

JUDGMENT

ATHAR MINALLAH, C.J.---Through this consolidated judgment, we intend to answer the instant Murder Reference No.01 of 2015 and decide Criminal Appeal No.18 of 2015 titled 'Qamar Zaman v. The State, etc.'. The Murder Reference and the appeal stem from the judgment, dated 20-01-2015, rendered by the learned Sessions Judge, Islamabad (East), whereby Qamar Zaman, son of Ali Muhammad, (hereinafter referred to as the 'appellant') has been convicted and sentenced in the following terms:--

"In view of foregoing elaboration and discussion, it is safe to conclude that the accused Qamar Zaman has committed murder of both the deceased Mst. Rubina Kausar and Syed Sibtain Shah to the satisfaction of judicial mind. Therefore, while holding the accused guilty of murder of both the deceased he is convicted and sentenced under section 302-B, P.P.C. and is awarded normal penalty of death with two counts. He be hanged from his neck till his death but subject to confirmation of sentence by the honorable Islamabad High Court.

The accused is directed under section 544-A, Cr.P.C. to pay compensation of Rs.100,000/- 100,000/- to the legal heirs of each of the deceased. In case of failure of accused to pay the said compensation he would have to suffer six months S.I.

2. The facts, in brief, are that criminal case i.e. FIR No.315, dated 06.07.2012 (Exh.P-A/1) was registered under section 302 of Pakistan Penal Code, 1860 (hereinafter referred to as the 'PPC') by Muhammad Razzaq, son of Gulab Khan (PW-7) (hereinafter referred to as the 'complainant'). The said FIR was registered pursuant to written complaint (Ex.P-A). The case of the prosecution is that on 05.07.2012, at about 11 am, the complainant received information that the appellant had killed the former's daughter, namely, Rubina Kausar (hereinafter referred to as the 'deceased No.1') in their house by firing at her using a pistol. Deceased No. 1 was married to the appellant. On receiving this information, the complainant rushed to the house of the appellant where he found the dead body of his daughter lying on the kitchen floor while that of another person, namely, Sibtain Shah, son of Saqlain Shah (hereinafter referred to as the 'deceased No.2') in the adjacent room. The appellant was alleged to have killed them. At almost the same time, Muhammad Hanif, Sub-Inspector, posted at Police Station Sihala, Islamabad (hereinafter referred to as the 'Investigating Officer'), who was later entrusted investigation of this case, also received information and reached the crime scene. The latter prepared an un-scaled site plan (Exh.PW-12/1) and collected blood on cotton and after making parcels, took them into possession vide recovery memo Exh.P-C and Exh.P-D, respectively. The Inquest Reports of both the deceased were also prepared, which were tendered in evidence as Exh.PW-2/8 and Exh.P-M/1. The Investigating Officer collected four empties (Ex.P1/1-4) from the crime scene and took them into possession vide recovery memo (Exh.P-B). The bodies of both the deceased were sent to Pakistan Institute of Medical Sciences (hereinafter referred to as the 'Hospital') where the autopsy of deceased No.1 was conducted by Dr. Nasreen Butt (PW-2) at 05:00 a.m. on 06-07-2012. The latter prepared the autopsy report (Exh.P-2/1) which shows that there were five entry wounds on the deceased's body. Likewise, Dr. Muhammad Farrukh Kamal (PW-4) conducted autopsy of deceased No.2 at about 09:00 a.m. on 06-07-2012 and he duly recorded his findings in the autopsy report (Exh.P-M). The said report records three entry wounds on the body of deceased No.2. On 06-07-2012, the Investigating Officer left the crime scene for about thirty (30) minutes and returned with the appellant, who was in his custody. The latter led the Investigating Officer the recovery of a .30 bore pistol (Exh.P-7) from under the pillow, which was taken into possession vide recovery memo. (Exh.P-F). Three live bullets were found in the chamber of the pistol and they were taken into possession by the Investigating Officer vide recovery memo (Exh.P-F). The Investigating Officer inquired from the appellant regarding the licence and on his failure to produce one, a separate criminal case i.e. FIR No.316/2012 was registered. The last worn clothes of both the deceased were taken into possession vide respective recovery memos. On 11-07-2011, Malik Amir Shahzad, Draftsman (PW-3), visited the crime scene and prepared a scaled site plan (Exh.P-3/1). On 07-09-2012, sealed parcels containing the recovered empties, pistol and blood stained cotton were delivered at the Punjab Forensic Science Agency, Lahore (hereinafter referred to as the 'Agency'). The latter, vide report dated 04-02-2013 (Exh.PH), confirmed the presence of human blood on the samples collected from the crime scene. Likewise, vide report dated 31-12-2013 (Exh.PJ), the Agency concluded that the empties did not match the recovered pistol. The learned trial Court framed the charge vide order, dated 02-10-2012, to which the appellant did not plead guilty and consequently trial proceedings were commenced. The prosecution produced twelve witnesses. The appellant preferred not to be

examined on oath and, therefore, his statement was recorded under section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Cr.P.C.'). On conclusion of the trial and affording an opportunity of hearing to the parties, the learned trial Court convicted and sentenced the appellant in the terms reproduced above. The learned trial Court has sent the Murder Reference for confirmation of the death sentence while the appellant has challenged his conviction and sentence by preferring the instant appeal.

3. The learned Counsel for the appellant has contended that; the motive is shrouded in mystery; the complainant, in his complaint, did not state the source through which he got information regarding the murder of his daughter; the complainant himself was nominated as an accused by the appellant; the appellant was arrested from the Police Station when he went there to report the murder of his wife and the other deceased; there are material contradictions in the testimony of the witnesses; it was an unseen occurrence; the witnesses who had deposed on behalf of the prosecution could not withstand the test of cross-examination; the statements of the private witnesses were recorded under section 161 of the Cr.P.C. after a considerable delay, which was not explained by the Investigating Officer; delay in recording of statements of witnesses, without furnishing any plausible explanation, is fatal to the prosecution case and such statements cannot be relied upon; reliance has been placed on the cases of 'Rahat Ali v. The State' (2010 SCMR 584), 'Abdul Khaliq v. The State' [1996 SCMR 1553], 'Imran Ashraf and 7 others v. The State' [2001 SCMR 424]; the report of the Agency was negative; recovery of the weapon was doubtful; the statement of PW-8 and 9 were recorded by the Investigating Officer on 22-07-2012 whereas the occurrence had been taken place on 05-07-2012; the testimonies of PWs-7, 8 and 9 cannot be relied upon; the medical evidence brought on record also does not confirm the time when the bodies had arrived at the Hospital; the complainant had at no stage during the investigation raised any doubt regarding its fairness and credibility; the prosecution story was an afterthought; the murders were committed by the complainant himself because he suspected both the deceased of illicit relationship; the prosecution failed to prove its case beyond a reasonable doubt.

4. The learned Counsel for the complainant has argued that; the deceased No.1 was the daughter of the complainant and the latter had absolutely no reason to falsely implicate the appellant; the prosecution had proved its case beyond a reasonable doubt by bringing on record unimpeachable and trustworthy evidence; the motive was setup by and on behalf of the appellant as is obvious from the suggestions made to the complainant while being cross-examined; admittedly, the crime scene was the house of the appellant and, therefore, the latter was under an obligation to give plausible explanation regarding the murder of his wife and the other deceased; the stance taken by the appellant while recording his statement under section 342 of the Cr.P.C. does not appeal to a prudent mind; since the crime scene was the house of the appellant, therefore, the latter was at least required to have volunteered to enter the witness box and testify under oath; absence of motive is not fatal; reliance has been placed on the cases of 'Khurram Malik and others v. The State and others' [PLD 2006 SC 354], 'Arshad Mehmood v. The State' (2005 SCMR 1524); the negative report of the Agency is inconsequential; reliance has been placed on the cases of Khalid Rasheed v. The State [2012 MLD 1274], 'Safdar Abbas and 4 others v. The State' [2008 MLD 1007]; a heavy onus was placed on the appellant to explain the murders having taken place in his house; reliance has been placed on the cases of 'Saeed Ahmed v. The State' [2015 SCMR 710], 'Arshad Mehmood v. The State' [2005 SCMR 1524] and 'Muhammad Akram v. The State' [2003 SCMR 855].

5. The learned counsel have been heard and the record perused with their able assistance.

6. The appellant and deceased No.1, besides being spouses were related to each other as cousins. The complainant is the maternal uncle of the appellant. The appellant and deceased No.1 had lived together for almost fourteen years prior to the occurrence. The couple was not blessed with children despite being married for a considerably long time. Except for the statement of the complainant, there is nothing on record to suggest that the relationship of the couple was strained or that the differences were of such a nature that could have led to taking the life of the wife. Rather, the complainant had testified that both had visited his house in the evening of the fateful day and that they had left together an hour before the occurrence. The deposition of the complainant does not give the impression that the relationship of the couple was strained. There is also nothing on record to explain the presence of deceased No.2 at the house of the appellant or his relationship with the latter or deceased No.1. The complaint and FIR are silent regarding the motive, nor could the prosecution bring on record trustworthy

evidence to establish any motive attributed to the appellant for taking two lives. In support of the prosecution's case, five private witnesses had entered the witness box. Syed Husnain Shah, son of Syed Saqlain Shah (PW-5), who was brother of deceased No.2, testified in his examination-in-chief that the Investigating Officer had prepared the Inquest Report (Exh.P-M/1) and that he was named as a witness. According to the testimony of the Investigating Officer, who was examined as PW-12, the inquest report was prepared when he had visited the crime scene on the day of the occurrence while, during cross-examination, Syed Hasnain Shah had deposed that he was informed about his brother's death at 10 am and that when he reached the Hospital the autopsy had already been conducted. This raises doubt regarding the presence of this witness at the time when the inquest report had been prepared by the Investigation Officer. Haji Muhammad Nazir, son of Gulab Khan, appeared as PW-6 and deceased No.1 was his niece. He also testified that he was present when the Investigating Officer had prepared the Inquest Report. In his cross-examination, he stated that he was informed about the murder at 09:00 p.m. on 06-07-2012 and that thereafter he went to the Hospital. He stated that he had visited the crime scene at 08:30 p.m. According to his testimony the entrance door of the house was locked and that the lock was broken by the police officials while the complainant (PW-7) contradicts this statement by deposing that he arrived before the police officials and that on arrival the latter searched the house. There is no mention of breaking locks by the police. The timings mentioned in PW-6's testimony were contradicted by depositions of other witnesses. The complainant had entered the witness box as PW-7. In his examination-in-chief he had deposed that the couple had visited his house on the day of occurrence and had left at 10:00 p.m. while he received information regarding the occurrence at about 11:00 p.m. According to him the Investigating Officer had left the crime scene for about 30 minutes and when he returned the appellant was in his custody and that the latter was handcuffed. He further deposed that the appellant had led to the recovery of the firearm weapon i.e. 30 bore pistol from underneath the pillow. Furthermore, in his cross-examination he took an altogether different stance. He deposed that when the Investigating Officer reached the crime scene, he carried out a search of all the rooms of the house and that it was during the said search that the firearm weapon i.e. 30 bore pistol was recovered. Anwar Hussain Shah son of Iqbal Hussain Shah (PW-8) had deposed that, while returning from his in-laws' house at about 10/10:30 p.m. on 05-07-2012, he saw the appellant and the deceased No.2 disembarking from a taxi and entering the house and that on the following day he was informed that deceased No.2 had been murdered. The statement of this witness was recorded on 22-07-2012 and there is no plausible explanation given by him or the Investigating Officer for the delay in recording his statement under section 161 of the Cr.P.C. During his cross-examination he had stated that when he reached Chatta Pul, he looked back and saw the appellant and deceased No.2 entering the house. The statement of Syed Sajid Hussain Shah, son of Syed Hussain Shah, who had entered the witness box as PW-9 is quite intriguing to a reasonable prudent mind. He had deposed that on 05-07-2012, at about 11:00 p.m, while he was returning to his house from the mosque, he heard shots fired in the house of the appellant. According to his examination-in-chief, the latter came out from the house and in response to his query he stated that he had murdered deceased No.1 and deceased No.2. The statement of this crucial witness was recorded by the Investigation Officer under section 161 of the Cr.P.C. on 22-07-2012. Deceased No.2 was the nephew of this witness and surprisingly he did not promptly inform any person regarding what he had witnessed on the fateful night, except his wife and some persons the next day during the funeral of deceased No. 2. But his deposition is not supported by any other witness. No reasonable prudent person would remain silent after being told by the perpetrator that he had killed his nephew.

7. We have carefully gone through the statements of the above mentioned private witnesses and have not been able to persuade ourselves that they are confidence inspiring, credible or trustworthy for handing down a conviction. The material contradictions highlighted above raise serious doubts regarding the veracity and trustworthiness of the depositions. Moreover, the arrest of the appellant is shrouded in mystery.

8. A person can be convicted of a criminal offence on the basis of unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case has to be resolved in favour of the appellant. Reliance is placed on the case of 'Muhammad Khan and another v. The State'

(1999 SCMR 1220). It would be pertinent to refer to the principles and law enunciated by the august Supreme Court in the case titled 'Abdul Wahab alias Rehra v. The State' (1999 SCMR 1668) relating to establishing a motive for committing a criminal offence and its significance for convicting an accused. The august Supreme Court, after examining the earlier precedent law, has held and observed as follows:--

"Motive shrouded in mystery" is not a legal principle which can be applied in all murder cases for reduction of capital sentence where there is no motive alleged/proved by the prosecution or where initially a motive is alleged but the same is not proved or withdrawn or a different motive appears in the prosecution evidence. "Motive shrouded in mystery" by itself is not a mitigating circumstance for lesser sentence. Where there is no motive alleged but the guilty of the accused is otherwise established on the basis of evidence, it could be said that in such a case the motive is "shrouded in mystery" and that it cannot be said as to what was the precise and immediate reason for the murder. But in Talib Hussain v. State (supra) it was observed by this Court that there is no legal requirement that in order to award maximum penalty of death in a murder case, the motive should be alleged and proved and that, if the prosecution proves that the case against an accused in a murder case beyond reasonable doubt, the normal sentence is death. It was further observed that if the normal sentence was not awarded, the Court is required to make out a case for reduction of sentence on the basis of mitigating circumstances. Therefore, in murder cases where no motive is alleged, the same remains shrouded in mystery; yet, if the prosecution establishes its case against the accused beyond reasonable doubt, the normal sentence awarded in such case is death, unless there are mitigating circumstances justifying award of lesser sentence.

It was also observed in Talib Hussain v. State (supra) that, even where the alleged motive is too weak but the case is otherwise established beyond reasonable doubt the normal sentence is death. In such a case also it could be argued that the motive in the case was shrouded in mystery; yet in such cases also the normal sentence in a proved case is death."

9. It is noted that one of the witnesses, Syed Sajid Hussain Shah (PW-9), was closely related to deceased No.2 and the learned Counsel for the appellant has argued that since he was an interested person, therefore, his testimony could not be relied upon. It is settled law that mere relationship of the deceased with a witness is not sufficient to discard his testimony unless the latter falls within the expression of an 'interested witness'. An interested witness is a person who has a motive to falsely implicate another person or in other words has an animus for false charge against an accused. Reliance is placed on the case of 'Anar Gul v. The State through Advocate-General, N. - W.F.P. and another' (1999 SCMR 2303). We have carefully gone through the record with the able assistance of the learned Counsels and have no hesitation in concluding that the prosecution was not able to bring on record unimpeachable evidence and, therefore, certainty of guilt could not be established beyond a reasonable doubt.

10. For what has been discussed above, we answer the Murder Reference No.01/2015 in the negative and consequently allow the appeal filed by the appellant. We, therefore, set aside the impugned judgment, dated 20-01-2015, and set aside the conviction and sentence handed down by the learned trial Court. We order the acquittal of the appellant by extending him the benefit of doubt and if the latter is not required to be incarcerated in any other case, then he shall be released from the prison forthwith.

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