

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

1. JCr.A No. 152-M/2018

(Sawab Khan versus The State and another)

Present:

Mr. Inayat Ullah Khatir, Advocate for the appellant/convict.

Mr. Razauddin A.A.G. for State.

Mr. Rahim Zada, Advocate for the complainant.

Date of hearing: **01.04.2021**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this appeal sent through Superintendent Central Jail Mardan, appellant/convict Sawab Khan has challenged the judgment of learned Additioanl Sessions Judge/ Izafi Zilla Qazi, Dir Upper at Wari dated 15.05.2018 rendered in case FIR No. 323 dated 20.04.2011 u/s 302/202 PPC, 13 A.O of P.S *Wari*, District *Dir Upper* whereby he was convicted and sentenced as under:

1. u/s 302(b) PPC

Life imprisonment as Tazir for the murders of deceased Mst. Sherin Mahal Bibi and Mst. Bakht Sultana Bibi with compensation of Rs.500,000/- payable to LR's of each deceased within the meaning of section 544-A, Cr.P.C recoverable as arrears of land revenue or to suffer six months S.I in case of default thereof.

2. u/s 202 PPC

06 months imprisonment

3. u/s 13 A.O PPC

05 years imprisonment

The sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C was extended to him.

2. Brief facts of the case are that complainant Wasi Ullah (PW-3) lodged a report vide *Madd* No. 33 dated 19.04.2011 at P.S *Wari* to the effect that his father Amir Khan had died some 25/26 years ago and his uncle Sawab Khan (the present appellant) had married his mother Mst. Sherin Mahal. Prior to that he had already married Mst. Bakht Sultana, however, he had no issues from both the wives. He further narrated in his report that he was informed by his cousin Riaz Ahmad that the present appellant had killed both his wives and buried them in a room of his house.

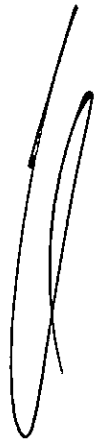
Muhammad Siraj SI/CIO (PW-4) initiated inquiry u/s 156(2), Cr.P.C in the matter. After seeking permission from the learned Additional Sessions Judge, Dir Upper at *Wari*, the Inquiry Officer in the company of DSP Circle *Wari*, Mian Ayan Ullah, Executive Magistrate Wari (PW-07), police constables and a team of doctors including lady doctors Bushra Naureen (PW-9) and Shabana Munir proceeded to the spot. The present appellant, who was equipped with Kalashnikov No. 1520891 with three magazines containing 90

rounds, two nose studs and a bandolier, was arrested by Inquiry Officer from the house of his maternal cousin Bakhtwar Said and took him to the spot. On pointation of the present appellant, the ground was excavated inside a room of his house wherein dead bodies of the two ladies were disinterred and duly identified by their LR's. The I.O prepared inquest reports and injury sheets of both the deceased and handed over the same to lady doctor for examination of the dead bodies. The I.O also recovered garments of both the ladies packed in a plastic bag on pointation of the appellant which he had buried in the courtyard of his house. He reported the matter to Incharge Police station through *Murasila* on the basis whereof the above referred FIR was registered against the appellant/convict.

3. Exhumation of the single grave prepared for both the deceased ladies was performed by medical team comprising of the above-named two lady doctors as well as Dr. Mati-ul-Haq M.O and Mis Shaheen, Charge nurse in presence of Executive Magistrate and DSP Circle. The dead body of Mst. Bakht Sultana Bibi was identified by her relative Riaz. Findings of the lady doctor with

regard to the said deceased as per exhumation report are as under:

- (i) The dead body is only externally examined.
- (ii) Multiple FA wounds are seen in both thigh anterior and posterior aspect, which left femoral compound fracture.
- (iii) The dead body abdomen is distended, nose and mouth were liquefied and decomposed with mugged infestation.
- (iv) Probable duration of death is one to three months.



Likewise, the lady doctor with the help of other team members examined the dead body of deceased Mst. Sherin Mahal Bibi, identified by her brother Bacha Munir as well her son Wasi Ullah, the present complainant. The lady doctor recorded the following findings in the exhumation report after examination of deceased Mst. Sherin Mahal Bibi.


- (i) Multiple FA wounds are seen in both thighs anterior and posterior aspect, with right inguinal area.
- (ii) The dead body abdomen is distended, nose was liquefied and decomposed with mugged infestation.
- (iii) Probable during of death: one to three months.

The exhumation report was exhibited as Ex.PW-9/1. It is noteworthy that original record of the case was reported to have been misplaced, therefore, the competent authority ordered for reconstruction of the file in shape of photocopies.

4. After completion of investigation, complete challan was put in Court and the appellant was formally indicted for the offences to which he did not plead guilty. Prosecution produced nine (09) PWs in support of the allegations against the appellant and closed the evidence. When examined u/s 342, Cr.P.C on 24.08.2013, the appellant/convict denied the allegation of prosecution, however, he neither recorded his own statement on oath nor produced any witness in his defence. It is pertinent to note here that complainant submitted application for recording additional statement of the appellant u/s 342, Cr.P.C which was accepted vide order dated 11.12.2013 and additional statement of the appellant u/s 342, Cr.P.C was recorded on 11.12.2013 wherein he recorded his answers against additional Question Nos. 16 and 17. On conclusion of trial, the learned trial Court vide judgment dated 05.05.2014 convicted him u/s 302(b) PPC for the murders of his wives and sentenced him to undergo life imprisonment on two counts.

5. The appellant/convict preferred JCr.A No. 156-M/2014 before this Court through jail authorities. During the course of arguments in the said appeal, it was brought into the notice of this

Court that charge u/s 202 PPC and 13 A.O had not been framed against the appellant, therefore, this Court accepted the appeal vide judgment dated 16.10.2017 by setting aside the judgment of the trial Court and remanded the case to trial Court with the directions to frame amended charge against the appellant by indicting him u/s 202 PPC and 13 A.O as well and after recording statements of necessary PWs, the trial Court was further directed to rewrite the judgment afresh.



After remand of the case, the learned trial Court framed fresh charge against the appellant u/s 202 PPC & 13 A.O on 16.11.2017 to which he did not plead guilty. The complainant side submitted an application with regard to non-examination of the PWs on the leftover sections 202 PPC and 13 A.O on the ground that some of the PWs already examined were dead whereas the complainant was abroad. The said application was supported by State by relying upon the statements of PWs already recorded during the pre-remand proceedings.

On completion of post-remand trial proceedings, the learned trial Court vide judgment dated 15.05.2018 again convicted the present

appellant for committing murders of his wives and sentenced him in the manner as discussed in detail in the first para of this judgment. Hence, this appeal.

7. We have heard the arguments of learned counsel for the parties including the learned A.A.G. and perused the record with their able assistance.

8. No doubt, the occurrence had taken place at unknown date and time and the matter was brought into the notice of police after considerable period of time but keeping in view the attending circumstances of the present case, prosecution could neither be held responsible for the delayed report nor could be burdened to produce an eye witness of the occurrence. Admittedly, both the deceased ladies were wives of the present appellant and their dead bodies have been recovered from a room of his house in presence of responsible police officers, Executive Magistrate as well as team of doctors including two lady doctors one of whom was examined before the Court as PW-9.

9. In the first phase, prosecution has discharged its onus to prove that dead bodies of the two wives of the present appellant had been

recovered from his residential house. In this regard, Aman Ullah and complainant Wasi Ullah were examined as PW-1 and PW-3 respectively. The former is nephew of deceased Mst. Bakht Sultana who duly identified her dead body during the course of exhumation. During cross-examination, he admitted that the present appellant was present in custody of police during excavation of the grave and further admitted that he had dug out the grave through mattock and spade which were available in the house of the appellant. In response to a question of defence counsel, PW-1 further stated that the present appellant had disclosed that the grave was of his two wives. This witness has duly attested identification memo of the grave (Ex.PW-1/1), recovery memo of dead bodies (Ex.PW-1/2) and identification memo of dead bodies (Ex.PW-1/3).

Complainant Wasi Ullah is son of deceased Mst. Sherin Mahal from her previous husband late Amir Khan, brother of the present appellant. After death of her previous husband, the present appellant contracted marriage with her. During the course of exhumation, complainant duly

identified dead body of his mother. The complainant has put his signatures on recovery memo Ex.PW-1/2 regarding dead bodies of the two ladies as wells the memo (Ex.PW-2/2) regarding handing over back of the dead bodies for reburial.

Bacha Munir (PW-2) was also present at the time when dead bodies of the two ladies were recovered from a combined grave inside the house of the present appellant, besides he is marginal witness of recovery memo Ex.PW-2/1 through which empties of 7.62 bore and a spent bullet were taken into possession from the place of occurrence.

Police have also recovered the crime weapon from the present appellant at the time of his arrest from the house of his maternal cousin on the date of exhumation. Prosecution has examined Amir Dad Khan as PW-6 in support of the aforesaid recovery of crime weapon which has matched with the crime empties recovered from the spot as is evident from FSL report Ex.PW-4/6.


All the above referred documents prepared by Investigating Officer Muhammad Siraj Khan S.I (PW-4) and signed/thumb impressed by the

PWs named above, were duly attested by Executive Magistrate Mian Ayan Ullah (PW-7). All the PWs including the I.O and Executive Magistrate have been subjected to lengthy cross-examination but nothing could be brought on the record from them to create a reasonable suspicion with regard to the process of exhumation.

10. The team of doctors comprising of Dr. Bushra Naureen WMO, Dr. Matiul Haq MO, Dr. Shabana WMO and Miss Shaheen (Charge Nurse) had visited the spot for the purpose of exhumation who have prepared the exhumation report Ex.PW-9/1 after completion of the process. Dr. Bushra Naureen has appeared before the trial Court as (PW-9) in support of the said report and confirmed presence of firearm injuries on bodies of both the deceased. Thus, the circumstantial evidence discussed above corroborate the allegation against the appellant that he had committed murders of his wives and thereafter buried them in a room of his house.


11. The appellant/convict has led the police and team of doctors to the place where he had buried his wives after committing their murders

through firing. The recovery of dead bodies from his residential house is a strong piece of circumstantial evidence against him which alone is sufficient to prove that none else but he had committed murders of his wives. In the case of "Sh. Muhammad Amjad V/s. The State" (PLD 2003 S.C 704) the Hon'ble apex Court while discussing recovery of dead body of the deceased child from the house under the control of accused in the said case, observed that:




"33. All above pieces of circumstantial evidence when combined together provided a strong chain of circumstances leading to the irresistible conclusion that it was the appellant and the appellant alone; who had killed the deceased. It was also established that the bungalow in question was in possession of the appellant from where the dead body was recovered. It was also established by an unimpeachable evidence that recoveries of dead body, car and other articles were made on the lead, provided by the appellant. All above pieces of evidence under Article 40 ibid are admissible and were proved by conclusive evidence".

12. Prosecution has established through unbreakable chain of circumstantial evidence that the present appellant was involved in committing murders of his two wives, hence, prosecution has discharged its onus. Although, it is settled principle of law that prosecution is bound to prove its case



against the accused and the said burden could not be shifted to accused but keeping in view the relationship of the two deceased with the present appellant, he was at least bound to offer explanation regarding disappearance of his wives otherwise he would cast a shadow of doubt on himself. Though has taken the plea of *alibi* during his examination under section 342, Cr.P.C by stating that he had proceeded to Kashmir for earning his livelihood and when returned to his house one day prior to his arrest after two months and twenty days, he found his wives missing with further assertions that he was trying to find traces of his missing wives but the complainant arrested him through police with mala fide as he himself with others was involved in the murders of his wives but the above plea of the appellant was nowhere suggested to the PWs nor the same does find a fit place in the attending circumstances of the case. Admittedly the occurrence has taken place in 2011 and long before the said year the world had turned into a global village because of effective communication resources through modern technology in shape of cellular phones. It does not appeal to prudent mind that the appellant during his alleged stay in Kashmir


never contacted his wives especially when there was no other male member in his house to protect them and help them in bringing ration and other necessary things of daily use for them. Moreso, it cannot be expected from an ordinary man to presume that his wives were living safe and sound lives without confronting any disease or accident. Thus, the plea raised by the appellant could not be accepted in the mentioned circumstances rather he has made a lame endeavor to save his skin by raising the plea of *alibi*.



In such situation when the plea raised by the appellant could not be accepted being absurd and irrational, he was bound to explain that what had happened to his wives and how their dead bodies were buried inside a room of his house. While highlighting such responsibility of the accused in the case of Saeed Ahmad Vs. The State reported as **2015 SCMR 710**, the august Supreme Court of Pakistan observed 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.



13. Admittedly, wives of the appellant have met unnatural deaths through firing as per exhumation report. The appellant has neither announced their funeral prayers according to custom of the area nor made any report to police nor there is any evidence to show that he had taken his wives in injured condition to hospital for saving their lives. This conduct of the appellant is relevant under Article 122 of the Qanun-e-Shahadat Order, 1984 according to which if a particular fact is especially within the knowledge of any person the burden of proving that fact is upon him. Thus, in light of his failure to offer explanation regarding the afore-referred unnatural happening inside his house, we

reach to the irresistible conclusion that the present appellant has killed his wives and thereafter secretly buried them in a room of his house to conceal his crime.

Before winding up the above discussion, we deem it appropriate to meet the objection of learned counsel for the complainant with regard to non-specification of the quantum of sentence on two counts by learned trial Court. Though the learned trial Court has not specifically mentioned the words 'two counts' while awarding the sentences of life imprisonment to appellant but the concluding para of the judgment transpires that while awarding the sentence of life imprisonment to him, the name of each deceased was specifically mentioned which implied means that the said sentence was on two counts.

14. In light of what has been discussed above, the learned trial Court has convicted the appellant through a well-reasoned judgment after correct appreciation of evidence on record besides the sentences awarded to him by trial Court are just and appropriate in circumstances of the case, therefore, the impugned judgment calls for no

interference by this Court. Resultantly, this appeal,
being devoid of merits, is accordingly dismissed.

Announced
Dt: 01.04.2021

JUDGE

JUDGE

Office
7/4/2021
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