

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, **JUDICIAL DEPARTMENT**

Crl. Appeal No.115/2017

Adil Khan
Versus
The State & another

Appellant by: Raja Rizwan Abbasi, Advocate.
Mr. Sohail Akhtar, Advocate.

Respondents by: Mr. Fayyaz Ahmad, Advocate for
Respondent No.2.
Mr. Sarfraz Ali Khan, State Counsel.

and

Crl. Revision No.101/2017

Muhammad Saleem
Versus
Adil Khan & another

Petitioner by: Mr. Fayyaz Ahmad, Advocate.

Respondents by: Raja Rizwan Abbasi, Advocate for
Respondent No.1.
Mr. Sarfraz Ali Khan, State Counsel.

Date of Hearing: 05.09.2018.

JUDGMENT

Through this common judgment, I intend to decide the captioned criminal appeal and criminal revision arising out of case FIR No.196, dated 06.07.2016, U/S 302 PPC, P.S. Tarnol, Islamabad.

2. Through Crl. Appeal No. 115/2017, the appellant/Adil Khan has assailed the judgment passed by the learned trial Court dated 20.07.2017, whereby the learned Additional District Judge-III (West), Islamabad has convicted the appellant/Adil Khan U/S 302(b) PPC and sentenced him to undergo imprisonment for life as Tazir and to pay compensation to the tune of Rs.50,000/- to the legal heirs of the deceased U/S 544-A Cr.P.C., whereas in default of payment of compensation, the convict shall suffer simple

imprisonment for a period of three (03) months, however benefit of Section 382-B Cr.P.C. has been extended to the convict. The complainant Muhammad Saleem s/o Muhammad Karim alleged in the complaint that his sister Mst. Shabnam Bibi/deceased got married to appellant/Adil Khan and on 06.07.2016, when he was present at his home at about 9:15 a.m. in the morning, one Jahangir, the brother of the appellant/Adil Khan, called him to reach at his sister house as there is some issue at the home. When the complainant reached at the spot, he found his sister Mst. Shabnam Bibi/deceased dead at charpayi lying in the courtyard. It is further alleged in the complaint that his brother-in-law, appellant/Adil Khan, usually had quarrels and fights with Mst. Shabnam Bibi/deceased and he committed murder of Mst. Shabnam Bibi/deceased with .30 bore pistol. On receiving such information, the police reached at the spot and taken over the dead body to the hospital, prepared the recovery memo of fire empty and bloodstained cotton. As a result of the said complaint, FIR No.196, dated 06.07.2016, U/S 302 PPC, P.S. Tarnol, Islamabad was registered, which is referred as Exh.PJ. The police has arrested the appellant/Adil Khan, who got recovered the .30 bore pistol allegedly used in the incident and after completion of investigation, the final report U/S 173 Cr.P.C. has been sent to the learned trial Court, and on completion of the trial, the learned trial Court convicted the appellant/Adil Khan through the impugned judgment and sentenced him for life imprisonment. Hence, this appeal.

3. On the other hand, the complainant filed the captioned criminal revision seeking enhancement of the sentence of life imprisonment awarded to the appellant/Adil Khan to death sentenced.

4. Learned counsel for appellant/Adil Khan contended that appellant/Adil Khan is innocent and has falsely been implicated in this case and the judgment dated 20.07.2017 is not sustainable in the eyes of law; that there are material contradictions in the prosecution evidence and these

contradictions have impaired the prosecution case beyond repair; that the learned trial Court has misread the evidence and the impugned judgment is based upon surmises and conjectures; that there is no eyewitness of the alleged occurrence and the entire case is based on circumstantial evidence, whereas PW-11 Dr. Muhammad Naseer acknowledged that it is a contact wound on the temporal region of Mst. Shabnam Bibi/deceased; that in the inquest report (Exh.PL) the police has referred the incident as of suicide.

5. Conversely, the learned counsel for complainant/Muhammad Saleem as well as the learned State Counsel contended that the case has been proved beyond any shadow of doubt but the learned trial Court has awarded the sentence of life imprisonment, despite the fact that the case is of death sentence; that the entire evidence of the prosecution successfully proved the connection of the appellant/Adil Khan with the alleged crime of murder of Mst. Shabnam Bibi/deceased; that the firearm .30 bore pistol used in the said crime was recovered vide recovery memo Exh.PH on the pointation of appellant/Adil Khan, and the same has corroborated the firearm empty used in this case, therefore, they prayed that the instant criminal appeal may be dismissed and the sentence awarded to the appellant/Adil Khan may be enhanced from life imprisonment to death sentence.

6. Arguments heard, record perused.

7. From the perusal of record it has been observed that the criminal case FIR No.196, dated 06.07.2016, U/S 302 PPC, P.S. Tarnol, Islamabad got lodged on the complaint of Muhammad Saleem, brother of Mst. Shabnam Bibi/deceased, who appeared as PW-3 in the learned trial Court and stated that he was present in his house on 06.07.2018 when he was informed by Jahangir, brother of appellant/Adil Khan, that there is some issue at his sister home, whereafter he visited the house of his sister Mst. Shabnam Bibi/deceased and found lot of people were gathered in the courtyard where

dead body of his sister Mst. Shabnam Bibi/deceased was lying, who was murdered by appellant/Adil Khan by using .30 bore pistol. After registration of the criminal case, the police shifted the dead body to hospital where PW-11 Dr. Muhammad Naseer conducted the postmortem of Mst. Shabnam Bibi/deceased and observed the following:

" On external postmortem examination, length of body was 5'. She was a young lady of very good physique with eyes and mouth closed, wearing yellow printed colour shalwar qameez, badami colour brazier, pink printed colour dupatta. All of which were blood stained. Following injuries were observed:

- "1. Firearm entry wound with no blackening but charring mark on the right temporal region with edges wound inverted measuring 6x3x4 cm in diameter with adjacent region right frontal bone was fractured.*
- 2. Firearm exit wound on the left temporal region 2x2 cm with edges everted. Both hands had been amalgamated with "Mehdi" and there were no marks of blood.*
- 3. Liver, spleen, kidney, piece of small intestine and its contents along with stomach with its contents were taken for chemical analysis at the time of dissection of abdomen and were sent to chemical examiner Lahore for any intoxication.*

On the dissection of skull:- Skull wall was ruptured while both the temporal and right frontal bone were fractured.

Dural Membranes with brain matter was ruptured while spinal cord was found healthy. On the dissection of thorax all the organs were found healthy.

On abdominal dissection all the organs were found healthy while stomach contained brownish colour fluid.

Opinion:

Deceased sustained firearms injury over the skull which caused rupture of the brain matter leading to loss of function and death. These firearms wounds were anti-mortem in nature and were sufficient to cause of death in an ordinary course of life.

Time of death between injury and death: 3-5 minutes

Time between death and postmortem: 8 – 8½ hours.

This report Exh.PK/1-4 is in my handwriting and bears my signatures and was handed over to Muhammad Khan, S.I on 13.07.2016. The two pictorial diagrams Exh.PK/5 and Exh.PK/6 had been prepared by me and bears my signatures."

8. During the course of cross-examination, PW-11 Dr. Muhammad Naseer acknowledged that the injury is a contact wound, which he defined in the following manner:

"If the firearm injury is a contact wound then charring marks are bound to occur. The charring marks are result of burning/roasting skin and muscles. It is correct to suggest that the entry wound of the deceased is bearing charring marks. It is correct to suggest that in case of contact wound the entry wound may be larger than the exit wound."

Besides the above referred evidence, PW-11 Dr. Muhammad Naseer has also acknowledged that there was no bruise or injury etc. on the body of Mst. Shabnam Bibi/deceased other than the firearm injury mentioned by him in the postmortem report.

9. The prosecution has produced Haq Nawaz Khan as PW-1, who recorded his statement that 06.07.2016 was the day of Eid-ul-Fitr and after offering the prayer of Eid-ul-Fitr, he received a call from a village that some incident took place at Tarnol, whereupon he contacted Muhammad Saleem, the brother of Mst. Shabnam Bibi/deceased, who then reached to the house of Mst. Shabnam Bibi/deceased and found out that she was lying dead in the courtyard of the house and a large number of people were gathered around the dead body. As per his stance, Mst. Shabnam Bibi/deceased sustained a bullet injury on her head and her head was already made clean by someone, her dress was changed, her room was washed out, and the blood from the "chitai" lying in her bedroom was also wiped out by some piece of cloth. He further stated that no one had informed the police, therefore, he called 15 Rescue Police through his cousin mobile and informed them about the occurrence, whereafter the police reached at the spot and shifted the dead body to the PIMS Hospital. During the course of cross-examination, Haq Nawaz/PW-1 acknowledged that he is a taxi driver and Mst. Shabnam Bibi/deceased was his maternal cousin. He also acknowledged that the Investigation Officer has neither recorded his statement after the funeral ceremony of Mst. Shabnam Bibi/deceased nor on the day of occurrence, but the Investigation Officer has obtained his signature on one paper when they were taking the dead body

back to home. He also acknowledged that Mst. Shabnam Bibi/deceased was living with her husband in a joint family system comprising of 6/7 male and female members, whereas Mst. Shabnam Bibi/deceased was residing in a house comprising of 4 rooms and she was living with her husband separately in one of the rooms, and Mst. Shabnam Bibi/deceased left one girl as her legal heir. PW-1 further acknowledged that he is not an eyewitness of the occurrence.

10. The prosecution has produced PW-2 Sher Muhammad Khan, who stated that he heard the news of death of Mst. Shabnam Bibi that she committed suicide and he reached to the house of Mst. Shabnam Bibi/deceased and found her dead lying on a cot in the courtyard, whereas her clothes had already been changed by someone and the Chitai inside the room was also made clean by someone, whereafter the police was called for, who shifted the dead body to the PIMS Hospital. However, nothing fruitful has been achieved from his statement during the course of cross-examination except that he is a Councilor of Union Council No.3, Rawalpindi and he has only signed the document of handing over of the dead body.

11. The complainant Muhammad Saleem, brother of Mst. Shabnam Bibi/deceased, put appearance as PW-3, who recorded his stance with similar version that on the day of Eid-ul-Fitr in the year 2016, when he was present in the shop of his relative Roshan Zameer, he received a call from Jahangir Khan, the real brother of appellant/Adil Khan, who asked him to reach their home due to some issue at home. He immediately reached to the house where he observed a large number of people inside and outside of the house, however when he entered into the house he saw the dead body of his sister Mst. Shabnam Bibi/deceased. He asked the said Jahangir regarding the cause of death of his sister, whereupon he told him that he cleaned his pistol the earlier night and placed it in the bedroom of Mst. Shabnam Bibi/deceased, and the

said Jahangir while abusing Mst. Shabnam Bibi/deceased told him that she took the pistol and committed suicide. PW-3 Muhammad Saleem/complainant further stated that Haq Nawaz made a call to 15 Rescue Police, whereafter the police reached at the spot and started interrogating the matter and complaint Exh.PB was lodged on his verbal statement. He further stated that he identified the dead body through identification memo Exh.PA and the clothes of the deceased were also taken through recovery memo Exh.P6, which was signed by him. However, during the course of cross-examination, PW-3 Muhammad Saleem/complainant acknowledged that he is a Grader Operator and an illiterate person. He further conceded that his niece Jaweria is living with her paternal grandparents in the same house where Mst. Shabnam Bibi/deceased was living with her husband along with the other family members. He further acknowledged that Mst. Shabnam Bibi/deceased neither moved any complaint to the police nor any family litigation has ever been filed against her husband appellant/ Adil Khan. He further acknowledged that appellant/ Adil Khan did not allow Mst. Shabnam Bibi/deceased to stay with her sister and that the last time he went to the house of Mst. Shabnam Bibi/deceased in the holy month of Ramzan to give her Eidi. He also conceded that his first statement/complaint Exh.PB was drafted by the Investigation Officer at the place of occurrence, however after receiving the dead body from PIMS Hospital, he went to the police station and the FIR was recorded in the night time. He also acknowledged that he has not produced any eyewitness of any previous quarrel or torture etc. by appellant/ Adil Khan against Mst. Shabnam Bibi/deceased nor he mentioned the absence of appellant/ Adil Khan in complaint Exh.PB. PW-3 categorically stated that he is neither the eyewitness of the occurrence as the occurrence took place inside the house nor he has produced any witness before the police who ever stated that there was any quarrel between Mst. Shabnam Bibi/deceased and appellant/ Adil Khan on the

date of occurrence. He also acknowledged that he has not informed the police about the occurrence, and that he signed the Exh.PC, Exh.PD, and Exh.PE.

12. The prosecution has produced Zafar Abbas/Constable as PW-4, who stated that he participated in the proceedings of arrest of appellant/ Adil Khan and got signed the recovery memo of all the articles which were recovered from appellant/ Adil Khan at the time of his arrest.

13. The prosecution has produced Akbar Zaman/Moharrar as PW-5, who stated that he received the parcels being deposited by the Investigation Officer regarding bloodstained cotton and handed over the same to the CMO along with the objection for onward deposit in the PSFL with road certificate. He also acknowledged that the parcels remained in his custody till 12.08.2016 and he handed over .30 bore pistol along with one empty of .30 bore pistol to the Investigation Officer.

14. The prosecution has produced Malik Amir Shahzad/Draftsman as PW-6, who stated that he prepared the site plan Exh.PG, wherein he has given the details of the distance of place of occurrence, firearm empty, and other details of the house where dead body was lying.

15. The prosecution has produced Muhammad Ishaq/Constable as PW-7, who stated that he proceeded to Forensic Science Agency, Islamabad along with two sealed parcels bearing seal of MN for onward transmission to NFSA and had deposited .30 bore pistol and firearm empty of the weapon used in the crime.

16. The prosecution has produced Muhammad Riaz/Constable as PW-8, who stated that he is witness of recovery memo (Exh.PH), however, during the course of cross-examination, he acknowledged that Exh.PH was prepared by the Investigation Officer at P.S. Tarnol and he attested the same as witness and that the place of occurrence was not cordoned by the Investigation Officer and

even at time of recovery of pistol, the Investigation Officer has not secured the fingerprints in his presence.

17. Similarly, Mushtaq Ahmad/S.I. appeared as PW-10 and stated that he received the complaint, which was prepared by Muhammad Khan/S.I., and lodged FIR No.196, dated 06.07.2016, U/S 302 PPC, P.S. Tarnol, Islamabad, which is referred as Exh.PJ.

18. Lastly, the prosecution has produced Muhammad Khan/S.I. as PW-12, who is the Investigation Officer of this case, stated that on 06.07.2016, he received a wireless call that an incident took place in Mohallah Farooq-e-Azam, Pindi Parian, whereafter he along with Ashfaq Ahmad/ASI, Zafar Abbas/Constable, Arshad Mehmood/Constable, and Sajida Parveen/Lady Constable reached at the place of occurrence on a private car, where dead body of Mst. Shabnam Bibi/deceased was lying on a cot (charpayi), whereupon the lady constable examined the dead body and observed a wound on the right side and left side of the forehead (kanpatti). Accordingly, the inquest report (Exh.PL) as well as application for postmortem (Exh.PM) were prepared by the Investigation Officer. He further stated that he has recorded the statement of Muhammad Saleem/complainant on spot PB against appellant/Adil Khan U/S 302 PPC and sent the same to the police station for registration of FIR. He inspected the place of occurrence and prepared a rough site plan (Exh.PN). During the site inspection, he found one bullet empty and bloodstained cotton, which were taken through separate seizure memo Exh.PD and Exh.PC, respectively. Whereafter, he reached to the PIMS Hospital and the concerned CMO handed over the last worn clothes of Mst. Shabnam Bibi/deceased (Exh.PE). He also prepared the recovery memo of the last worn clothes of Mst. Shabnam Bibi/deceased and the dead body was handed over to the complainant. He further stated that on 08.07.2016, he got prepared the site plan through PW-6 Malik Amir Shahzad/Draftsman and has received the

postmortem report (Exh.PK/1-6) along with photographs of Mst. Shabnam Bibi/deceased through recovery memo (Exh.PP). He arrested the appellant/Adil Khan, and on whose disclosure, .30 bore pistol along with three live cartridges were recovered on 17.07.2016 and the separate FIR No.203/2016 U/S 13, 20, 65 A.O., P.S. Tarnol, Islamabad was got registered. The Investigation Officer has sent the parcels of bloodstained cotton through Qaisar Abbas/Constable to National Forensic Science Laboratory, Lahore on 03.08.2016, and recorded the statement on 04.08.2016.

19. However, during the course of cross-examination, PW-12 Muhammad Khan/S.I. acknowledged that the day of occurrence was Eid-ul-Fitr and the occurrence took place between 9:45 a.m. to 10 a.m. He also acknowledged that when he reached the place of occurrence the dead body of Mst. Shabnam Bibi/deceased was lying in the courtyard and was covered with a *Chaddar*. He also admitted that Sajida Pervaiz/Lady Constable was not cited as witness in the calendar of witnesses of the instant case. He further acknowledged that during his investigation of the instant murder case, he had not cordoned the area as per the standard practice. PW-12 Muhammad Khan/S.I. further conceded that the place of occurrence is comprising of three bedrooms, drawing room, kitchen, bathroom, veranda and courtyard, which is approximately about 5-6 marlas. He further acknowledged that there is no eyewitness mentioned in the calendar of witnesses who could have witnessed or seen any previous quarrel occurred between Mst. Shabnam Bibi/deceased and appellant/Adil Khan and no application about previous quarrels between Mst. Shabnam Bibi/deceased or appellant/Adil Khan was produced during the course of investigation. He also acknowledged that he has mentioned in one of the column of Exh.PL that there were rumors about suicide of Mst. Shabnam Bibi/deceased at the place of occurrence. He also acknowledged that there is no eyewitness or witness of Wajtakar in the calendar of witnesses.

Even, no one from the siblings or mother of Mst. Shabnam Bibi/deceased joined the investigation of this case and the bloodstained piece of earth was obtained from the inside of house, no led bullet was recovered from the alleged place of occurrence and the last worn clothes of Mst. Shabnam Bibi/deceased, which were lying in the Police Station Tarnol got destroyed due to the fire incident took place on 29.05.2017. PW-12 Muhammad Khan/S.I. also conceded that on 17.07.2016, he along with the appellant/ Adil Khan went to the place of occurrence and the alleged weapon of offence was got recovered and during the course of its recovery, no one witnessed the recovery proceedings and he has not mentioned any of the almirah or safe in Exh.PH, none of the family members of appellant/ Adil Khan was joined by him in the investigation and even there is not a single witness who could disclose that the place of recovery was in use of the appellant/ Adil Khan.

20. After completion of the evidence, the appellant/ Adil Khan has recorded his statement U/S 342 Cr.P.C. and while answering the Question No.3, he has taken the following stance:

"Question No.3 It is in the prosecution evidence that on 06.07.2016, I.O alongwith Ashfaq Ahmed, ASI, Constable Zafar Abbas, Constable Arshad Mehmood, Lady Constable Sajida Parvaiz through private vehicle went to Mohallah Farooq-e-Azam Pind Parian at your house where dead body of deceased Shabnum was lying in the cot/Charpai and through lady constable they examined the dead body and they observed wound lying on the right side and left side of the forehead (kunpatti) and the inquest report is Exh.PL. What do you say about it?

Ans. It is incorrect. My wife committed suicide in the house which contains almost 09 persons. All of my family members and neighbourer informed the I.O. that the deceased committed suicide but the I.O. willfully did not recorded their statements nor joined them in his investigation. Both IO and the

complainant stated that the dead body was lying in the courtyard. I.O. willfully did not take into custody the bedsheet and the cot. I.O. took the pistol in his possession which contains finger prints of the deceased and the gun which the deceased used but change the gun from the alleged recovered gun, so that the I.O. and complainant can fix me in this case. Furthermore, the postmortem report and the statement of doctor is available on record and according to which a contact fire shot was made and that is why charring marks are available on the entry wound. Exh.PL clearly depicts that I.O. have verified the alleged occurrence from the vicinity and it is written in that report that rumor is about suicide."

21. From the above referred evidence tendered by the prosecution, the following discrepancies have been noted by this Court:

- i) The complaint (Exh.PB) was lodged by Muhammad Saleem with delay.
- ii) The complainant and other private witnesses confirmed that case was registered at night after funeral of Mst. Shabnam Bibi/deceased.
- iii) Mst. Shabnam Bibi/deceased was lying on a cot in the courtyard and when complainant and other witnesses reached at the place of occurrence the alleged place of occurrence was washed out, the wound was also made clean and the clothes of Mst. Shabnam Bibi/deceased was changed by someone.
- iv) The Investigation Officer Muhammad Khan/S.I. PW-12 has not associated any of the neighborer or resident of the same house i.e. brother, sister, and mother of appellant/ Adil Khan in this case.
- v) There is no eyewitness of the occurrence.

- vi) There is no eyewitness produced by the prosecution regarding any alleged incident of previous quarrel between Mst. Shabnam Bibi/deceased and appellant/Adil Khan nor complainant or any other family member or Mst. Shabnam Bibi/deceased ever submitted complaint against appellant/Adil Khan about his conduct.
- vii) The initial information was conveyed by Jahangir, brother of the appellant/Adil Khan to Muhammad Saleem/complainant that some incident took place at his sister house.
- viii) PW-11 Dr. Muhammad Naseer has confirmed the injury No.1 as a firearm entry wound with no blackening but the charring mark on the right temporal region, whereas he defined the injury No.2 as a firearm exit wound on the left temporal region.
- ix) PW-11 Dr. Muhammad Naseer further acknowledged that the charring mark is a result of burning and roasted skin and muscles and it is a contact wound.
- x) PW-11 Dr. Muhammad Naseer also confirmed that there was no bruise or injury on the body of Mst. Shabnam Bibi/deceased other than the firearm injury.
- xi) The Investigation Officer acknowledged that he has referred the rumor of suicide of Mst. Shabnam Bibi/deceased in the inquest report Exh.PL on the day of occurrence.
- xii) The firearm empty recovered through Exh.PD on the day of occurrence and the recovered pistol allegedly used in the incident recovered through Exh.PH were sent to the FSL jointly on 08.08.2016 and a report Exh.PT was prepared by NFSA where fired cartridge has been identified that it was fired from the same pistol.

- xiii) There is no evidence of alleged motive raised by the prosecution in this case.
- xiv) PW-3 Muhammad Saleem/complainant states that there is no other injury on the face or head of Mst. Shabnam Bibi/deceased except the firearm injury.
- xv) PW-3 Muhammad Saleem/complainant cannot tell the exact time when he reached the place of occurrence, it would be 45/1 hour after the Eid prayer.
- xvi) As per the statement of PW-3 Muhammad Saleem/complainant, it took 15/20 minutes to reach the place of occurrence from the place of resident.
- xvii) The learned Trial Court has not believed the motive as it is shrouded in mystery.
- xviii) The instant case is of circumstantial evidence as there is no direct witness of evidence.
- xix) The learned Trial Court technically disbelieved the recovery effected by the Investigation Officer.
- xx) PW-12 Muhammad Khan/I.O. has not investigated or recorded any witness during the course of investigation who could have met or seen the appellant/Adil Khan on the day and time of occurrence.
- xxi) The Investigation Officer has not recorded any witness in the investigation who could disclose the exact time of occurrence, even he is not able to answer the exact number of resident of house where the alleged incident took place.
- xxii) The Investigation Officer has acknowledged that there is no direct witness of the occurrence or any witness of Wajtakar.

- xxiii) The bloodstained last worn clothes of Mst. Shabnam Bibi/deceased were not sent for the purpose of chemical examination.
- xxiv) Investigation Officer has not recorded any injury other than the firearm injury mentioned in the inquest report Exh.PN.
- xxv) Investigation Officer has not cordoned the place of occurrence on the day of occurrence and it remained open and under use of its dwellers during the period of between 06.07.2016 to 17.07.2016.
- xxvi) Investigation Officer has not obtained any fingerprints from pistol at the time of alleged recovery.
- xxvii) Investigation Officer has acknowledged that there is no witness who could disclose that the place of recovery (safe/almirah) from where the alleged pistol was recovered was in use of the appellant/ Adil Khan.
- xxviii) The place of recovery (bedroom) has not been referred to the appellant/ Adil Khan in Exh.PH.
- xxix) Appellant/ Adil Khan has taken the stance in his statement U/S 342 Cr.P.C. that his wife committed suicide in the house which comprises of nine persons and all family members and neighbours informed the Investigation Officer that Mst. Shabnam Bibi/deceased committed suicide.

22. From the perusal of abovementioned discrepancies and facts, this Court is of the view that the prosecution is under heavy burden to prove the fact that the appellant/ Adil Khan has committed the murder of his wife Mst. Shabnam Bibi/deceased and in order to prove this case, there is no direct eyewitness available and the case rests upon circumstantial evidence. The alleged incident took place on 06.07.2016 on the day of Eid-ul-Fitr after Eid prayer in the house of appellant/ Adil Khan and Mst. Shabnam Bibi/deceased was shot dead in the

head in the bedroom but the dead body was shifted to courtyard (sehan), her clothes were got changed, the wounds were made clean, and even the blood at the place of occurrence (bedroom) was already wiped out, but the Investigation Officer has not carried out the investigation to bring all those circumstances and persons on record who have removed the valuable pieces of evidence and even the entire case record is silent as to how, when, and who shifted the dead body from bedroom to courtyard, even otherwise, the Investigation Officer had not sent the bloodstained clothes of Mst. Shabnam Bibi/deceased to the chemical examiner and when PW-3 Muhammad Saleem/complainant reached at the house of Mst. Shabnam Bibi/deceased, she was lying dead on a cot and people as well as mother of appellant/ Adil Khan were sitting around the dead body. No witness has been produced in this case who could justify the fact of calling of police on the alleged place of occurrence and there is no denial to proposition that the alleged incident took place after Eid prayer but the matter was informed to the police with delay and in this period valuable and committing articles have been compromised. Similarly, the Investigation Officer has not only poorly investigated the matter qua the style of crime but also excluded the most natural witnesses i.e. the residents and neighbours of the house, whereas no justifiable reason has been placed on record for this discrepancy.

23. The Investigation Officer/PW-12 himself referred in Column No.21 of Report Marg (Exh.PL) that there are rumours of suicide, however the alleged portion of inquest report is as under:

کیا کوئی ایسے حالات موجود ہیں یا افواہ جاری ہے جس سے	جی ہاں خود کشی کی افواہ جاری ہے۔
معلوم ہو کہ متوفی نے خود کشی کی۔	

24. The first ever information to the police is regarding suicide of Mst. Shabnam Bibi/deceased in the vicinity but after lodging of the complaint by

PW-3 Muhammad Saleem, the matter was turned into a murder case and the entire case file as well as evidence of the prosecution has been made in a manner to prove that it is a murder, whereas in such like cases the Investigation Officer plays a crucial role of investigation and as per the definition of the word "investigation" referred in Section 4(i) of Cr.P.C., 1898, all proceedings under this Code for the collection of evidence conducted by police-officer is referred as investigation. Investigation of case does not mean that after registration of the FIR the truth has to be extracted from the incriminating material. The investigation generally consists of the following steps.

- Proceedings on the spot
- Ascertaining of the facts/circumstances of the case
- Discovery of arrest of suspended offender
- Collection of evidence relating to commission of offence.
- Formation of opinion as to the trial of the case.

25. It is incumbent upon the Investigation Officer to send its final report to the Court and the provisions relating to Sections 157, 160, and 161 Cr.P.C. dealing with the investigation have provided a mechanism of check and balance so that a fair and impartial investigation is conducted within the framework of these provisions and also without fear or without nepotism and favoritism. It is expected from the police officer to act fairly, honestly and without any biases, however in this case the Investigation Officer is not able to demonstrate the highest standard of professionalism as he himself excluded the most natural witnesses of this case i.e. the residents and neighbours of the house where the alleged occurrence took place and similarly the manner in which the dead body was shifted from the bedroom to courtyard has not been explained despite the fact that he had an authority to charge all those persons

in offence U/S 201 PPC for removal of evidence but no such effort is visible. At the same time, he has referred the rumor of suicide in the inquest report.

26. I have also gone through a number of forensic medicine & toxicology references and it has been observed that firearm like pistol, which propels a projectile by expansion of gases generating by the combustion of an explosive substance. In case of a pistol, the cartridges are directly loaded in the chamber of a barrel and when the bullet comes out of muzzle with rotating movement and with velocity and energy, it is a combination of flame and gases accompanied by unburned burning or partially burned propellant. When there is a close shot in a contact wound, abraded color or contusion ring occurs. The gases from explosion expand between scalar and skull resulting in a bursting effect and a regot entrance would appear.

27. I have also gone through medical jurisprudence and toxicology by John James Reese, wherein he has referred certain observations of average tendency of suicide observed from different cases where the style of killing 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."

I 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."

I 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."

28. 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 the statement of Dr. Muhammad Nasser PW-11, which reads as under:

"firearm entry wound with no blackening but a charring mark on the right temporal region with edges wound inverted measuring 6x3x4 cm in diameter with adjacent region right bone was fractured."

This gives a clear cut impression that the blackening was not present and the same was with a close proximity, whereas during the course of cross-examination, PW-11 Dr. Muhammad Naseer acknowledged that:

"if the firearm injury is a contact wound, then charring marks are bound to occur. The charring marks are result of burning/roasting of skin and muscles. It is correct to suggest that the entry wound of the deceased is bearing charring mark. It is correct to suggest that in case

of contact wound the entry wound may be larger than the exit wound."

In view of above statement, the firearm exit wound on the left temporal region is 2x2 cm with edges averted and as per the version of PW-11 Dr. Muhammad Naseer, the entry wound is bigger in size than the exit wound.

29. The abovementioned observation is also visible from the photographs (Exh.PP) of Mst. Shabnam Bibi/deceased, exhibited as Exh.P1 to Exh.P6, which fully explain that it is a contact wound. The weapon of offence used in this case is .30 bore pistol and the fire empty recovered from the spot through Exh.PD matches the pistol as per the NFSA report, referred as Exh.PT. The above referred view of contact wound has to be seen in the light of statement of Sher Muhammad Khan/PW-2, who stated before the Court that he received a call on Eid-ul-Fitr at about 8:30 am from Gul Nawaz that Mst. Shabnam Bibi/deceased committed suicide. Sher Muhammad Khan/PW-2 is a Councilor in UC-3, Rawalpindi and is a close relative of the complainant. Similarly, PW-1 Haq Nawaz who made a telephone call to 15 Rescue Police has also not seen the occurrence, rather he was informed after the prayer of Eid-ul-Fitr through a telephonic call that some incident took place at Tarnol. Even otherwise, PW-3 Muhammad Saleem/complainant, brother of Mst. Shabnam Bibi/deceased, is not an eyewitness and was informed by brother of appellant/Adil Khan regarding the alleged incident. This entire background shall also be seen in the light of statement of PW-12/Investigation Officer, who acknowledged in Column No.21 of Exh.PL that he heard rumors of suicide of Mst. Shabnam Bibi/deceased.

30. In such like cases where a vulnerable dependent i.e. Mst. Shabnam Bibi/deceased, wife of appellant/Adil Khan, was gunned down to death inside the confinement of appellant/Adil Khan, he is under some onus to explain all those circumstances as to how his wife met an unnatural death and in this

regard, the respondent side has placed reliance upon 2015 SCMR 710 (Saeed Ahmad vs. The State). The requirements of Article 117 and 112 of the Qanun-e-Shahadat Order, 1984 come into play where burden of proof is dependent upon the existence of facts which have been asserted by a person who wants to prove the existence of a particular fact i.e. in this case PW-3 Muhammad Saleem/complainant is under heavy burden to discharge the onus as his sister Mst. Shabnam Bibi/deceased was murdered by appellant/Adil Khan and he has to express this particular knowledge of commission of offence in terms of Article 122 of the Qanun-e-Shahadat Order, 1984 and if the complainant is not an eyewitness, the circumstances are different in their nature and the stance taken by the appellant/Adil Khan, if placed in juxtaposition with the prosecution evidence, especially the answer of Question No.3 in his statement under Section 342 Cr.P.C., where he stated that:

"my wife committed suicide in the house which contains almost 9 persons. All of my family members and neighbours informed the I.O. that deceased committed suicide but I.O. willfully did not record their statement and not joined them in the investigation."

31. The above referred stance clearly raises a serious doubt on the entire proceedings conducted by the Investigation Officer. There is no doubt that if Mst. Shabnam Bibi/deceased met an unnatural death in the confines of the house some onus has to be laid upon the appellant/Adil Khan to establish the circumstances in which such unnatural death had occurred but this does not mean that burden of proof shifted to the accused person. Reliance is placed upon 2017 SCMR 724 (Nasrullah alias Nasroo vs. The State). In such like cases where motive set up by the prosecution had not been proved, the recovery of pistol from the accused possession on his pointation was even otherwise inconsequential, crime empty as well as pistol were sent to the FSL together on one and the same day despite the fact that crime empty was recovered on the day of incident and pistol was recovered after two months, there are no

eyewitnesses of the account and most natural witnesses have been excluded, the benefit goes to the accused. Reliance is placed upon 2011 SCMR 941 (Abdul Majeed vs. The State) and 2016 YLR Note 44 (Punoon vs. The State).

32. It is also trite law that crime empty allegedly found at the place of occurrence was retained in the police station and same was sent to the FSL along with the crime weapon after the recovery of alleged weapon, the evidential value of such piece of evidence could not be used for any corroboration of appellate testimony. Reliance is placed upon 2008 SCMR 707 (Ali Sher vs. The State) and 2017 PCr.LJ 1391 (Sauleh Muhammad vs. The State). Similarly, the medical evidence may confirm the ocular evidence with regard to the receipt of injury, nature of injury, type of weapon used, duration between injury received and the death, but it would not connect the accused with the commission of crime. Reliance is placed upon 1994 SCMR 1928 (Muhammad Iqbal vs. Abid Hussain alias Mitto) and PLD 2009 SC 53 (Muhammad Tasgheer vs. Hafiz Zulqarnain & two others).

33. The poor investigation conducted by the Investigation Officer in this case is visible, who has not taken the proper incriminating evidence on record, rather the entire case suggests the possibility of suicide of Mst. Shabnam Bibi/deceased and the Investigation Officer has recorded some observations in the inquest report on the day of occurrence on his first visit, whereas the best available evidence would be of the family members/residents of the place of occurrence, who have neither been produced nor even referred, which gives rise to the situation that the best available evidence has been withheld by the Investigation Officer in terms of Article 129(g) of the Qanun-e-Shahadat Order, 1984. It is trite law that in case of doubt, the benefit must be given to the accused as a matter of right and not as a matter of grace, and even there is no requirement to suggest many circumstances to create a doubt as even a single circumstance create a reasonable doubt in a prudent mind about the guilt of

the accused makes him entitled to its benefit not as a matter of grace or concession, but as a matter of right. Reliance is placed upon 2009 SCMR 230 (Muhammad Ikram vs. The State), 1995 SCMR 1345 (Tariq Pervaiz vs. The State) and 2018 YLR 282 (Haji Kasim Khan vs. Qadeer Khan). Therefore, in such like circumstances, I am fortified with the view taken by the recent judgment of the apex Court in 2017 SCMR 564 (Arshad Khan vs. The State) whereby the husband was acquitted on the charge of murder of his wife as no independent witness was associated during the recovery proceedings, the delay in lodging the FIR was apparent, the motive has not been substantiated.

34. In view of above discussion, this Court reached to an inescapable conclusion that the prosecution has failed to prove its case against the appellant/ Adil Khan beyond reasonable doubt, therefore, the instant Criminal Appeal No.115/2017 (Adil Khan vs. The State & another) is allowed, the conviction and sentence of appellant/ Adil Khan recorded by the learned Trial Court is hereby set aside, and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in any other case.

35. Accordingly, the instant Criminal Revision No.101/2017 (Muhammad Saleem vs. Adil Khan & another) is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 17th September, 2018

JUDGE

Khalid Z.

Approved for Reporting.