

## **Judgment Sheet**

IN THE PESHAWAR HIGH COURT,  
PESHAWAR.

**JUDICIAL DEPARTMENT**

**Cr.A No. 138-P of 2014.**

### **JUDGMENT**

Date of hearing.....02.10.2017.....

Appellant: (Wisal) By Munir Hussain, Advocate.....

Respondent/State: By Ms. Abida Safdar, AAG, assisted by Sahibzada Riazat-ul-Haq, Advocate, counsel for the complainant.....



**QALANDAR ALI KHAN, J:-** Wisal, appellant was convicted under section 302 (b) PPC and sentenced to life imprisonment and compensation of Rs:300000/-, payable to the legal heirs of deceased Mst: Sara, by the learned trial Court/Additional Sessions Judge-VIII, Mardan. Therefore, the convicted appellant lodged the instant appeal against his

conviction and sentence awarded to him by the learned trial Court in case vide FIR NO.752 dated 12.10.2011 under section 302 PPC, registered in Police Station, Pak Hoti, Mardan, on the basis of *murasila* of Ali Rehman Khan S.I; after he found dead body of an unknown lady having received firearm injuries.

2. During investigation, an empty shell of 30 bore was recovered and blood stained earth was also secured from the spot. The report of chemical examiner about the blood stained earth secured from the spot and blood stained garments of the deceased was positive. The parents of the deceased i.e. her father, Ajmal Khan, and mother, Zulfan Bibi, recorded their statements under section 164 Cr.P.C to the effect that their deceased daughter had developed illicit relations with the accused/appellant and had left the house for the house of accused/appellant. They had not lodged any report, but they were searching for her, and after recovery of the

dead body of their daughter, they were satisfied that she was murdered by the accused/appellant after her abduction. The appellant/accused was arrested on 16.10.2011, and he, allegedly, made pointation of the scene of occurrence to the I.O, who was also handed over a pistol 30 bore by Arif Shop Keeper on the, alleged, pointation of the accused/appellant. After remaining in police custody for around three days, the appellant/accused recorded a confessional statement before the learned Judicial Magistrate, Mardan, on 19.10.2011. The 30 bore empty shell recovered from the spot and the pistol handed over by Arif Shop Keeper to the I.O were sent to the firearms expert, who furnished his report in the affirmative. After completion of investigation, challan was submitted in the learned trial Court/Additional Sessions Judge-VIII, Mardan, where the accused/appellant was formally charged for the offence punishable under section 302 PPC, to which he pleaded not

guilty and claimed trial. During trial, the prosecution examined as many as eleven PWs, including material PWs, namely, Ajmal Khan (PW-4), father of deceased, Mst: Sara; Rozi Khan (PW-5); Doctor Seema Sharif (PW-7); Bakht Jamal Khan S.I/I.O (PW-9) and Amanullah Khan, Civil Judge/Judicial Magistrate (PW-10). After prosecution closed its evidence, statement of the accused/appellant was recorded under section 342 Cr.P.C, wherein, he refuted allegations of the prosecution against him, but neither produced defence evidence nor expressed his wish to be examined on oath. Thereafter, the learned trial Court/Additional Sessions Judge-VIII, Mardan, found the appellant/accused guilty of the commission of offence under section 302 (PPC); and convicted and sentenced him to life imprisonment and compensation of Rs:300000/, which, if recovered, was to be paid to the legal heirs of the deceased as compensation within the meaning of section

544-A Cr.P.C, and in default of payment of compensation, the accused/appellant was further sentenced to six months S.I. Both the sentences were to run concurrently, and benefit of section 382-B Cr.P.C was also extended in favour of the accused/appellant. Hence the instant appeal by the appellant/accused.

3. Arguments of learned counsel for the appellant/accused and learned Assistant A.G, assisted by learned counsel for the complainant heard; and record perused.

4. Admittedly, the occurrence was unseen, as dead body of an unknown lady, having received firearm injuries, was found by Ali Rehman Khan S.I; and even, lateron, no one came forward to furnish eyewitness account of the occurrence. On 15.10.2011, the parents of deceased, Mst. Sara, recorded statements under section 164 Cr.P.C wherein they not only disclosed this fact that their deceased daughter had illicit relations with the appellant/accused and had eloped with him,

but also charged the appellant/accused for the *qatl-i-amd* of their daughter. On the following day of statements of the parents of the deceased i.e. 16.10.2011, the accused/appellant was arrested, and on that very day Shop Keeper Arif handed over pistol 30 bore pistol to the I.O; and the appellant/accused also recorded confessional statement, thereby, confessing his guilt of murder of the deceased who had married him but was not having good character. As such, the entire case of the prosecution hinges on the confessional statement of the appellant/accused; but the confessional statement was, admittedly, recorded after the appellant/accused had remained in police custody for three days, therefore, no conviction could be based on this retracted confession, which also did not receive any corroboration from rest of the evidence, as neither report of abduction of their daughter was lodged by parents of the deceased for almost 4/5 months of her alleged abduction by

the accused/appellant nor any evidence was brought on the record to show marriage of the accused/appellant with the deceased.

5. The other so-called incriminating evidence against the appellant/accused is the 30 bore pistol which was handed over by Shop Keeper Arif to the police, and the firearms expert found the only empty shell of 30 bore having been fired from the same pistol; but apart from the fact that the pistol was not recovered from the possession of the appellant/accused, the said Shop Keeper, Arif, was also not produced by the prosecution and abandoned being unnecessary, thus bringing both the alleged recovery of pistol and report of the firearms expert under shadow of doubt. As such, there was hardly anything incriminating on the record to justify conviction of the appellant/accused and award of Life Imprisonment to him.

6. Consequently, the appeal is accepted, and judgment of the learned trial Court/Additional Sessions Judge-VIII, Mardan,

dated 09.01.2014, together with conviction of the appellant/accused and sentences awarded to him, is set aside. The accused is acquitted of the charge, and be set free, forthwith, if not required in any other case.

**Announced.**  
**02.10.2017.**

**J U D G E**

**J U D G E**

*\*M.Iqbal\**

*(D.B) Hon'ble Mr. Justice Lal Jan Khattak, Judge.*  
*Hon'ble Mr. Justice Qalandar Ali Khan, Judge.*