

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.A.No.22-P of 2014.**

Date of hearing: 21.09.2017.

Mr.Muhammad Tariq Kakar, advocate for appellant.

Mr. Mujahid Ali Khan, AAG for State.  
Respondent No.2/complainant Mst. Yasmin in person.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** This criminal appeal is directed against the judgment dated 17.12.2013 of the learned Additional Sessions Judge, Shabqadar Charsadda delivered in case FIR No.305 dated 11.04.2012 u/s 302 PPC of Police Station Abdul Hameed Shaheed Shabqadar District Charsadda, whereby the appellant has been convicted and sentenced u/s 302 (b) PPC to imprisonment for life. He was ordered to pay compensation of Rs.1,00,000/- payable to the legal heirs of the deceased within the meaning of Section 544-A Cr.P.C or in default thereof to further undergo six months S.I. Benefit u/s 382-b Cr.P.C was also extended to him.

2. Brief facts of the case are that on 11.4.2012 Mst. Yasmeen (PW-8) reported to S.I. Saifullah Khan (PW-11) to the effect that she alongwith her son-in-law Javed Khan had come to see her daughter Mst. Shehla. In the meanwhile, an altercation took place between her daughter and the appellant over ornaments on which the appellant got infuriated and took out pistol from the folder of his shalwar and fired at her daughter with which she was hit and died on the spot. The complainant charged the appellant i.e. her son-in-law for the murder of her daughter. Motive for the crime was given as a dispute over ornaments between the spouses.

3. On arrest of the accused and completion of investigation, the case was put in court, which indicted the appellant for the offence to which he pleaded not guilty and claimed trial. In order to prove its case prosecution examined 12 witnesses whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned trial court, after conclusion of the trial, found the appellant guilty of the charge and while recording his

conviction sentenced him as mentioned above, hence the instant appeal.

4. Arguments heard and record perused.

5. Perusal of the case record would show that in support of the allegations contained in the FIR (Ex.PA), Mst. Yasmeen appeared before the court as PW-8 and deposed in line with what she had alleged in her report. Pertinent aspect of the case is that one Javed Khan, who was cited in the FIR as an eyewitness to the crime, was abandoned by the prosecution for the reason to avoid before the court repetition of the incident. The reason advanced by the prosecution in support of abandonment of PW Javed Khan does not seem to be plausible as the complainant was the sole eyewitness of the case and in order to give corroboration and credence to her testimony, examination of Javed Khan as prosecution witness was very vital and material because solitary eye version account of a related eyewitness is seldom made a base for recording a conviction unless strong corroboration comes in

support of what the solitary eyewitness has deposed. As the statement given by the sole eyewitness of the case has not been supported through any independent source of evidence or through any circumstantial evidence of the case, therefore, we are unable to rely upon the testimony furnished by PW-8 for its lacking corroboration.

6. No doubt, there is confessional statement of the appellant recorded on the 3<sup>rd</sup> day of his arrest but the ibid statement is of no help to the prosecution for basing conviction for the reason that it goes quite contrary to what the complainant had alleged in her report. In the FIR (Ex.PA), the complainant has alleged that in her view the appellant took out pistol from the folder of his shalwar and fired at her daughter but in the confessional statement, it has been stated by the appellant that early in the morning when was asleep, his wife had hit him with a stone on which he got infuriated and took out a loaded pistol lying in the room and fired at her on her head with which she died. If the confessional statement and contents of the FIR are put in

juxtaposition with each other, then it would appear that each document contradicts the other, as in the FIR it is the prosecution case that in presence of the complainant, the appellant had fired at the deceased while in the confessional statement, it is mentioned that after the occurrence, the appellant-accused had informed the complainant about the occurrence on cell phone. It appears that there is no consistency and coherence between the confessional statement and the FIR for which the confessional statement cannot be relied upon for lack of corroboration to it.

7. Not only that the confessional statement has negated the prosecution story as narrated in the FIR but it seemed to us that same was not voluntary one and was the result of fear and promise. Pertinent is the question No.7 put to the appellant before recording his statement, which is reproduced as under:-

Q.7        Have you been told that you  
              will be made an approver?

Ans.       Yes

Above referred question and answer would show that the confessional statement

was extracted from the appellant as a *quid pro quo*. Careful perusal of the above question and answer would show that had there been no offer of approver to the appellant by the Magistrate, then he would not have opted to admit his guilt.

8. It is well settled that in order to record conviction of an accused on the strength of confessional statement alone, the court shall see with utmost care and caution that the confession is free from all sorts of duress, pressure, promise or inducement etc. In case any of the above cited elements is found missing in the confessional statement, then for the safe administration of justice same should not be relied upon for recording a conviction. As the confessional statement of the appellant suffers from the inherent defects and does not appear to be voluntary one, therefore, we are unable to accept it.

9. If solitary statement of the complainant and the confessional statement are put out of consideration, then there remains nothing to support the prosecution case as set up against the appellant.

Besides, the prosecution for no valid reason had abandoned the independent witness, namely, Javed Khan, which fact has caused colossal damage to its case for which it shall suffer.

10. Thorough and careful examination of the case record would show that the presence of sole eyewitness on the spot is not established through reliable and confidence inspiring evidence, hence, her testimony cannot be accepted. The case against the appellant has not been proved beyond any shadow of doubt, which is hall mark of criminal jurisprudence. The learned trial court has not appreciated the case evidence in its true prospective and has wrongly convicted the appellant for which its judgment is not sustainable.

11. For what has been discussed above, we accept the instant appeal, set aside the impugned judgment and resultantly acquit the appellant of the charge leveled against him. He be set free forthwith, if not required to be detained in any other case.

12. Above are the reasons of our short order of even date, which reads as under:-

“For the reasons to be recorded later, this appeal is allowed, conviction and sentence of the appellant recorded by the learned Additional Sessions Judge, Shabqadar (Charsadda) vide the impugned judgment dated 17.12.2013 in case FIR No.305 dated 11.04.2012 u/s 302 PPC of Police Station Abdul Hameed Shaheed Shabqadar District Charsadda, are set aside. The appellant is acquitted of the charge leveled against him and he be set free forthwith, if not required or wanted in any other case”.

**JUDGE**

**JUDGE**

**Announced**  
**21.09.2017.**

*Sadiq Shah, PS (D.B) (Hon'ble Justice Lal Jan Khattak & Hon'ble Mr. Justice Qalandar Ali Khan)*