

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,**  
**RAWALPINDI**  
**(JUDICIAL DEPARTMENT)**

**Crl. Appeal No. 701 of 2020***Ghulam Rasool vs. the State***JUDGMENT**

<b>Date of Hearing</b>	24.06.2021
<b>For Appellant</b>	Mr. Mehmood Azam Baloch Advocate
<b>Complainant by</b>	In person.
<b>For State</b>	Ms. Maimoona Ehsan-ul-Haq, DDPP
<b>Record by</b>	Mr. Afzal SI

**SOHAIL NASIR, J.** This criminal Appeal is directed against judgment dated 18.08.2020 passed by learned Additional Sessions Judge, Sohawa, District Jhelum on the basis of which Ghulam Rasool (*Appellant*) was convicted under Section 302(b) PPC and sentenced to life imprisonment. He was ordered to pay Rs. 300000/- (*three lacs*) as compensation in terms of Section 544-A Cr.P.C to the legal heirs of decease and in default thereof to further undergo six months SI. Benefit of Section 382-B Cr.P.C was also extended to him. By way of same judgment Rukhsana Begum and Misbah Bibi mother and sister of appellant having the role of abetment were acquitted. The conviction is outcome of case FIR No. 117 (*PE*) recorded on 02.08.2019 under Sections 302/311/109 PPC at Police Station Domaili District Jhelum on the complaint of Muhammad Iqbal/father of deceased (*Pw-7*) for the allegations of commission of Qatl-e-Amd of Surayya Iqbal/wife of appellant.

2. Facts of the case are that Qamar Sultan SI (*Pw-10*) upon receipt of information of the occurrence arrived at Pindori, where Muhammad Iqbal (*Pw-7*) submitted an application (*PG*) and maintained that he was retired from Army; he was employee as security guard at Barkat Market Lahore; on that day (*02.08.2019*), he received a telephone call from Muhammad Imran (*Pw-8*) that his

daughter Surayya Iqbal was done to death by appellant; on this information, he arrived there, where he found that dead body of Surayya Iqbal was lying on a cot; he was told by Muhammad Imran (**Pw-8**) and Haq Nawaz (**Pw-9**) that at about 07:30 am, they were present outside the house of appellant, where they heard hue and cry; they along with Khurram Shahzad (*not produced*) went inside the house and saw that appellant was having an iron rod and trying to assault Surayya Iqbal; the lady was running here and there in the courtyard; they/the witnesses tried to sensitize the appellant, but of no consequence; in the meantime, Surayya Iqbal entered in the room and tried to bolt it but could not succeed; appellant gave repeated blows with iron rod, which hit on different parts of the head of Surayya Iqbal, who being injured fell on the cot and died there; appellant while abusing had succeeded from there. The motive alleged was family dispute between appellant and deceased and that the appellant was having a suspicion on her. It was further alleged that appellant committed the crime at the instance of his mother Rukhsana Begum and sister Misbah Bibi alias Tayyaba.

3. Qamar Sultan SI, after his endorsement sent the complaint to police station on the basis of which FIR (**PE**) was recorded by Fayyaz Ahmad ASI (**Pw-5**).

4. During investigation, both female accused were arrested on 08.08.2019, whereas appellant was taken to task on 13.09.2019. On conclusion of investigation report under Section 173 Cr.P.C (**Challan**) was submitted in Court.

5. A charge under Sections 302/109 PPC was framed against appellant and his co-accused for which they pleaded not guilty and demanded their trial.

6. In support of its case, prosecution had produced Dr. Talia Siddique (**Pw-1**), Saddam Hussain HC/Moharrar (**Pw-2**), Khalil Ahmad Constable (**Pw-3**), Hasnat Ahmad (**Pw-4**), Fayyaz Ahmad ASI/author of FIR (**Pw-5**), Asif Akhtar Naqash/draftsman (**Pw-6**), Muhammad Iqbal/complainant (**Pw-7**), Imran Khan/eye witness

(Pw-8), Haq Nawaz/eye witness (Pw-9) and Qamar Sultan SI (Pw-10).

7. After the prosecution's evidence was closed, appellant and his co-accused were called for their examination under Section 342 Cr.P.C. Version of appellant was that he was falsely involved in this case because Hasnat Ahmad son of complainant had divorced his/appellant's sister and for this reason complainant was inimical towards him. Appellant opted not to appear in terms of Section 340(2) Cr.P.C however, he desired to produce defence evidence. *(The date of examination has been recorded as 17.02.2019, which in fact as evident from order sheet is 17.02.2020).*

8. Appellant moved an application for summoning of mobile data of complainant and to produce it in his defence but that was turned down vide an order dated 21.02.2020.

9. Learned counsel for appellant maintains that in this case the most important evidence could be the CDR of complainant Muhammad Iqbal and Imran Khan to establish that Imran had informed the complainant about this occurrence but it was not taken into possession; conduct of both eye witnesses was unnatural who along with Khurram were present inside the house but they could not restrain the appellant from assault to his wife who was having in his hand only an iron rod; said unwanted conduct continued because none of them bothered to inform the police about this occurrence; they also appear to be chance witnesses as they could not give any reason for their presence at crime scene; the children of appellant and deceased were present at crime scene, but the Investigating Officer did not bother to examine them who could be the best witnesses of this case. He finally maintains that if the ocular account is discarded, appellant cannot be convicted only on the reason that he and his deceased wife were residing under one and the same roof in the same house.

10. On the other hand learned DDPP contends, that two eye witnesses of the occurrence were residing in the same area where

this crime was committed by appellant; at the time of occurrence appellant was supposed to be present in his house and nowhere else; wife of appellant was found dead on the basis of physical violence, but he did not bother to inform the police and he also disappeared from crime scene; no enmity of the eye witnesses is there with appellant therefore, question of false involvement does not arise; medical evidence and recovery of iron rod are strong pieces of evidence which corroborate the ocular account. She finally contends that appellant has been convicted through a well reasoned judgment which is not liable to be interfered.

**11. HEARD.**

**12.** Story started, when Imran Khan (*Pw-8*) informed Muhammad Iqbal about this occurrence. Admittedly complainant was in Lahore at that time. This information was given to him through a telephone call by Imran Khan. Muhammad Iqbal in cross-examination provided his mobile number 0342-4220742. He admitted that from the record of concerned department mobile calls made to and received from and location can be ascertained. According to him he received call when he was present at *Adda Thokar Niaz Baig*, which was at a distance of about 275 Kilometers from crime scene.

**13.** Qamar Sultan SI/IO (*Pw-10*), when asked in cross-examination about CDR, he simply replied that he did not annex mobile phone data either of complainant or Imran Khan to verify the communication between them and to confirm their locations. It is not understandable that when best available evidence through modern device could be collected conveniently, why that was not secured during the process of investigation? It was one of the qualitative evidence in support of complainant's version that Imran Khan had informed him on telephone about the incident.

**14.** This risk was taken by appellant, when he moved an application for summoning of CDR to be produced in his defence but unfortunately he was unsuccessful. If the story given by complainant was correct, then to contest that application was

beyond imaginations. This clearly shows that there was something wrong which prosecution was avoiding to be brought before the Court.

**15.** The conduct of Imran Khan (**Pw-8**) and Haq Nawaz (**Pw-9**) remained unnatural throughout on various reasons. Firstly, they along with Khurram Shahzad were present in the house of appellant and all they three were in a position to stop him for assaulting Surayya Iqbal, but according to them they simply tried to sensitize the appellant, with no positive result. Secondly occurrence took place at 07:30 am but none of them ever bothered to inform the police till the arrival of complainant Muhammad Iqbal who reached there at 11:00/11:30 am. Even thereafter neither Muhammad Iqbal nor they considered it necessary to call the police because Qamar Sultan SI in his statement specifically said that he arrived at crime scene on receiving information through Moharrar and none else.

**16.** It is an admitted fact that Muhammad Iqbal complainant was residing in the same locality where the occurrence took place but he had to be in Lahore because of his employment there. In cross-examination Muhammad Iqbal (**Pw-7**) replied that: -

*“My wife Tasleem Kousar and my son Hasnat along with other relatives were already present at the place of occurrence when I reached there.”*

**17.** The conduct of real mother and real brother of deceased also remained questionable as they too did not feel appropriate to inform the Police for the reason best known to them.

**18.** Keeping in view what has been deliberated above, this Court finds no difficulty now to declare Imran Khan and Haq Nawaz as chance witnesses despite the fact that they were residing in the same vicinity. House of Imran Khan (**Pw-8**) was at a distance of about half kilometer from crime scene and of Haq Nawaz at about 250 meters from there. Although Imran Khan said that he was standing in front of house of his sister that was opposite to crime scene, but

he could not furnish any reason that why he came there on that day at the given time and same infirmity is there in the statement of Haq Nawaz who was also mum about the cause of his presence in front of the venue of crime.

19. All three witnesses arrived at crime scene at a time when the occurrence had almost started. The Hon'ble Supreme Court of Pakistan in **'State through Advocate General Khyber Pakhtunkhwa vs. Hassan Jalil & others 2019 SCMR 1154'** in such situation was pleaded to observe that: -

*“Arrival of Noor Seema, PW at venue exactly at a point of time when the respondent allegedly did away with the deceased, in itself is a circumstance that reflects on the very genesis of the prosecution case”*

20. Same view finds support from **'Muhammad Imran vs. The State 2020 SCMR 857'** where it was observed that: -

*“These contradictions, viewed in the retrospect of arrival of the witnesses exactly at a point of time when the petitioner started inflicting blows to the deceased with their inability to apprehend him without there being any weapon to keep them effectively at bay, cast shadows on the hypothesis of their presence during the fateful moments”*

21. The day of occurrence was the one when schools were closed due to summer vacations and it was admitted by Haq Nawaz (**Pw-9**). Ahmed Gul Nawaz (10½ years) and Adil Gul Nawaz (9 years) were the two sons of appellant and deceased beside another aged about one year. Focusing the time of occurrence that was 07:30 am, they were supposed to be present in their house and in this context conduct of Qamar Sultan SI/IO has been found malafide and dishonest. In cross-examination he responded as under: -

*“I do not know whether these three children of deceased were present in the house at the time of occurrence. I did not*

*join these three children in my investigation, volunteered that they were minors. I had a meeting with these three children during my investigation. None of these children disclosed any fact about this occurrence”*

22. Investigation has been defined under Section 4(I) of Cr.P.C that is as under: -

*“Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf*

23. In ‘Mst. Sughran Bibi vs. The State PLD 2018 SC 595’ while referring the Police Rules, 1943 it was observed by the apex Court that: -

*“During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 “It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person”*

24. The duty of an Investigating Officer, therefore is to discover the truth irrespective the fact that what the parties, rival to each other, have the claims. Once evidence is collected, it is to be produced before the Court who in due course after judicial scrutiny of entire material has to arrive at a just decision of the case. Two sons were the best witnesses of the occurrence. The Investigating Officer advanced a lame excuse that they were minors. Law does

not prohibit recording of statement of a minor unless there are compelling circumstance to do otherwise. Therefore, most important evidence in this case has been kept away from the Court deliberately which has made adverse effects on prosecutions' case.

25. The conduct of complainant is also found malafide and unfair who involved Rukhsana Begum and Misbah Bibi on the allegations of abetment but during investigation, he could not produce even an iota of evidence against them.

26. Coming to the medical evidence, Dr. Talia Siddique (*Pw-1*) had conducted the post mortem examination of deceased who found four lacerated wounds on right ear, right tempore, left lateral head and below left eye. It is settled principle of law that medical evidence is at the most a confirmatory proof, which does not identify the culprit. It simply indicates nature of injuries, kind of weapon used, duration between injuries and death as well as between death and post mortem. In 'Hashim Qasim & another vs. the State 2017 SCMR 986' the honorable Supreme Court of Pakistan on this subject was pleased to hold that: -

*"The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit(s)"*

27. Therefore, once ocular account of this is disbelieved, medical evidence shall be of no consequence for prosecution.

28. Coming to recovery it too requires no detail discussion. On spot inspection Qamar Sultan SI had taken into possession an iron rod (*P7*) vide a memo (*PK*). During investigation, on 16.09.2019 according to prosecution, appellant led to the place of occurrence and pointed that he had thrown the iron rod there. As this was not a disclosure of any distinct fact because iron rod was already recovered from there on 08.02.2019, hence this portion of evidence shall also play no role in favour of prosecution. In 'Naveed Asghar



**& 2 others vs. The State PLD 2021 SC 600'** about the value of recovery in such circumstances it was held that: -

*“Recovery of weapon of offence is only a corroborative piece of evidence; and in absence of substantive evidence, it is not considered sufficient to hold the accused person guilty of the offence charged. When substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution case”*

29. On perusal of the statements of all relevant witnesses, this Court finds no difficulty to hold that the motive has also not been proved in this case. Appellant and his wife were residing together for the last more than 10 years having three children and there is nothing in evidence that earlier to the occurrence there was any kind of dispute between them.

30. So prosecution remains only with the evidence that dead body was found in a house where appellant and deceased were residing under the same rood. The principles do not allow recording of conviction on presumptions however strong may be. Prosecution in all circumstances is under strict obligation to prove its case independently but not at the strength of weakness of defence. In **'Nasrullah alias Nasro vs. The State 2017 SCMR 724'** in similar circumstances it was held: -

*“Be that as it may holding by this Court that some part of the onus lies on the accused person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this nature. It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case and in a case where the*

*prosecution asserts presence of some eye-witnesses and such claim of the prosecution is not established by it there the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and none else who would have committed that murder”*

31. Same view finds support from ‘**Arshad Khan vs. The State 2017 SCMR 564, Nazeer Ahmed vs. The State 2016 SCMR 1628 and Asad Khan vs. The State PLD 2017 SC 681**’.

32. Concluding the discussion made above I hold that prosecution has badly failed to prove its case beyond shadow of doubt, therefore, this appeal is **allowed**. Impugned judgment dated 18.08.2020 is ***set aside***. Ghulam Rasool appellant is **acquitted** from the case. He is in custody and he shall be released forthwith, if not required in any other case. The case property shall be dealt with in the same manners as directed by learned trial Court.

(SOHAIL NASIR)  
Judge

**Approved for reporting**

Judge