

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

**Cr.A No. 194-M/2015**

*Umar Zada son of Gul Zada (Appellant)*  
*Versus*

*The State through A.A.G.*  
*Hameem Zada son of Rahhim Khan*  
*(Respondents)*

**Present:**

*Mr. Farman Ali, Advocate for the appellant.*

*Mr. Rahim Shah, Asstt. Advocate General.*

*Mr. Jehanzeb Bunery, Advocate for the complainant.*

Date of hearing: **25.02.2019**

**JUDGMENT**

**SYED ARSHAD ALI, J.-** This criminal appeal is directed against the judgment dated 06.08.2015 passed by the learned Sessions Judge/ Zilla Qazi Buner in case FIR No. 373 dated 26.05.2013 registered under sections 302,34 PPC at Police Station Gagra District Buner, whereby the accused/appellant Umar Zada was convicted under section 302 (b) PPC on two counts and sentenced to life imprisonment as 'Ta'zir' alongwith compensation of Rs. 200,000/- (two lacs) on two counts payable to the legal heirs of both the

deceased except the accused under section 544-A Cr.P.C, or in default thereof, he shall further suffer six months after completion of the substantive sentence. However, the accused/appellant was extended the benefit of section 382-B Cr.P.C.

2. As per contents of the FIR, the complainant Hameem Zada, PW-7, uncle of the deceased Sahib Zada on 25.5.2013 at 23:15 hours reported the incident to Muhammad Khalid, Sub Inspector, who appeared during proceedings u/s 512 Cr.P.C as PW-2 at emergency ward of Dagger hospital about the unnatural death of both the deceased who were allegedly killed by father of the female deceased Mst. Ruqia namely Umar Zada (the present appellant) and his son namely Habibullah (absconding accused) through fire arms. The complainant also advanced specific motive, which was stated to be illicit relations of both the deceased. The report of the complainant was incorporated in '*Murasila*' Ex. PA/1, which culminated into



FIR *ibid* Ex. PA being registered against the present accused-appellant and other absconding co-accused at PS concerned on 26.05.2013.

3. Initially, both the accused were avoiding their lawful arrest, therefore, upon completion of investigation, *challan* u/s 512 Cr.P.C was submitted against them before the Court of learned Sessions Judge/Zila Qazi Buner and upon conclusion of the said proceedings, both the accused were declared proclaimed offenders by the said learned Court vide judgment dated 11.02.2014.

4. The present appellant was arrested in the case on 11.8.2014 and was sent for trial. During the course of trial, the prosecution examined as many as 13 witnesses whose statements were recorded and placed on file. On closure of the prosecution evidence, accused was examined under section 342, Cr.P.C, wherein he denied the charges, claimed innocence and stated to have falsely been implicated in the case.

5. On conclusion of the trial, the learned trial Court convicted the accused/ appellant vide judgment impugned herein, hence, the present appeal.

6. Arguments heard and record of the case was perused with the able assistance of learned counsels for the parties including the learned Astt: Advocate General appearing on behalf of the State.

7. As per prosecution story, the complainant Hameem Zada, PW-7 on 25.05.2013 at 23:15 hours reported the matter to Muhammad Khalid, Sub Inspector at emergency ward of Dagger hospital to the effect that he along with his nephew (deceased Sahib Zada) and other family members were jointly living in one house. His nephew used to go to the 'Baitak' of one



Bakhtshad and on the day of occurrence he went to the said *Baitak* as usual. At about 21:30 hours, he was informed that his nephew Sahib Zada and Mst. Ruqia daughter of Umar Zada were killed by the said Umar Zada (the present appellant) and his son Habibullah (absconding accused). The dead bodies of both the deceased were lying in the *Baitak*/house of the said Umar Zada. In pursuit of such information, when the complainant in the company of his brother Zameer Zada, PW-11 reached at the spot there they found dead bodies of both the deceased. The dead bodies were then shifted to Dagger hospital with the help of inhabitants of the locality. Both the deceased were killed by the Umar Zada and his son Habibullah on account of illicit relations through fire arms. The



motive behind the occurrence was disclosed to be illicit relations of the deceased.

8. It is an admitted fact surfacing on the record that the occurrence is unseen and un-witnessed. Even the complainant Hameem Khan, PW-7, uncle of the deceased Sahib Zada is not the eye-witness of the occurrence.

9. Likewise, the prosecution has also produced one Naseeb Zada as PW-10 who is the father of the deceased Sahib Zada. This PW is also not the eye-witness of the occurrence as at the relevant time he was present in the house when the complainant and his brother Zameer Zada upon receipt of information went to the spot. During cross-examination he has confirmed that he is not the eye-witness of the occurrence.

10. Similarly, the brother of the complainant Zameer Zada was examined by



the prosecution as PW-11, who also admitted during his cross-examination that he is not eye-witness of the occurrence.

11. No doubt, there is a statement of mother of the deceased Mst. Nargas, PW-13 available on file. In respect of the said witness, the prosecution had moved an application for declaring her to be hostile witness. However, her cross-examination is worth perusal wherein she totally deposed against the version of prosecution and had shown complete ignorance about the death of her real daughter. This PW has stated during cross-examination that at the relevant time she was in the house of one Mst. Rukhsar and when returned to her house she found the dead body of her daughter alongwith a body of a boy.

12. From above-referred glimpses of the prosecution evidence it is crystal clear that on all counts the occurrence is unseen and unwitnessed, as none has come forward who could have seen the unfortunate death of both the deceased.

13. Thus, the only circumstance which remains in field against the appellant is that admittedly the deceased Mst. Ruqia was his daughter and she died unnatural death at his *Baitak*, however, it discerns from record that apart from deceased, his other family members were residing in the said house, and the absconding accused, who is his son is also charged for the offence. True, it has been settled by the august Supreme Court of Pakistan in number of judgments that with regard to vulnerable members of the society, such as children, women and the infirm, who



were living with the accused or was last seen in his company before their death, the accused ought to offer some explanation as to what happened to them and when instead offering explanation, the accused remained silent or offers a false explanation he casts a shadow upon himself. However, mere this circumstance that the deceased remained in custody of her father and dies unnatural death was never alone considered a sufficient proof for conviction of an accused. In "Saeed Ahmad vs the State (2015 SCMR 710)", the august Supreme Court of Pakistan while upholding the conviction of the appellant therein has held that:- *"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*

*5/11*

*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.”*

However, in the above-referred case all the Courts had believed the testimony of the eyewitnesses who have witnessed strangulation of the deceased at the hands of the appellant and the brother of the appellant who had facilitated her strangulation by holding her down and the statements of the said eyewitnesses were also corroborated by the medical evidence.

In the recent judgment reported as “Arshad Khan vs the State (2017 SCMR 564)”, the august Supreme Court of Pakistan has elaborately held in Para 4 of the judgment that:- *“It may be true that it has been held by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) that in such cases some part of the onus lies on the accused person to explain as to how and in which circumstances the accused person's wife had died an unnatural death inside the confines of the matrimonial home but at the same time it has also been clarified by this Court in the case of Abdul*

*Majeed v. The State (2011 SCMR 941) that where the prosecution completely fails to discharge its initial onus there no part of the onus shifts to the accused person at all."*

The said view was also re-affirmed by the august Supreme Court of Pakistan in "Nazir Ahmad vs The State (2018 SCMR 787).

14. In the context of the present case, no one has witnessed the tragic incident of death of both the deceased and even the complainant and other witnesses who are related to the deceased were admittedly not the eye-witnesses of the occurrence. For the offence not only the appellant but his absconding son is also charged. Thus, the allegations are based on suspensions. Therefore, in such circumstances, we have reached at the conclusion that the only circumstance that the deceased was the daughter of the appellant and died unnatural death in his *Baitak* alone is not sufficient for his conviction, then, in such a eventuality, we

*512*

have no other choice but to extend the benefit of doubt to the present accused/appellant.

15. The appellant who was declared as proclaimed offender, was arrested on 11.8.2014 and in respect whereof, although no plausible explanation has been given. However, it is settled law that absconsion is a corroborative piece of evidence and in cases where direct evidence does not exist, corroborative piece of evidence is of no worth. Reliance is placed on "Abdullah Vs. Muhammad Ali" (PLD 1971 SC 541), "Muhammad Arshad Vs. Qasim Ali" (1992 SCMR-814) and "Muhammad Salim Vs. Muhammad Azam and another" (2011 SCMR-474).

16. Thus, after reappraisal of the entire evidence, we are of the firm view that the prosecution case against the appellant has not been proved beyond any reasonable doubt and the judgment of learned trial Court is based on wrong appreciation of evidence. Hence, we accept this appeal and set-aside the

*S.A.*

impugned judgment rendered by the learned trial Court. Resultantly, the appellant is acquitted of the charges leveled against him. He is in custody and be set free if not required in any other case.

17. These are the reasons of our short order of even date.

Announced  
25.02.2019

  
JUDGE

  
JUDGE

Office  
06/03/2019  
W/R