affidavit has been exhibited on record and plays an important role in the entire case. For ready reference, the affidavit Exh.CW-1/1-3 is reproduced as under:

منکہ مسمی مرزا پرویز اختر ولد مرزا محمد اشرف ساکن پنڈ ملکان ڈاکخانہ خاص تحصیل و ضلع اسلام آباد کا رہائشی ہوں اور مندرجہ ذیل بیان حلفی تحریرا دیتا ہوں کہ: میں خود اور میرا چھوٹا بھائی چن زیب اختر ایک ہی حویلی میں رہائش پذیر ہیں۔ میرے پاس نو کمرے زیر استعمال ہیں جبکہ چن زیب کے پاس دو کمرے زیر استعمال ہیں۔ چن زیب میرا چھوٹا بھائی ہے مورخہ 5 اور 6 فروری 2015 کی درمیانی رات میں خود اور میری بیوی اپنے رہائشی کمرے جو کہ چن زیب کے کمرے کے ساتھ ہیں سوئے ہوئے تھے چن زیب کے کمرے میں فائرنگ کی آواز سن کر میں فوری طور پر صحن میں آیا تو دیکھا کہ میرا چھوٹا بھائی چن زیب اختر حویلی کے گیٹ سے باہر کی طرف بھاگ رہا تھا۔ اور اس کے رہائشی کمرے کا دروازہ کھلا تھا فوری طور پر اس کے رہائشی کمرے کی طرف گیا تو اس کی بیوی منزہ سلطانی بی بی مردہ حالت میں چارپائی پر پڑی تھی۔ اسکی نعش دیکھ کر میں فوری طور پر حاجی مرزا ظفر محمود جو کہ میرا چچا زاد بھائی ہے اور منزہ سلطانی کا حقیقی بھائی ہے اس وقوعہ قتل کی اطلاع کرنے اس کے گھر گیا اور اس کو اطلاع دی کہ آپ کی بہن کو میرے بھائی چن زیب اختر نے فائرنگ کر کے قتل کر دیا ہے اور اس کی نعش چارپائی پر موجود ہے اور چن زیب اختر خود بھاگ گیا ہے۔ اطلاع پا کر حاجی ظفر محمود میرے ساتھ آیا اور بعد میں میں خود حاجی ظفر محمود کے ساتھ اطلاع کرنے تھانے آیا۔"

39. CW-1 Mirza Pervaz Akhtar while appearing before the Court had been confronted with his affidavit Exh.CW-1/1-3, whereby he acknowledged his signature and thumb impression thereon, however he denied the contents mentioned therein and submitted the reason that he and his brother PW-11 Mirza Zafar Mehmood were engaged in a business, while he used to purchase stamp papers in connection with the same and handed over blank stamp papers along with his ID for using the same. However, during the course of cross-examination, he acknowledged the presence of his signature on CNIC, rather thumb impression. He further acknowledged that neither the Investigating Officer/police officials have no enmity with him, nor has PW-11 Mirza Zafar

Mehmood (brother). However, he stated in loud words that *I have not challenged the said affidavit and its contents before any Court. Stamp vendor or typist has no enmity with me.* He has also no objection for verification of his signature by way of comparison and he also stated that *I did not move any application before any authority or before this court up till now regarding the contents of affidavit and signature over it about falseness thereof.*

40. The submission of affidavit Exh.CW-1/1-3 has also been taken into account with the testimony of CW-2 Sami Ullah, who stated in Court that Stamp Paper No.3892, dated 10.02.2015, was issued by him to CW-1 Pervaiz Akhtar son of Mirza Muhammad Ashraf, resident of Phind Malkknaa, Islamabad, having CNIC No.61101-8535463-9, and has also given the endorsement at the back of stamp paper, who himself purchased the said stamp paper after putting his signature on register in his presence. He also verified that CW-1 Pervaiz Akhtar had purchased three (03) stamp papers, each of Rs.20/-, for the purpose of affidavit and the counter files of those stamp papers have been referred as Exh.CW-2/3-5. On Court's question, CW-2 Sami Ullah further verified that, *"it is correct that I typed stamp paper No.AC405664 in Urdu what was stated by deponent Pervez Akhtar and I read over contents to him who admitted the same as correct and signed the same.*

41. The above referred statement of CWs, if considered in the light of statements of PW-11 Zafar Mehmood/complainant and PW-16 Muhammad Iqbal/I.O., there is nothing left in favour of appellant as his own brother CW-1 Mirza Pervez Akhtar by way of submission of his affidavit Exh.CW-1/1-3 had vowed that he had seen the appellant fleeing away from the scene of occurrence after commission of offence, whereafter he informed PW-11 Zafar Mehmood/complainant regarding the alleged incident and this aspect was also noted by PW-16 Muhammad Iqbal/I.O. that the complainant came to Police

Station in late hours of night with appellant's brother i.e. CW-1 Mirza Pervez Akhtar. This circumstantial chain links all the facts relating to the crime and prosecution has successfully proved this chain of evidence, although CW-1 Mirza Pervez Akhtar tried to escape from his acknowledgment being a court witness, which itself is a negation of Quranic injunctions as laid down in Verse 283 of the Surah Al-Baqarah, which reads as follow:

"اور گواہی کو نہ چھپاؤ اور جو اسے چھپالے وہ گنہگار دل والا ہے اور جو کچھ تم کرتے ہو اسے اللہ تعالیٰ خوب جانتا ہے۔"

Similarly, Verse No.135 of Surah An-Nisa reads that:

"اے ایمان والو ! عدل و انصاف پر مضبوطی سے جم جانے والے اور خوشنودی مولا کیلئے سچی گواہی دینے والے بن جاؤ گو وہ خود تمہارے اپنے خلاف ہو یا اپنے ماں باپ کے رشتہ داروں عزیزوں کے وہ شخص اگر امیر ہو تو اور فقیر ہو تو دونوں کے ساتھ اللہ کو زیادہ تعلق ہے اس لیے تم خواہش نفس کے پیچھے پڑ کر انصاف نہ چھوڑ دینا تو جان لو کہ جو کچھ تم کرو گے اللہ تعالیٰ اس سے پوری طرح باخبر ہے۔"

42. The Allah Almighty has directed every individual not to suppress any testimony and he, who conceals the testimony/evidence, is a sinful of heart. The directions given in the above mentioned Quranic injunctions further impose an obligation upon the individual to give "سچی گواہی" whether it is against one's own family members, parents or kinsmen, this aspect left nothing to hide or conceal, therefore, if CW-1 Mirza Pervez Akhtar intends to hide the evidence recorded by him in shape of affidavit, the same has to be considered in the light of statement of three witnesses of the prosecution, where the dead body of deceased was not allowed to be transmitted to hospital, which shows their willful abetment in the crime or considered to be harboring the offender i.e. the appellant and as such, all three brothers are liable in such type of conduct.

43. The entire chain of events imposes a duty upon appellant to explain his position, especially when a vulnerable dependent i.e. his wife Munaza Sultan was done to death inside the house as well as in bedroom of appellant. The appellant is under heavy onus to explain as to why his wife (deceased) met with an unnatural death, especially when the weapon of offence i.e. pistol (P15) was

recovered on his pointation. However, no logical explanation was rendered by the appellant to discredit the medical and forensic evidence or the testimonies of PW-11 Zafar Mehmood/complainant and PW-12 Babar Iqbal/last seen witness.

44. In this context, we have also gone through the judgments reported as 2005 SCMR 1524 (Arshad Mehmood vs. The State), 2015 SCMR 710 (Saeed Ahmad vs. The State), 2011 SCMR 941 (Abdul Majeed vs. The State), PLD 2017 SC 681 (Asad Khan vs. The State), 1991 P.Cr.LJ 113 (Afzal Hussain Shah vs. The State), 2018 P.Cr.LJ 242 (Syed Tahir Shah vs. The State), 2003 SCMR 855 (Muhammad Akram vs. The State) and 2016 SCMR 1628 (Nazir Ahmad vs. The State), wherein it has been held that the burden of proof never shifts upon the accused, however it is the responsibility of accused in such circumstances where a wife or a vulnerable dependent had met an unnatural death within confines of the house of accused, such helpless and weak person requires protection and care and it would not be sufficient for the accused to stay silent in circumstances which tend to incriminate him and if he elects to do, he lightens the burden of the prosecution. The case of *Saeed Ahmad supra* has further highlighted the duties of the accused in the following manner:

“Article 122 of the Qanun-e-Shahadat Order too stipulates that if a particular fact is especially within the knowledge of any person the burden of proving that fact is upon him. In the present case the prosecution had established its case against the appellant; two eye-witnesses had deposed against him and the medical evidence confirmed strangulation of the deceased. The appellant did not attend to the last rites of his wife who had died whilst residing with him, he also did not inform the police nor took his wife to a hospital and disappeared for two months, such circumstances corroborate the prosecution case in the absence of the appellant offering a reasonable explanation for his unnatural conduct.”

45. Keeping in view the above ratio, the appellant has failed to explain his conduct in this case, even his brothers and family members had tried to protect him and concealed the evidence, rather tried to destroy the prosecution evidence to favour him. Similarly, his own brother CW-1 Mirza Pervaiz Akhtar concealed the testimony to protect the offender in this case, such conduct is highly

condemnable and could not been taken lightly. All these factors, if placed in juxtaposition with the testimonies of PW-11 Zafar Mehmood and PW-12 Babar Iqbal i.e. the witnesses of last seen/res gestae coupled with recovery of weapon of offence, which has been confirmed through FSL report Exh.PAA along with the details of injuries given by PW-9 Dr. Kaneez Fatima/MLO, there is no other conclusion except that the appellant had committed the offence of murder of his wife in a gruesome, shocking and dreadful manner by repeating the firearm shots at a close range, which otherwise expressed his intention of committing a certain murder and nothing else, even the appellant had not denied his presence in unequivocal terms at the time and place of occurrence nor the same could be infirmed from his statement recorded under Section 342 Cr.P.C., therefore, the circumstantial chain of evidence is proved without any missing link and the combined effect establishes the guilt of appellant beyond any shadow of doubt.

46. Besides the above referred position, no motive has been brought on record by the prosecution nor even suggested in this case, neither any reason or a clue has been reflected from record as to why a lady (deceased) was murdered in a ruthless manner in her own bedroom. Such silence of motive, however, has been considered immaterial as a mitigating circumstance as held by the apex Court in the cases of *Nasir Shah and Musa supra*, but this aspect could not been taken lightly as the appellant has been charged under Section 302(b) PPC for causing murder of his wife in their own bedroom and it is not imaginable to a prudent mind that a murder in such a brutal manner could be done without a reason or motive, therefore, it could safely be held that motive has been concealed by either party due to family honor as insinuation can be taken from the statements of prosecution witnesses that family members of appellant restricted the police party for about six (06) hours in shifting the dead body of deceased to hospital for the purpose of postmortem examination.

47. In view of above discussion, the captioned Criminal Appeal No.08/2018 (Chanzeb Akhtar vs. The State, etc.) and Jail Appeal No.130/2018 (Chanzeb Akhtar vs. The State) are hereby **DISMISSED**. However, the death sentence awarded to the appellant by the learned Trial Court, vide impugned judgment dated 17.07.2018, has been **CONVERTED** into **LIFE IMPRISONMENT** for the reasons mentioned in preceding paragraph. Accordingly, the captioned murder reference is answered in **NEGATIVE** and death sentence awarded to the appellant is **NOT CONFIRMED**.

48. Before parting with this judgment, it is necessary to hold that the appellant's brother i.e. CW-1 Mirza Pervez Akhtar has withheld the testimony and even as per the sayings of Holy Quran, he has been considered as a dishonest man as he had concealed the crime of a murder within his own house. Similarly, the conduct of appellant's other brothers in causing delay in shifting of dead body to a hospital makes them part of this worst crime in the family, although this Court, at this stage, is not in a position to prosecute them for their conduct and dishonesty, but it is necessary to record their conduct in this judgment for rest of their lives.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 23.04.2020.

JUDGE

JUDGE

*** APPROVED FOR REPORTING ***

Khalid Z.