

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Criminal Appeal No.79/2016

(Muhammad Awais vs. The State)

Appellant by: Mr. Muhammad Arshad Tabrez and Mr. Ansar
Nawaz Mirza, Advocates.

Complainant by: Ch. Zafar Ali Warraich, Advocate.

State by: Mr. Sadaqat Ali Jahangir, State Counsel.

Criminal Appeal No.99/2016

(Dr. Munir Ahmad vs. Muhammad Banaras Sadozai, etc.)

Appellant by: Ch. Zafar Ali Warraich, Advocate.

Respondent by: Mr. Muhammad Arshad Tabrez and Mr. Ansar
Nawaz Mirza, Advocates.
Mr. Sadaqat Ali Jahangir, State Counsel.

and

Murder Reference No.4/2016

(The State vs. Muhammad Awais)

State by: Mr. Sadaqat Ali Jahangir, State Counsel.

Respondent by: Mr. Muhammad Arshad Tabrez and Mr. Ansar
Nawaz Mirza, Advocates.

Date of Hearing: 19.04.2018.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, we intend to decide the two captioned criminal appeals and murder reference as it arose out of same FIR No.269, dated 11.08.2014, U/S 302/109 PPC, P.S. Ramna, Islamabad.

2. Brief facts referred in the instant criminal appeals are that Dr. Munir Ahmed Abro/complainant lodged the complaint Exh.PE, upon which the aforesaid FIR was got lodged. The complaint in brief is that complainant

was informed by his son Fazil on telephone to reach PIMS Hospital Emergency as her sister Sarah Abro was murdered. On receiving the information he reached the hospital at about 3:50pm and he has seen the dead body of Sarah Abro who was murdered by Muhammad Awais son of Muhammad Banaras through firearm and her dead body was left at PIMS hospital and claimed the drama of suicide. He further contends that her daughter Sarah Abro was abducted on 23.09.2013 by Muhammad Awais and he detained Sarah Abro in his house at G-10/2 where he assaulted Sarah Abro and committed rape and against which FIR was registered in P.S. Ramna. The complainant has also involved Muhammad Banaras, father of Muhammad Awais, as abettor in this case. The police has arrested Mohammad Awais and recovered the pistol which was used in the said crime and after the completion of Investigation submitted the Challan under section 173 Cr.P.C. against the appellant and his father Muhammad Banaras who have been charged under section 302/109 PPC by the learned trial court in the murder of Sarah Abro vide order dated 21.11.2014. Both the accused pleaded not guilty and claimed trial whereupon the prosecution has tendered 12 witnesses and after completion of the prosecution evidence appellant and Muhammad Banaras recorded their statements U/S 342 Cr.P.C. whereafter the learned trial Court has passed the impugned judgment dated 13.04.2016 whereby the appellant Muhammad Awais son of Muhammad Banaras has been held guilty for the murder of Sarah Abro and he was convicted U/S 302-B PPC and sentenced to death by way of Tazir. He was also directed to pay compensation to the sum of Rs.500,000/- to the legal heirs of deceased U/S 544-A Cr.P.C. and in case of failure to pay the compensation he shall have to further undergo 1 year S.I. whereas the other accused Muhammad Banaras was acquitted from the said charge. Hence, these criminal appeals.

3. Learned counsel for appellant in Criminal Appeal No.79/2016 contended that impugned judgment is against law and facts and prosecution has miserably failed to prove its case beyond reasonable doubt; that Sarah Abro deceased has committed suicide and there is no direct evidence available on record to confirm the stance of the complainant/prosecution to charge the appellant with the murder of deceased Sarah Abro; that the recovery is planted and the recovered pistol 9mm Beretta was sent to the forensic expert after the delay which has not been explained by the prosecution and the entire recovery is inconsequential.

4. Conversely, the State Counsel and learned counsel for complainant contended that prosecution has successfully discharged the onus whereby the appellant/Muhammad Awais is the only person who was last seen with the deceased while holding the pistol in his hand when PW-9/Aleena, housemaid, reached after hearing the fire shot; that as per the medical evidence of PW-1/Dr. Nasreen Butt and PW-8/Dr. Farukh Kamal the deceased Sarah Abro had received twelve (12) different injuries on her body which were not explained by the appellant in any manner; that PW-1/Dr. Nasreen Butt has categorically stated in her examination-in-chief that the injury is from approximate distance of two (2) feet are slightly above which confirms that it is not the case of suicide.

5. Argument heard, record perused.

6. From the approval of record it has been observed that the Dr. Munir Abro/complainant has lodged the case FIR No.269, dated 11.08.2014, U/S 302/109 PPC, PS Ramna, Islamabad on the basis of his complaint (Exh.PE) and the FIR has been referred as Exh.PE/1. As per the complaint Dr. Munir Abro, father of deceased, contended that he received a call from

his real son that his sister was murdered and her dead body is lying in the PIMS Emergency on which he reached to the PIMS Hospital where he found out that his daughter Sarah Abro was lying dead as murdered by her husband i.e. Muhammad Awais son of Muhammad Banaras, with firearm weapon and left the dead body at PIMS Hospital and created a drama of suicide of Sarah Abro. The complainant further contended that her daughter was abducted on 23.09.2013 by Muhammad Awais/appellant who detained, assaulted, and committed rape with her in his house in G-10/2, Islamabad, accordingly FIR was registered in P.S. Ramna. The complainant also involved Muhammad Banaras, father of appellant/Muhammad Awais, in this case for the purposes of abetment. After the registration of criminal case the police have started investigation and arrested appellant/Muhammad Awais. After completion of investigation, challan was submitted in the trial Court whereby charge was framed U/S 302/109 PPC against appellant/Muhammad Awais and acquitted accused/Muhammad Banaras whereas both the accused denied the charges and claimed trial.

7. The prosecution has produced Dr. Nasreen Butt, MLO as PW-1, who conducted the postmortem examination of the dead body of Sarah Abro, wife of Muhammad Awais/appellant, aged about 20 years, brought by the police officials of P.S. Ramna, identified by Dr. Munir Abro, father of deceased at about 4pm. PW-1 stated in her evidence that the dead body was of a young girl having height of 5'4", both eyes were open whereas mouth was semi-open. The deceased was wearing pink trousers, underwear with pad and green t-shirt. Rigor mortis was positive on neck, both arms, and both legs. The injuries found on deceased body were explained by PW-1 in the following manner:

"There were multiple contusion/abrasion marks on lower 1/3rd and middle 1/3rd in front of neck, which was 6x7cm above the right eyelid. There was 4x2cm contusion on the lateral angle of eye.

Contusion mark on lateral angle of right eye 1/2cm. There were two contusion marks on nasal bridge, tangentially. There were two bruises on right middle thigh 2x2cm. There were faint bruises on both knee joint interiorly, 2x2 and 1x2 respectively. Contusion mark on left eye 8x1cm. Contusion mark on left side of cheek just below the left eye. 2x1cm contusion mark, middle of front of superior side of forehead. There was cyanosis on hypothenar of left hand on palmar aspect. There was synchysis with red coloured cyanosis on nail of little, ring and middle fingers. There was fire arm entry wound middle of abdomen, 10cm below epigastrium, 07cm above umbilicus 1x1, very faint blackening and charring, corresponding with holes of shirt but there was no blackening mark and burning on shirt. There was no burning and there was no close contact of wound. Exit wound of fire arm injury measuring ½ x ½ cm with everted and rough margins, 38 cm from middle of lower end of neck posteriorly at the back of the body."

The PW-1/Dr. Nasreen Butt also given the opinion that the firearm wound was fired from approximate distance of two feet or slightly above. PW-1/Dr. Nasreen Butt has also given the final opinion on internal examination of the dead body in the following manner:

" On internal examination, abdominal aorta was ruptured. On examination of scalp, there was sub-periosteal bleeding, vertebrae was healthy, membrane of scalp were having bleeding and contusion on brain.

In my opinion, deceased died due to firearm injury on abdomen, which caused rupture of spleen, kidney, small and large intestines, with their blood vessels and abdominal aorta which caused severe bleeding and shock, sufficient to cause death in ordinary course of life. All injuries were ante mortem in nature. Time between injuries and death was within 1/2 hour approximately and between death and post mortem examination within 5 to 5-1/2 hours approximately. The dead body was with menstruation at that time of examination. Post mortem report is Ex.P.A and sketches of injuries Exh.A/1 and Exh.A/2. All are in my hand and with my signatures."

On cross-examination, PW-1/Dr. Nasreen Butt stated that she prepared the report of dead body Exh.DA which bears her signatures and acknowledged that she mentioned only one injury in it and that too without exit. She also acknowledged that neither the contusion or abrasion is mentioned in

examination report Exh.DA nor there is any mentioning of duration of said contusion and abrasion marks present on the dead body of Sarah Abro. However, she acknowledged that she was called by Islamabad High Court regarding medical examination of Sarah Abro and it was regarding change in medical examination for rape and on the order of the High Court inquiry was conducted against her. She also acknowledged that she is not a firearm expert.

8. Dr. Farrukh Kamal, MLO, PIMS Hospital, Islamabad appeared as PW-8 and stated that Exh.DA is in the handwriting and duly signed by Dr. Samia. Nothing incriminating was hauled out in favour of either party during the course of cross-examination.

9. Dr. Munir Abro/complainant appeared as PW-10 and stated that on 11.08.2014 he was in his office in Serena Hotel, and he received a call from his son Fazil Abro at around 03:27pm who told him to rush to PIMS Hospital Emergency because Sarah Abro has been murdered. He immediately rushed to the hospital and reached there at around 03:50pm where other three children Fazil Abro, Sarmad Abro and Afroz Abro standing next to the dead body of Sarah Abro which was lying on a stretcher in PIMS Emergency. He contended that Sarah Abro is his youngest daughter, fifth in sequence and recognized the dead body of Sarah Abro who had many injuries and bruises on her face and neck and staff of PIMS was standing there. He asked the staff of PIMS as to who brought the dead body whereupon it was told that a lady and a boy had brought the dead body and left it in the PIMS Emergency. He also stated before the Court that he has given application/complaint Exh.PE to Nawaz Gondal, Sub-Inspector, who already got his signatures on memo of identification of dead body (Exh.PH). He received the dead body vide receipt Exh.PI for the

purpose of burial and Sarah Abro was buried on the next day i.e. 12.08.2014. He nominated Awais Sadozai as a murderer and his father Banaras as an abetter in this case. During the course of cross-examination, he acknowledged that when he reached hospital Nawaz Gondal, S.I. was in the hospital, however he also acknowledged that he did not mention in Exh.PE that there are bruises on the face and neck of Sarah Abro deceased. He has also not mentioned that who brought the dead body to the hospital. He also denied that he ever had knowledge that Muhammad Awais/appellant was taken into custody by police on the same day. He is also not aware regarding Aleena, the servant of the house, who was taken into custody by the police on the same day. However, he acknowledged that Sarah Abro married Muhammad Awais but neither he nor any member of family was part of marriage ceremony. He also acknowledged that he got registered case of abduction, Zinna and beating against Muhammad Awais in P.S. Ramna, Islamabad on 23.09.2013 and he never appeared as a witness in that case while it was pending before the Court. However, he denied that his daughter Sarah Abro appeared before the Court in the said case and made a statement, in consequence thereof, Muhammad Awais/appellant was acquitted in the said case. He also acknowledged that Sarah Abro gave an affidavit before the Hon'ble High Court for exonerating the Muhammad Awais/appellant. However, he also acknowledged that Sarah Abro was pursuing her study regarding MBBS in the month of March/April, 2013 from China. He also acknowledged that after 14.02.2014 he had no contact with Sarah Abro but his family members contacted deceased Sarah Abro and he never disallowed his family members to meet her. He was also confronted with the document Exh.DA, the report prepared by Dr. Samia, where only single firearm wound was mentioned, however at that stage the learned counsel for complainant has raised objection that such kind of

question could not be asked from the complainant as the report was neither prepared by him nor he is the medical expert or author of the said report despite the fact that the complainant is also a doctor and remained DG Health. At last, one of the suggestions put forward to the complainant has been written in the following manner:

"It is also incorrect to suggest that Muhammad Banaras accused has been falsely involved as abettor in this case. It is correct to suggest that my daughter has committed suicide."

The above referred admission regarding suicide has been negated by the learned Session Judge through a separate handwritten order on the margin, which read as under:

"With reference to the application for correction filed before this Court word "correct" is replaced by word "incorrect."

10. Muhammad Sharif, Constable of P.S. Ramna appeared as PW-2 and stated that on 03.09.2014, Moharrar of P.S. Ramna, Islamabad handed over him sealed parcel containing the bloodstained piece of cloth of "Sofa", which he deposited with PFSA, Lahore, on the very said day intact.

11. Shakeel Abbas, Head Constable, Foreign Mission Lines, Islamabad appeared as PW-3 and stated that on 11.08.2014 he was posted at P.S. Ramna, Islamabad when he accompanied Nawaz Gondal, S.I. to PIMS Hospital where the dead body was lying mortuary. Dr. Munir Abro/complainant presented application before Nawaz Gonda, S.I., whereby PW-3 along with Akhtar Shah, Constable took the same to police station and handed over to Noor Ellahi, ASI, who recorded the FIR, whereafter PW-3 along with said Akhtar Shah, Constable brought it back to Nawaz Gondal, SI at PIMS Hospital, who annexed the same with other papers. PW-3/Shakeel Abbas, HC, further stated that he along with said police officials went to the place of occurrence i.e. House No.54, Street No.23, Sector G-10/2, Islamabad where Muhammad Nawaz, S.I., collected

one empty cartridge and one lead of bullet of 9mm pistol, which were taken into possession by Muhammad Nawaz, S.I. vide recovery memo Exh.PB, which was attested by PW-3 along with Ismat Tahira, lady constable. Muhammad Nawaz, S.I., also took into possession a bloodstained piece of 'sofa' cloth vide recovery memo Exh.PC., which was attested by PW-3 along with Ismat Tahira, lady constable. PW-3 further stated that during investigation, Muhammad Awais/appellant disclosed that he could get recovered the weapon of offence i.e. 9mm from his house, on which PW-3 along with Muhammad Nawaz, S.I., reached at the house where Muhammad Awais/appellant got recovered the said pistol from an Almirah placed at western side of the T.V. lounge, though no fingerprints were identified by fingerprint expert. I.O. taken into possession that pistol vide recovery memo Exh.PD, which was attested by PW-3 and Tasaddaq, Constable. PW-3 further stated that Moharrar P.S. Ramna, Islamabad handed over him two sealed parcels said to have contained empty cartridge, lead of bullet, and pistol 9mm which he deposited the same with FSL, Main Margalla Road, Islamabad intact. PW-3 also stated that Muhammad Nawaz, S.I., got snapped ten (10) photographs of the deceased and place of occurrence in his mobile and took the same into possession vide recovery memo Exh.PE, which is attested by PW-3. However, during the course of cross-examination, PW-3/Shakeel Abbas, HC, acknowledged that complainant presented the application at about 12:36 noon which he presented at the police station at about 01:00pm and returned to PIMS at about 01:25pm, whereafter PW-3 along with other police officials reached at the place of occurrence i.e. house of Awais, where one maid servant, mother and sister of Muhammad Awais/appellant were present. PW-3 further conceded that they remained in the house for about 25/30 minutes whereas Muhammad Nawaz, S.I., had visited other rooms of the house as well,

whereafter they returned to police station at about 03:30pm. PW-3 also acknowledged that Muhammad Awais/appellant was interrogated during the night of 21.08.2014 and on the next date i.e. 22.08.2014, they left the police station for the place of occurrence at about 11:40am where mother and sister of Muhammad Awais/appellant along with maid servant of the house were present there. The Almirah, from where the pistol was recovered, was closed but not locked and fingerprint expert was a constable from Rescue-15 Emergency Police, who was summoned by Muhammad Nawaz, S.I., before leaving for the recovery.

12. Ismat Tahira, Lady Constable, appeared as PW-4 and stated that on 11.08.2014 she was directed to reach PIMS Hospital regarding conduct of autopsy of Sarah Abro. Father, mother, and brother of deceased along with Muhammad Nawaz, S.I./I.O. were already present there. PW-4 further stated that autopsy of deceased was conducted whereby the doctor handed over to her last worn clothes of deceased in a shopping bag. PW-3 presented the same as shirt (P1), trousers (P2), both bloodstained underwear (P3), and short vest (P4) before Muhammad Nawaz, S.I./I.O., who took the same into possession vide recovery memo Exh.PF, which was attested by her and brother of deceased. Thereafter they went to place of occurrence from where Muhammad Nawaz, S.I./I.O., cut a piece of sofa cloth which was lying in the TV lounge and took the same into possession vide recovery memo Exh.PC. Muhammad Nawaz, S.I./I.O. also collected empty cartridge along with lead (slug) of bullet and taken into possession vide recovery memo Exh.PB. However, during the course of cross-examination, she acknowledged that two constables including Shakeel Abbas were also accompanied with them when they reached at place of occurrence, where they stayed in the TV Lounge for about half an hour whereas Investigation

Officer had checked other rooms of the house also. PW-4 further acknowledged that the house was locked and got opened by a boy having key, whereas there were nobody in the house.

13. Muhammad Akram, ASI, appeared as PW-5 and stated that on 11.08.2014 he was Moharrar in P.S. Ramna when Muhammad Nawaz/I.O. handed over him bloodstained cloth of sofa, sealed in parcel along with another parcel said to have contained lead of bullet and empty cartridge which were placed in Malkhana. On 22.08.2014, Muhammad Nawaz, I.O., handed over him sealed parcel containing a 9mm pistol which he also placed in Malkhana. On 11.09.2014, all these parcels were handed over to Muhammad Sharif, Constable for onward transmission to FSL and chemical examiner at Lahore, whereafter his statement was recorded. PW-5 also acknowledged that FSL is located in F-10/3, Islamabad and Shakeel Abbas, Constable after depositing of above said parcel submitted a road certificate to police station at about 05:00pm.

14. Noor Ellahi, ASI, appeared as PW-6 and stated that on 11.08.2014, he was duty officer in P.S. Ramna, Islamabad and received the complaint, Exh.PE, through Shakeel, Constable, sent by Muhammad Nawaz, S.I./I.O., which was converted into formal FIR, Exh.PE/1.

15. Aamir Shahzad, Draftsman, appeared as PW-7 and stated that he visited the place of occurrence on 17.08.2014 along with Investigation Officer and on his pointation and on the pointation of complainant, he prepared rough notes and also prepared scaled site plan, Exh.PG, on 20.08.2014. All the drawing and notes were signed by him. However, during the course of cross-examination, PW-7 acknowledged that if any witness would have had told him the name and position of accused, he would have

mentioned it the site plan Exh.PG. PW-7 also acknowledged that the house was open and inmates were present in the house.

16. Aleena daughter of Ghulam Shabbir , appeared as PW-9, who is the star witness in this case, stated that she was working as housemaid at the time of occurrence in the house of Muhammad Awais/appellant. On 10.08.2014, Asif, cousin of Muhammad Awais/appellant, visited the house where a quarrel took place between Asif and Muhammad Awais/appellant whereafter Asif left the house. On his leaving, Sarah Abro/deceased and Muhammad Awais had a quarrel on the point that Sarah Abro/deceased asked Muhammad Awais/appellant as to why he treated Asif like that. PW-9/Aleena further stated that she heard Sarah Abro saying that she will take revenge from Muhammad Awais/appellant. PW-9 also heard conversation took place between Sarah Abro and Jasia, sister of Muhammad Awais/appellant, where Jasia was talking loudly that Sarah Abro (deceased) should be sent back to her parent house as they did not want to keep her, even Jasia told Muhammad Awais/appellant that she did not want to keep Sarah Abro in the house and she should be sent back to her parent house. However, at about 10:30pm Jasia and Muhammad Awais/appellant left the house for a marriage ceremony and Sarah Abro remained in the house. On their return, Jasia and Sarah Abro had another quarrel. PW-9/Aleena further stated that on the next morning, i.e. 11.08.2014, Sarah Abro was very upset and constantly strolling between the room and TV lounge, whereas Shamas, who came to take Jasia, handed over some money to PW-9/Aleena for further transmission to Muhammad Awais/appellant which she gave to Sarah Abro. PW-9 further stated that when Sarah Abro was going to her room with money, she saw a pistol in her pocket. Feeling worried, she managed to take out the pistol and hide it

in the cupboard of Jasia, though Sarah Abro time and again asked her to hand over the pistol back to her on the stance that "اویس مجھے مار دے گا". On this, she gave back the pistol to Sarah Abro deceased who later on sat in the TV lounge. PW-9/Aleena thereafter stated that she went out to see garbage collector and when she reached at the main gate, she heard a fire shot and screams of Sarah Abro.

17. At this stage, learned counsel for complainant requested the Court to declare PW-9/Aleena as hostile. The said request was allowed and she has been cross-examined by complainant as well as defence counsel simultaneously. However, during the course of cross-examination, PW-9/Aleena acknowledged that Muhammad Awais/appellant took her and Sarah Abro (deceased) to a private hospital on vehicle which he lend from the neighborhood, and that Sarah Abro deceased was in senses on the way to hospital and some blood drops shed on the floor of house and on the seat of vehicle as well, however she do not remember the name of the private hospital to which Muhammad Awais/appellant took the deceased at the first instance. PW-9/Aleena also acknowledged that Sarah Abro had nothing in her hand, then again said Sarah Abro had a pistol in her hand and when Muhammad Awais/appellant picked her up the pistol got dropped from deceased's hand which she picked up and put it on a nearby table. PW-9/Aleena further acknowledged that she had also gone to the second hospital where she saw sister of deceased and that she remained in the Women Police Station till night. The Learned counsel for defence has also cross-examined PW-9/Aleena whereby she acknowledged that she recorded her statement before PW-12/Nawaz

Gondal, S.I., and that she remained in the Woman Police Station for 12/13 days though she was not produced before any Court.

18. Faazil Abro, the brother of deceased Sarah Abro, appeared as PW-11 and stated that he was informed by his sister regarding the death of deceased Sarah Abro and on his inquiry he find out that Muhammad Awais/appellant brutally beaten up the deceased in the morning and shot her dead, and that his father reached to the hospital at about 3:25pm. During the course of cross-examination, PW-11/Faazil Abro acknowledged that her sister Sarah Abro was forced into that marriage, and on 14.02.2014, she left the house for university but never came back to home whereas he never visited the house of Muhammad Awais/appellant after marriage. PW-11 further acknowledged that prior to registration of instant case his father got lodged a case regarding abduction, rape and torture of Sarah Abro deceased against Muhammad Awais/appellant in P.S. Ramna, though Sarah Abro deceased appeared before the Court and belied that story whereby Muhammad Awais/appellant was acquitted. PW-11/Faazil Abro also acknowledged that family of appellant was with the dead body of Sarah Abro in the hospital whereas Muhammad Awais/appellant was not present there but he was outside the hospital premises, and that he had also seen PW-9/Aleena in the hospital along with police officials. PW-11/Faazil Abro further acknowledged that he met the police officer in the hospital who has not recorded his statement, the same was got recorded by the police official after 3/4 days, and that he never went to the house of Muhammad Awais/appellant. PW-11/Faazil Abro further acknowledged that police officials arrested Muhammad Awais/appellant in the hospital on 11.08.2014 whereas police officials have neither interrogated nor recorded statement of PW-9/Aleena in his presence.

19. Muhammad Nawaz, S.I./I.O, appeared as PW-12 and stated that he was posted in P.S. Ramna on 11.08.2014 and he received a message from Rescue 15 at about 2:05/2:10pm that a girl named Sarah Abro has received a bullet injury whereupon he along with Shakeel Abbas and Akhtar Shah, constables, reached the PIMS Hospital at about 02:35pm where he saw the dead body of deceased Sarah Abro and her siblings i.e. Faazil, Sarmad, and Afroz. PW-12/Muhammad Nawaz, S.I., further stated that the proceedings were initiated on the arrival of complainant at about 3:50pm, who drafted an application (Exh.PE) on which he formulated Isteghasa and sent it to P.S. Ramna through Shakeel Ahmad, constable. PW-12 also stated that he conducted examination of the deceased through Asmat Tahir, lady constable, from a lady doctor whereas Doctor Samia conducted first examination of the dead body whereupon he formulated inquest report Exh.PJ/1-2, which was signed by Munir Abro and Sarmad Abro. PW-12 also stated that he formulated memo of identification of dead body (Exh.PH), application for conducting postmortem of deceased (Exh.PK), and application for keeping the dead body in mortuary (Exh.PL). PW-12 further stated that Dr. Nasreen Butt, CMO, conducted the postmortem of deceased Sarah Abro whereafter last worn clothes (P1 to P4) of deceased were handed over to him which were taken into possession vide recovery memo Exh.PF and thereafter handed over the dead body of the deceased to Dr. Munir Abro/complainant vide receipt Exh.PI. PW-12 also got recorded the statement U/S 161 Cr.P.C. of deceased's siblings i.e. Faazil, Sarmad and Afroza along with supplementary statement U/S 161 Cr.P.C. of Dr. Munir Abro/complainant as well as statement of Asmat Tahira, lady constable.

20. PW-12/Muhammad Nawaz, S.I., further stated that he visited the place of occurrence along with Asmat Tahir, Lady Constable, and Akhtar Shah, Constable, and on inspection he found bloodstains on the sofa kept in the TV lounge, which he cut through scissor and prepared a parcel and took the same into possession vide recovery memo Exh.PC. PW-12 also found the lead from sofa and an empty of 9mm which was lying seven (7) feet from the sofa on floor which he also took into possession vide recovery memo Exh.PB. PW-12/Muhammad Nawaz, S.I., also prepared an un-scaled site plan Exh.PM and recorded the statement of Asmat Tahira and Shakeel Abbas U/S 161 Cr.P.C. He further acknowledged that he arrested Muhammad Awais/appellant on 12.08.2014 as he himself came to the P.S. Ramna, whereafter on 22.08.2014 Muhammad Awais/appellant was taken to his residence i.e. House No.54, Street No.23, G-10/2, Islamabad, from where he got recovered the pistol from the cupboard kept in the western room and then another complaint U/S 13, 20, 65 of AO was registered. On 20.08.2014, PW-12 formulated the scaled site plan through PW-7/Amir Shahzad (Exh.PG) and on 21.08.2014, he obtained postmortem report (Exh.PA) from Dr. Nasreen Butt. He completed the investigation after receiving certain documents from mother of Muhammad Awais/appellant on 15.08.2014 which also included the details of Muhammad Banaras, father of Muhammad Awais/appellant, who went abroad one day after the occurrence. On 19.08.2014, PW-12 also visited the Life Care Hospital and joined the Chowkidar, lady doctor, and incharge of the hospital in the investigation, and finally submitted the incomplete challan against Muhammad Awais/appellant. On 03.09.2014, the investigation was transferred to the CIA.

21. During the course of cross-examination, PW-12/Muhammad Nawaz, S.I., acknowledged that no eyewitness of occurrence has been mentioned in Exh.PE and that neither in the scaled site plan (Exh.PG) nor in the unscaled site plan (Exh.PN) Muhammad Awais/appellant has been mentioned, and that he obtained attested copy of initial examination report (Exh.DA) conducted by Dr. Samia. PW-12 also acknowledged that he visited the place of occurrence and found it open whereby he searched the rooms which were opened and left those which were locked. He also conceded that Chowkidar of the Life Care Hospital and other staff affirmed that appellant along with two other women brought deceased to the hospital. He also acknowledged that he did not meet PW-9/Aleena during the period of 11.08.2014 to 22.08.2014 and that he did not join any inhabitant of the locality in the recovery proceedings and that the house of appellant was open and mother of appellant was present inside the house whereas the house comprises of total five (5) rooms with a basement while he recovered the pistol from the room adjacent to the room of Muhammad Awais/appellant and even the said room and Almirah therein was open and not locked. PW-12 also acknowledged that he sent the pistol and empty to the Forensic Science Laboratory through Shakeel Abbas/Constable on the same day.

22. On thorough perusal of the evidence tendered by the prosecution, following key facts emerged on record:

- (i.) Mst. Sarah Abro (deceased) received a firearm injury on 11.08.2014 on her abdomen, 10cm below epigastrium, 7cm above umbilicus 1x1, very faint blackening and charring, corresponding with the holes of shirt whereas the said bullet exit from backside, 38cm from middle of lower end of neck.

- (ii.) PW-1/Dr. Nasreen Butt referred 11 injuries on the body of the deceased including the firearm injury.
- (iii.) PW-1/Dr. Nasreen Butt suggested that the firearm wound was caused from approximate distance of two (2) feet or slightly above.
- (iv.) Dr. Samia prepared Exh.DA in which only one injury entry wound was referred.
- (v.) No witness of occurrence has been brought on record.
- (vi.) Sarah Abro deceased entered into marriage with Muhammad Awais/appellant against the wishes of her family.
- (vii.) PW-9/Aleena, housemaid of appellant, was declared hostile by the prosecution.
- (viii.) Muhammad Awais/appellant and PW-9/Aleena took Sarah Abro deceased in injured condition to Life Care Hospital for treatment and later on when she died she had been taken to PIMS Hospital on 11.08.2014.
- (ix.) The incident took place in House No.54, Street No.23, Sector G-10/2, Islamabad with 9mm Beretta Pistol.
- (x.) Fire empty, lead, and piece of bloodstained sofa cloth were taken into possession by Muhammad Nawaz, S.I., on 11.08.2014 from the place of occurrence, i.e. TV lounge.
- (xi.) Muhammad Awais/appellant was arrested on 12.08.2014 who himself surrendered before the police.
- (xii.) Muhammad Awais/appellant got recovered the pistol kept in a cupboard from his house on 22.08.2014.
- (xiii.) PW-9/Aleena recorded her statement U/S 161 Cr.P.C. on 22.11.2014.

- (xiv.) The recovered pistol and fire empty had been sent to National Forensic Science, Laboratory on 22.08.2014, the same was matched as per National Forensic Science, Laboratory.
- (xv.) Scaled site plan (Exh.PG) and unscaled site plan (Exh.PN) were prepared on the instructions of Investigation Officer by Draftsman and not on the instructions of any witness.
- (xvi.) Muhammad Awais/appellant has taken a plea that Sarah Abro had committed suicide.

23. In view of above background, this Court on the basis of available evidence and the points noted above reappraised the view of the learned Trial Court and came to the conclusion that Sarah Abro (deceased) entered into marriage with Muhammad Awais/appellant against the will of her family members, against which the case FIR No.372, dated 29.09.2013, U/S 376, 384, 337H, 337, 506-A(1) PPC, P.S. Ramna, Islamabad was got lodged with the accusation that Muhammad Awais/appellant abducted Sarah Abro (deceased) and raped her. However, Sarah Abro (deceased) recorded her statement as PW-2 and submitted her affidavit before the Court on the basis of said affidavit the learned Trial Court vide judgment dated 16.04.2014 acquitted Muhammad Awais/appellant. Whereas, if the said matter is placed in juxtaposition with the statement of Dr. Munir Abro/complainant, it appears that Sarah Abro (deceased) had no contact with her family members, including the parents, as Dr. Munir Abro/complainant stated that Sarah Abro (deceased) left the house on 14.02.2014 and never came back home, whereafter he saw Sarah Abro (deceased) on 11.08.2014 when he was informed about her death.

24. Keeping in view the above background, there is no apparent malafide on the part of prosecution, especially the complainant, to involve

Muhammad Awais/appellant in this case while considering the statements of PW-9/Aleena who has given the details of the day of occurrence as well as the previous day i.e. 10.08.2014 whereby she has narrated the following facts:

- i. Muhammad Awais/appellant and Sarah Abro (deceased) had a quarrel on the visitation of Asif and the way he was treated.
- ii. Jasia quarreled with Sarah Abro (deceased) and told her that she is unwanted and should be sent back to her parent house.
- iii. Muhammad Awais/appellant also joined and supported her sister and quarreled with Sarah Abro (deceased).
- iv. When Jasia came back to house after marriage, she and Sarah Abro (deceased) quarreled again.
- v. Muhammad Awais/appellant locked Sarah Abro (deceased) in the house when he and Jasia left the house to attend a marriage ceremony.

The above facts narrated by PW-9/Aleena give an overview of the chain of events of the earlier day of murder. The second important question before this Court is to verify the statement of PW-9/Aleena, who had been declared hostile by the prosecution, whereas before declaring PW-9/Aleena hostile, she categorically stated that Sarah Abro (deceased) had a pistol in her hand which was taken by her but she stated that Sarah Abro (deceased) told PW-9/Aleena that “اوپس مجھے مار دے گا” and she needs the pistol, whereupon PW-9/Aleena returned the pistol to her. Such kind of statement gives an impression that Sarah Abro (deceased) is under fear of her death and therefore, kept the pistol for her safety and protection. However, when PW-9/Aleena went out of home to see the garbage collector, she heard the

fire shot and shouts of Sarah Abro (deceased). Though, during the course of cross-examination, she acknowledged that:

"She did not have anything in her hand, again said, she had a pistol in her hand. When Awais picked her, the pistol was dropped from her hand. The pistol dropped from hand closed to her feet. I picked the pistol."

25. If we compare the above referred position with the statement of PW-9/Aleena, it turns the table otherwise as she earlier confirmed before the Investigation Officer that the pistol was in the hand of Muhammad Awais/appellant. Such kind of approach raise a serious concern upon the conduct of said witness, however all these facts have to be seen in the light of technical evidence of the nature of injury as well as medical expert's evidence, therefore, in order to proceed further, the nature of injury as well as medical affect of the firearm injury has to be analyzed. Accordingly, Dr. Nasreen Butt/PW-1 has categorically deposed in her testimony that:

"In my opinion, the firearm wound was fired from approximate distance of 2 feet or slightly above."

While considering the said stance of Dr. Nasreen Butt/PW-1, we have also gone through the autopsy report wherein PW-1 defined the relevant portion as under:

"There was a firearm entry wound, middle of abdomen, 10cm below epigestrum, 07cm above in umbilicus 1x1, very faint blackening and charring corresponding with the holes of shirt, but there was no burning mark on the shirt. There was no burning and there was no close contact of wound. Exit wound of firearm injury measuring ½ ½ cm with aberted and rough margins, 38cm from middle of lower end of neck. Posteriously at the back of body."

Such technical evidence of the doctor confirms that the fire shot hit Sarah Abro (deceased) above the umbilicus, which is also apparent in the photographs referred as Exh.PE, whereas the exit wound confirms the trajectory in the lower region from the back as both these exit and entry wounds are not in a straight line rather it is a downward angle, even the

same has been confirmed by the photographs produced by the Investigation Officer in which the slug was taken from the wooden portion of the sofa on which Sarah Abro (deceased) was sitting at the time of receiving bullet injury.

26. In view of above background, it is inconceivable that how had Sarah Abro (deceased) fired using a 9mm Beretta pistol while pointing the pistol upon her upper portion of abdomen with an approximately distance of more than 2 feet while sitting on a sofa. Such kind of angle by any impression could not be caused to a person if he or she holds the pistol in his/her own hand(s).

27. The second important factor regarding which the matter revolves is the distance of approximately seven feet at which the firearm empty was found as referred by the Investigation Officer at the time of visit of the place of occurrence and taken into possession by him through Exh.PB. This also confirms that someone was standing in front of Sarah Abro (deceased) and shot her.

28. We have also gone through a number of forensic medicine and toxicology references and it has been observed that a firearm like pistol or a gun is an instrument/device, which propels a projectile by expansion of gases generating by the combustion of an explosive substance and pistol is a hand gun in which cartridges are directly loaded in the chambers of a barrel and when the bullet comes out of muzzle with rotating movement and with considerable velocity and energy it is a combine by flame, gases, accompanied by unburned burning or partially burned propellant, whereas when there is a close shot that is in the range of power blast and the flame is into one and three inches for a small arm there is a collar of shoot and grease around the circular wound of entry partially burned and unburned

grains of powder are blasted into the skin causing a tattooing which cannot be easily wiped off. Similarly, blackening is found if firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharge within about two feet.

29. We have also gone through the Medical Jurisprudence and Toxicology by John James Reese wherein he has also referred certain observations regarding the average tendencies of suicide observed from different cases where the style of killing oneself has been explained in the following manner:

“The question of the homicidal, suicidal, or accidental character of gunshot wounds must generally be settled by the appearance of the wounds, and also by the particular circumstances. Thus, if it be on the forehead or temple, behind the ear, in the mouth, or over the heart, and if it be blackened or lacerated (indicating the close proximity of the weapon), it may be regarded as almost certainly a suicidal act. If, on the contrary, the wound be on the back or side of the head (except in the case of the insane), or of the body, without the blackened and lacerated appearance above alluded to, it may be considered as the act of a homicide. Accidental gunshot wounds bear the marks of near wounds, as they are mostly the result of the accidental discharge of the piece, either in the hands of the deceased at the time, or else in close proximity to his person. The possibility of a bullet glancing from a hard surface, and thus entering a point at which the weapon was not aimed, must not be overlooked.

Out of 368 cases of suicide by firearms, in France, 297 were from wounds in the head; of these, 234 were fired into the mouth; only 71 were from wounds inflicted on the chest or abdomen.”

30. We have also gone through the concept of blackening in the abovementioned paragraph and this Court has taken account of 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."

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."

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."

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."

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."

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."

31. The above referred concepts explained by John James Reese and Jaising P. Modi in their respective books as well as observations rendered by different superior Courts persuaded this Court to observe that statement of Dr. Nasreen Butt is correct and Sarah Abro (deceased) was shot by someone else beyond the distance of two feet as Dr. Nasreen Butt has categorically stated that:

"very faint blackening and charring corresponding with holes of shirt was present"

Hence, it was not a case of suicide, even otherwise, Sarah Abro (deceased) was doing routine cooking and housekeeping on the day of incident and the day earlier. Such state of affairs clearly establishes that she was neither frustrated nor depressed in any manner to commit suicide. Even otherwise, she had retained the pistol for her own defence which is apparent from statement of PW-9/Aleena, who also stated before the Court that Sarah Abro (deceased) needed the pistol as according to her "اویس مجھے مار دے گا". Such statement by the star witness of this case stand corroborated with the circumstantial evidence available on record while considering the medical evidence as well as references of forensic sciences and it goes against Muhammad Awais/appellant. Even otherwise, the statement of PW-9/Aleena contains details of the day of occurrence and other factors, however she had been declared hostile but in our humble view, she has not stated a single word against the prosecution in her statement and she has been declared hostile at a point when she was about to record a material

fact in her statement U/S 161 Cr.P.C. whereby she earlier stated before the Investigation Officer that the pistol was in the hand of Muhammad Awais/appellant but she was declared hostile by the prosecution on this juncture and later on she had been cross examined. During the course of cross-examination by the learned counsel for complainant, PW-9/Aleena acknowledged that:

“When we picked her from the house and boarded her in vehicle, she did not have anything in her hand again said, she had a pistol in her hand. When Awais picked her, the pistol was dropped from her hand.”

Putting up the statement U/S 161 Cr.P.C. and cross-examination of PW-9/Aleena in juxtaposition, there emerges a conflict regarding holding of the pistol whereby PW-9/Aleena in her statement stated that Muhammad Awais/appellant was holding the pistol whereas during her cross-examination, she acknowledged that Sarah Abro (deceased) had nothing in her hand. This entire chain of events imposes a duty upon the appellant to explain his position, especially when a vulnerable dependent i.e. Sarah Abro (deceased), wife of appellant, was gunned to death inside the confines of appellant's house, he is then under heavy onus to explain as to how his wife Sarah Abro (deceased) met an unnatural death while holding a pistol in her hand, which is otherwise contradicted as per medical and forensic reasons. Whereas, learned counsel for appellant has placed reliance upon PLD 2017 SC 681 (Asad Khan vs. The State) wherein it has been held that:

“4. It had been held by this Court in the case of Arshad Mehmood v. The State (2005 SCMR 1524) that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the later case of Saeed Ahmed v. The State (2015 SCMR 710) the said legal position had been elaborated and it had been held that an accused person is under some kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the

confines of his house; It had, however, been held in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the entire case of the prosecution stands demolished or is found to be utterly unbelievable there an accused person cannot be convicted merely because he did not explain the circumstances in which his wife or some vulnerable dependent had lost his life. In such a case the entire burden of proof cannot be shifted to him in that regard if the case of the prosecution itself collapses. The present case is a case of the latter category wherein the entire case of the prosecution has been found by us to be utterly unbelievable and the same stands demolished and, thus, we cannot sustain the appellant's conviction and sentence merely on the basis of an inference or a supposition qua his involvement."

Similarly, learned counsel for appellant further placed reliance upon **2016**

SCMR 1628 (Nazir Ahmad vs. The State) wherein it has been held that:

"4. It may be true that when a vulnerable dependant is done to death inside the confines of a house, particularly during a night, there some part of the onus lies on the close relatives of the deceased to explain as to how their near one had met an unnatural death but where the prosecution utterly fails to prove its own case against an accused person there the accused person cannot be convicted on the sole basis of his failure to explain the death. These aspects of the legal issue have been commented upon by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524), Abdul Majeed v. The State (2011 SCMR 941) and Saeed Ahmed v. The State (2015 SCMR 710)."

32. We have gone through the above referred judgments of the apex Court whereby the apex Court has laid down a principle where part of onus has been placed upon the close relatives of the deceased to explain their position although the complete onus is not upon the appellant but the exception created by the apex Court in the above referred judgments gives rise to the situation whereby this Court needed to refer the medical evidence tendered by PW-1/Dr. Nasreen Butt regarding the injuries found on Sarah Abro (deceased), details of which are referred as follow:

"There were multiple contusion/abrasion marks on lower 1/3rd and middle 1/3rd in front of next, which was 6x7cm above the right eye-lid. There was 4x2cm contusion on the lateral angle of eye. Contusion mark on lateral angle of right eye 1/2cm. There were two contusion marks on nasal bridge, tangentially. There were two bruises on right middle thigh 2x2cm. There were faint bruises on

both knee joint interiorly, 2x2 and 1x2 respectively. Contusion mark on left eye 8x1cm. Contusion mark on left side of cheek just below the left eye. 2x1cm contusion mark, middle of front of superior side of forehead. There was cyanosis on hypothenar of left hand on palmar aspect. There was synchysis with red coloured cyanosis on nail of little, ring and middle fingers. There was fire arm entry wound middle of abdomen, 10cm below epigastrium, 07cm above umbilicus 1x1, very faint blackening and charring, corresponding with holes of shirt but there was no blackening mark and burning on shirt. There was no burning and there was no close contact of wound. Exit wound of fire arm injury measuring 1/2 x 1/2 cm with everted and rough margins, 38 cm from middle of lower end of neck posteriorly at the back of the body."

The above referred injuries explain the conduct of appellant who tortured and assaulted Sarah Abro (deceased) prior to her death, even the same has been corroborated with the evidence of PW-9/Aleena, although she was declared hostile, but in our humble view the status of hostile witness has to be seen in the light of view rendered by the apex Court. In this regard, the apex Court in PLD 2007 SC 249 (Dr. Javaid Akhtar vs. The State) has held that:

"Court would be justified to ignore the statement of hostile witness."

Similarly, the apex Court in PLD 2007 SC 223 (Muhammad Suleman, etc. vs. The State) has held that:

"Testimony of hostile witness or a witness, who was not examined being won over was either produced by defence or was examined as Court witness, must not be left out of consideration for mere reason that he did not support prosecution rather evidence of such witness must be considered with utmost care and caution---Testimony of witness who speaks in different tune at different times is certainly not reliable unless strong confirmatory evidence of independent, character is available on record."

Similarly, the apex Court in PLD 2013 SC 386 (Muhammad Sarfraz vs. The State) has held that:

"Prosecution could not be permitted to confront a witness with his previous statement recorded under S.161, Cr.P.C. for the purpose of contradicting him even after being declared hostile."

Similarly, the apex Court in PLD 2003 SC 635 (Niaz Ahmad vs. The State) has held that:

“Statement of a hostile witness was to be viewed in the light of circumstances of the case and thereafter it was to be ascertained as to what truth actually flowed from their statements, whether favouring the prosecution or the defence.”

And similarly, the apex Court in 1995 SCMR 1144 (Rana Muhammad Akram vs. The State, etc.) has held that:

“Eye-witnesses who had turned hostile at the trial did not support the prosecution case and were cross-examined by the prosecution as well as the defence---Courts below had rightly placed no reliance on the testimony of said witnesses to convict the accused respondents on capital charge and their judgments acquitting them did not suffer from any legal infirmity.”

The above referred view of apex Court gives rise to the principle that hostile witness is not outrightly discarded unless the same is based upon lies, or the witness is not truthful.

33. As per the proposition before this Court is regarding the murder of Sarah Abro (deceased) in the confines of a house where the only person available at that time was Muhammad Awais/appellant and no other witness or person had seen the occurrence directly, therefore, in such type of cases the quantum of evidence is different as of normal cases, we have seen the medical evidence which corroborates the entire scenario that the death is not suicidal rather it is homicidal, but in order to connect Muhammad Awais/appellant with the said incident of murder, we have to see the entire case with reference to the Qanun-e-Shahadat Order, 1984, whereby Article 117 of the Order places a burden of proof upon a person who has to prove the existence of any fact. In such eventuality the prosecution is under heavy burden to discharge its onus that Sarah Abro (deceased) was murdered by Muhammad Awais/appellant but at the same time the provisions of Article 119 of the Qanun-e-Shahadat Order, 1984 also

play a significance role in this case when we consider the plea of appellant who has taken the defence of a particular line from day one i.e. Sarah Abro (deceased) had committed suicide and the suggestion put forward by the appellant in the trial is on the same line, even otherwise, appellant has taken this specific stance in his statement under Section 342 Cr.P.C. with reference to Question No.9 which is as under:

“Q. No. 9: It has also come in the prosecution evidence that your wife deceased Sarah was fired upon by Bretta 9mm. pistol in your house around 11.00 – 11.30AM on 11 August 2014 while you were present in your house where you lived with her as husband and wife. What do you say?”

Ans. No it is incorrect as stated in this question. Mst. Sarah deceased committed suicide with the pistol and she was taken by me to the hospital, where she was found dead. I shifted her to PIMS Hospital, where doctors prepared her death certificate with only one injury that too without any exit wound, which is part of the file and exhibited as Exh.DA. Mst. Sarah fired upon herself with the pistol.”

The above referred answer confirms that the plea raised by Muhammad Awais/appellant is regarding act of suicide of Sarah Abro (deceased) and even he has taken Sarah Abro (deceased) to the hospital. Similarly, it was also inquired from Muhammad Awais/appellant that whether Sarah Abro (deceased) had told PW-9/Aleena that “اے میں نے مار دے گا” and as to why Sarah Abro (deceased) committed suicide, whereupon Muhammad Awais/appellant answered that:

“Deceased Sarah never said so and she committed suicide due to the attitude of her parents and family.”

Whereas, it is admitted that Sarah Abro (deceased) had never been seen by her parents from the day she left her house as referred in the statement of PW-10/Dr. Munir Abro, father of Sarah Abro (deceased), who categorically referred the date of departure of Sarah Abro (deceased) from the house till date of her death in the following words:

“On 14.02.2014, deceased Sarah left our house to collect her result from Fatima Jinnah University. Deceased Sarah on 14.02.2014 went to Fatima Jinnah University along with other girls in the university van from DHA. It takes about 30 minutes on a ride to reach Islamabad High Court from Fatima Jinnah University. My daughter Sarah, never returned since 14.02.2014 to our house, and we received her death body on 11.08.2014.”

The above referred stance of complainant Dr. Munir Abro clearly establishes that neither he nor his other family members were having any relationship/contact with Sarah Abro (deceased) from the day when she had left the house, therefore, a particular fact has to be proved by appellant as to whether Sarah Abro (deceased) had committed suicide and this can only be proved by appellant in terms of Article of 119 of the Qanun-e-Shahadat Order, 1984 which read as under:

“119. Burden of proof as to particular fact: The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

Similarly, Article 122 of the Qanun-e-Shahadat Order, 1984 is also relevant in this regard which is as under:

“122. Burden of proving fact especially within knowledge: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

In this case Muhammad Awais/appellant has taken the plea of suicide by Sarah Abro (deceased) and in such situation he has to discharge the burden under the exception taken by the apex Court in PLD 2017 SC 681 (Asad Khan vs. The State) and 2016 SCMR 1628 (Nazir Ahmad vs. The State).

Whereas, the detailed view has been rendered in this regard by the apex Court in (2015 SCMR 710 Saeed Ahmad vs. The State), wherein it has been held that:

“14. That with regard to vulnerable members of society, such as children, women and the infirm, who were living with the accused or were last in his company the accused ought to offer some explanation of what happened to them. If instead he remains silent or offers a false explanation he casts a shadow upon himself. This

does not mean that the burden of proof has shifted onto the accused as it is for the prosecution to prove its case, however, in respect of the helpless or the weak that require protection or care it would not be sufficient for the accused to stay silent in circumstances which tend to incriminate him, and if he elects to do so he lightens the burden of the prosecution. 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."

34. We have also gone through another judgment of the apex Court referred as 2011 SCMR 941 (Abdul Majeed vs. The State) where Abdul Majeed/accused had allegedly committed murder of his wife by way of strangulation, however in the said case the apex Court put emphasis on the principle of burden of proof which is always upon prosecution in such a manner and held that:

"such burden remains throughout and does not shift to accused, who is only burdened to prove defence plea."

Whereas, in the present case, the plea of defence regarding the fact of suicide by Sarah Abro (deceased) has not been proved, whereas Muhammad Awais/appellant has taken this plea of suicide on record. However, when we considered the facts of present case with reference to the case of Abdul Majeed *supra* the only distinction in the instant case is the presence of Muhammad Awais/appellant and very much available at the scene of murder of Sarah Abro (deceased) whereas in the case of Abdul Majeed *supra* the husband of deceased was not proved to be present at the scene of murder. The apex Court has also drawn the same distinction while considering the case of Afzal Hussain Shah reported as 1991 PCr.LJ 113

[Lahore] in which the conviction was maintained by the High Court where husband could not explain satisfactorily the circumstances of his wife death in his house

35. The next question placed before this Court is regarding the status of PW-9/Aleena who was declared a hostile witness whereas it is trite law that evidence of hostile witness could be ignored ordinarily, however the principle has to be observed in the light of Article 150 of the Qanun-e-Shahadat Order, 1984 which has as follow:

“150. Question by party to his own witness: The Court may, in its discretion, permit the person who calls a witness to put any questions to him, which might be put in cross-examination by the adverse party.”

The above referred Article has been placed in the Qanun-e-Shahadat Order, 1984 to impeach the credit of witness by cross-examination, however Article 151 applies at a situation where witness was guilty of prevarication or that he was having an animosity towards the party who called him or giving an unfavorable evidence to the party calling him or contrary to statement expected of him which is to be discarded by the party calling him and the said witness has to be declared hostile with permission of the Court. However, in the light of provision of Article 150, we have gone through the statement of PW-9/Aleena recorded in examination-in-chief as affirmative evidence but the same does not fulfill the test and criteria laid down above as no unfavorable fact has been brought by her on record which give rise to a situation in which she was declared hostile by the prosecution and at this stage we could not understand what persuaded the prosecution, the prosecutor, or the learned Trial Court to declare such important witness as hostile as it amounts to destroying its own case, although nothing discredit PW-9/Aleena in this case and she remained consistent in favour of prosecution as she is natural, truthful, and clear witness whose statement

has neither been tainted with any malice, mala fide nor she ever stated that Muhammad Awais/appellant had not committed murder, even such fact was not available on record and the effort to make PW-9/Aleena as hostile is somehow mysterious. In such like situation, we are fortified with the view given by the Hon'ble Lahore High Court in (PLD 2013 Lahore 178 Muhammad Zafar vs. The State), wherein it has been held that:

"9. Now putting the facts of the present case on the criteria as mentioned above, it is clear that P.W.11 conducted the entire investigation, he declared two persons to be innocent, placed them in column-II of the challan. The said investigation was never challenged by the complainant before any forum so much so the prosecution itself summoned the said witness to appear as PW. Whatever was said by him was exactly according to the record and nothing was against the record entitling the other party to get him declared as hostile, suppressing the truth or inconsistent in his statement. In a case titled Muhammad Boota and another v. The State and another reported in 1984 SCMR 560, the august Supreme Court held that a witness who is unfavourable is not necessarily hostile, for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the court; that the witness answered to certain question is in direct conflict with evidence of other witnesses and is not and can never be a reason for allowing the witness to be treated as hostile and permitted to be cross-examined.

10. It is not denied that the opinion of the police with regard to the innocence or guilt of the accused is inadmissible in evidence. However, it is for the trial Court to determine this aspect but for declaring the witness to be hostile, it is necessary to establish that he had made the statement against the record which is not a position in the present case. It is apparent from the record that P.W.11 Liaquat Ali only narrated that fact which he had done during the investigation and did not add a single word to that in examination in chief recorded in the trial court. Whatever the investigation was carried out by him before submitting the challan in the court that has been relied by the complainant. However, it is the job of the trial court to evaluate its veracity.

11. After going through the said statement, nothing has been noticed which can be said to be improvement, deviation, addition or concealment of material facts in the statement of Liaquat Ali SI/PW11."

The above referred judgment of the Hon'ble High Court has also relied upon the judgment of the apex Court in the case of Muhammad Boota *supra*.

36. From the perusal of record it has further been observed that in order to impeach the credit of witness in terms of Article 151 of the Qanun-e-

Shahadat Order, 1984 there are four ways to impeach the witness that is either by way of knowledge of the witness, witness has been bribed by way of inducement to give evidence, former statement inconsistent with any part of his evidence which is liable to be contradicted, or the witness has been prosecuted for rape or in attempt to ravish or generally of an immoral character. However, the test laid down in the Qanun-e-Shahadat Order, 1984, if placed in juxtaposition with the statement of PW-9/Aleena, we have neither seen any question in which the witness has been discredited or placed by the prosecution side nor even in the cross-examination of the defence, hence the act of declaring PW-9/Aleena as hostile witness by the Court is contrary to record.

37. In view of above background, this Court is fully convinced that Mst. Sarah Abro (deceased) was murdered with the help of 9mm Beretta although its recovery has no legal significance, especially when the same was recovered by the Investigation Officer after 11 days of arrest of Muhammad Awais/appellant despite the fact that the Investigation Officer had visited the place of occurrence on the very first day of incident and even he searched the entire house but the pistol was not recovered and later on it was recovered on the disclosure of Muhammad Awais/appellant which is not believable. The other important aspect noticed by this Court is that the fire empty was recovered vide recovery memo Exh.PB on 11.08.2014 on the very first day of incident but the fire empty and the pistol was sent to the National Forensic Science Agency on 03.09.2014 as reflected in Exh.PP, although the weapon of offence and the crime empty had been matched in the test result but in our humble view, it has no evidentiary value due to the delay caused by the Investigation Officer for not sending the 9mm fire empty prior to the recovery of 9mm pistol to the National

Forensic Science Agency, therefore, the recovery has been disbelieved having no legal worth to place reliance upon in this case.

38. The complainant side has also filed an appeal against acquittal of co-accused i.e. Muhammad Banaras Sadozai, the father of Muhammad Awais/appellant, who has been charged in this case to the extent of Section 109 r/w 302 PPC for abetment in the murder of Sarah Abro (deceased), however there is not an iota of evidence placed by prosecution against Muhammad Banaras Sadozai and we have also not seen any effort from the prosecution side to justify his involvement in this case.

39. The entire background of the case proves the chain of evidence against Muhammad Awais/appellant if seen in the light of evidence of Dr. Nasreen Butt viz-a-viz to the medical opinion, the place of sitting of Sarah Abro (deceased) on sofa, and the line of bullet trajectory which is diagonal and the same was directly hit on the middle of abdomen 10cm below epigastrium, 7cm above umbilicus 1x1, with very faint blackening and charring and the exit wound of firearm injury measuring $\frac{1}{2} \times \frac{1}{2}$ cm with everted and half margins, 38cm from middle of lower end of neck posteriorily at the back of the body clearly establishes that Sarah Abro (deceased) was sitting on the sofa and Muhammad Awais/appellant killed her with the pistol while in standing position and the fire empty was ejected at the distance of seven feet from the sofa as referred in the site plan Exh.PG, which is a natural distance of any firearm empty when ejected from the chamber of the pistol after its fire and the distance referred in the Exh.PG is seven feet from Point No.1 where Sarah Abro (deceased) was sitting on the sofa. All these facts confirm the involvement and commission of offence leading towards Muhammad Awais/appellant. All these facts further confirmed from the statement of PW-9/Aleena who is natural witness of the chain of event and who had seen Muhammad

Awais/appellant at the place of occurrence whereas Muhammad Awais/appellant has failed to explain his stance of suicide of Sarah Abro (deceased) as per his own plea. Although, the motive has not been justified on record in any manner, therefore, keeping in view the foregoing discussion, we are of the considered view that certain circumstances of mitigation appear on record as the recovery is not believed and motive has not been proved, hence, while maintaining the conviction of Muhammad Awais/appellant under Section 302-B PPC, we hereby convert the death sentence into life imprisonment by way of Tazir. Resultantly, the Criminal Appeal No.79/2016 (Muhammad Awais vs. The State) as well as Criminal Appeal No.99/2016 (Dr. Munir Ahmed vs. Muhammad Awais Sadozai, etc.) are hereby **dismissed**, whereas the Murder Reference No.4/2016 (The State vs. Muhammad Awais) is answered in **negative**.

40. Before parting with the instant judgment, we are constrained to hold that the role of Muhammad Nawaz, S.I./Investigation Officer is highly unprofessional and is based upon his illegal action in the investigation proceedings whereby he had taken into custody PW-9/Aleena, the star witness of this case, on the day of occurrence i.e. 11.08.2014 and kept her in the Women Police Station for 12/13 days as recorded in the evidence, and recorded her statement after 12 days which is beyond any legal and factual justification. Similarly, the Investigation Officer had not sent the firearm empty of 9mm pistol recovered through Exh.PB on 11.08.2014 to the Forensic Science Laboratory prior to the recovery of 9mm Beretta pistol which was recovered through recovery memo Exh.PD on 22.08.2014 and intentionally dispatched both these items to National Forensic Science Agency on 03.09.2014, which reflects his inability to understand the nature of evidence and sensitivity of such a case, even he has not investigated the case to the extent of Asif, the alleged cousin of Sarah Abro (deceased), who

visited Sarah Abro (deceased) on 10.08.2014 as referred in the evidence of PW-9/Aleena which resulted into a quarrel and fight between the husband and wife, i.e. Sarah Abro (deceased) and Muhammad Awais/appellant. The Investigation Officer has also not brought any evidence from the Life Care Hospital where Sarah Abro (deceased) was taken at the first instance after she was injured and neither any witness was recorded nor any medical evidence has been taken into custody from the said hospital, even the same were not placed with the final report U/S 173 Cr.P.C. Such approach on the part of Investigation Officer speaks volumes about his conduct, therefore, copy of this judgment may be transmitted to the I.G. of Police, who shall consider all these factors referred above.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: May, 2018.

JUDGE

JUDGE

Khalid Z.