

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

1. Cr.A No. 66-M/ 2017
Mst. Amina Bibi
v/s
The State & another
2. Cr.A. No. 67-M/2017
Ghulam Sardar
v/s
The State & another
&
3. Cr.R. No. 31-M/2017
The State
v/s
Ghulam Sardar & another

Date of hearing: - 18.02.2019

CONSOLIDATED
JUDGMENT

Appellant:- (Mst. Amina Bibi) by:-
Mr. Javaid Akhtar Tajak,
Advocate.

Respondents:- (The State & another) by
Mr. Haq Nawaz, Astt: Advocate
General.

SYED ARSHAD ALI, J.- Through this single judgment, we propose to decide this criminal appeal bearing No. 66-M/2017 as well as the connected Criminal Appeal No. 67-M of 2017 and Criminal Revision bearing No. 31-M/2017, as all these matters emanate from one and the same judgment dated 02.03.2017 handed down by the learned Additional Sessions Judge/Izafi Zilla Qazi Chakdara,

Camp Court at Timergara, in case F.I.R No. 278 dated 25.08.2015 registered under sections 302, 34 PPC at Police Station Talash District Dir Lower, whereby the appellants Mst. Amina Bibi and Ghulam Sardar were convicted and sentenced under different sections of law in the following manner:-

- *The appellant Mst. Amina Bibi was convicted U/Ss 302 (b), 34 PPC and sentenced to life imprisonment alongwith payment of compensation of Rs. 500,000/- under section 544-A Cr.P.C, or in default thereof, she was ordered to undergo further 6 months S.I. However, the accused/appellant was extended the benefit of section 382-B Cr.P.C.*
- *The appellant Ghulam Sardar was convicted U/Ss 302 (b), 34 PPC and sentenced to life imprisonment alongwith payment of compensation of Rs. 500,000/- under section 544-A Cr.P.C, or in default thereof, he was ordered to undergo further 6 months S.I. However, the accused/appellant was extended the benefit of section 382-B Cr.P.C.*

2. As per prosecution story, on 25.08.2015 at 16:25 hours, the complainant Muhammad Hazrat, PW-1 reported the incident to Gul Zaman, ASI, PW-3 at the

place of occurrence known as *Hookhano Sar Macho Talash* about the unnatural death of his son Rahim Zada, who was killed by unknown accused. Therefore, on the basis of the said report of the complainant, the '*Murasila*' Ex. PW-1/1 was drafted, which culminated into FIR *ibid* being registered against unknown accused at PS concerned on 25.8.2018.

3. Upon completion of the investigation, complete *challan* was forwarded to the SHO concerned for onward submission.

4. During the course of trial, the prosecution examined as many as 10 witnesses whose statements were recorded and placed on file. On closure of the prosecution evidence, accused were examined under section 342, Cr.P.C, wherein they denied the charges, claimed innocence and stated to have falsely been implicated in the case.

5. On conclusion of the trial, the learned Additional Sessions Judge/Izafi Zila Qazi Dir Lower convicted and sentenced the accused/appellants vide the judgment



impugned herein. Hence, these connected matters.

6. Arguments of learned counsel for the accused/appellants and learned Astt: Advocate General appearing on behalf of the State were heard and record of the case was perused. While the complaint on 21.05.2018 appeared before this Court and stated that he did not want to engage counsel and would rely on the arguments of the learned State counsel.

7. The precise facts of the prosecution case are that on 25.8.2015 pursuant to an information received by Gul Zaman, ASI, PW-3 regarding the death of the deceased Rahim Zada, the said ASI Gul Zaman rushed to the spot where he found the dead body of Rahim Zada son of Muhammad Hazrat smeared in blood. There, father and brother of the deceased alongwith elders of the locality were present. The father of the deceased reported the matter to the said ASI Gul Zaman, PW-3 to the effect that his deceased son had gone to the mountain



commonly known as *Hookhano Sar* for collection of dry wood and grass, however, he could not turn up, therefore, Ali Muhammad, the relative was asked so to search him who found the dead body of the deceased in the aforesaid mountain smeared in blood. The said report was recorded in shape of '*Murasila*' Ex. PW-1/1 and later was incorporated in FIR No. 278 dated 25.08.2015 being registered against unknown accused at PS concerned.

8. On 27.8.2015 Said Malookd the brother and Muhammad Hazrat the father of the deceased had recorded their statements under section 164 Cr.P.C wherein they had charged the present appellant Mst. Amina Bibi, the widow of the deceased for facilitation of murder of her husband.

9. On 28.8.2015 Mst. Amina Bibi was arrested from the house of the complainant, she was produced before the Judicial Magistrate Chakdara, PW-10, where she had confessed her guilt. Thereby,

attributing effective role of murder of the deceased to the co-appellant Ghulam Sardar. In the said confession, she had also admitted her illicit relations with the co-accused Ghulam Sardar.

10. On 30.08.2015 the Investigation Officer had recovered an axe and a small hoe (کشوٹی) from the house of the deceased vide recovery memo Ex. PW-8/8. Similarly, on 28.08.2015 the co-convict Ghulam Sardar was also arrested, who according to the investigation had made pointation of the place of occurrence where he had killed the deceased and in the said pointation he had also shown Mst. Amina Bibi to be present with him in the said Jungle.

11. Admittedly, it is an unseen occurrence, hence the entire prosecution case rests on the retracted confession of the appellant Mst. Amina Bibi and the alleged pointation made by the co-appellant Ghulam Sardar, which was duly exhibited in the site plan PW-8/1.

12. Since the main evidence against the present appellants is the confession of accused Mst. Amina Bibi, therefore, it would be appropriate to reproduce the same, which reads as under:-

"بیان کیا کہ میرا خاوند اومان میں مزدوری کرتا تھا اور میں الگ مکان میں اپنے علاقے میں رہتی تھی۔ میری ممانی کی بیٹیوں نے مجھ پر الزام لگایا تھا کہ میرے اور غلام سردار کے درمیان ناجائز تعلقات ہیں اور اس کی وجہ سے شیر زمین اور ماموں ام کے درمیان ایک جھگڑا تھا۔ جس میں نعیم اور غلام سردار نے خلاصی کرائی تھی۔ اس کے بعد غلام سردار نے کسی طریقے سے میرا موبائل نمبر حاصل کیا اور اکثر و بیشتر ہم دونوں ایک دوسرے کے ساتھ رابطے میں رہتے تھے اور موبائل پر پیار و محبت کے باتیں کرتے تھے۔ غلام سردار اکثر ہمارے گھر آتا تھا اور میرے ساتھ میری مرضی پر جماع کرتا تھا۔ پانچ ماہ قبل میرا خاوند واپس اپنے گھر آیا اور اس دوران بھی میں غلام سردار کے ساتھ ملی تھی۔ ایک دن میرے خاوند نے ہم دونوں کو اکھٹا ہمارے گھر کے صحن میں بیٹھے دیکھ لیا خوف کی وجہ سے غلام سردار بھاگ گیا اور خاوند نے مجھے خوب مارا پیٹا اور ساتھ قتل کی دھمکی بھی دی۔ اس کے بعد میں غلام سردار کے ساتھ مکمل رابطے میں تھی اور ہم دونوں نے فیصلہ کیا کہ رحیم ذادہ خاوند ام کو قتل کر کے اُسے راستے سے ہٹھا دیے ہیں۔ بروز وقوعہ رحیم ذادہ گھاس لانے کیلئے پہاڑ چڑھ گیا ہوا تھا تو اس دوران غلام سردار نے مجھے فون کیا کہ رحیم ذادہ پہاڑ پر آیا ہوا ہے تو میں نے کہا ہاں وہ وہاں موجود ہے۔ اس کے بعد تقریباً گیارہ بجے دوبارہ فون کیا کہ اس نے رحیم ذادہ کو قتل کر دیا ہے۔ غلام سردار نے رحیم ذادہ کو میری ایماء و مشورہ سے قتل کیا ہے۔ یہی میرا بیان ہے۔"

13. No doubt, the said confession was recorded on the first day of arrest of the appellant Mst. Amina Bibi before the Judicial Magistrate, PW-10, however, we have yet to see as to whether the said confession which

was later retracted by her was voluntary and true. Indeed, we have no doubt in our mind that the promptly recorded confession even if it is retracted can well be made as ground for the conviction of the accused and can also be considered as a corroborative piece of evidence under Article 43 of the Qanun-e-Shahadat Order, 1984 against the co-accused provided that the said confession is true and voluntary. It is evident from record that the appellant Mst. Amina Bibi after the commission of alleged crime was in the house of her in-laws, wherefrom she was arrested. She was charged on 27.08.2015 by the father-in-law and brother-in-law, however, on the same date she was not arrested and on the following day i.e. 28.08.2015 she was arrested and produced before the Judicial Magistrate for recording of her confession. Thus, before recording her confession she was in custody of her in-laws, therefore, in such circumstances, it was incumbent upon the Judicial Magistrate to have

provide her an atmosphere where she should have felt no signs of fear in her mind with full assurance that in case she was not guilty or not making confession voluntarily then in that case she would not be handed over back to the police.

14. However, even if it is presumed that it was promptly recorded confession and voluntary, then the contents of the said confession does not appear to be true because in the said confession she had stated that she had developed illicit relations with the co-accused Ghulam Sardar. The said illicit relations were known to her cousins, who had leveled allegation of illicit relations against them and subsequently she was also seen by her husband in the company of Ghulam Sardar. However, when the complainant Muhammad Hazrat and Said Malook appeared before the Court as PW-1 and PW-2 respectively they did not mention about such relations before the Court. Whereas the father-in-law Muhammad Hazrat has admitted in his



cross-examination that he alongwith his son and daughter-in-law were residing in a house having a common boundary wall. Both the witnesses have further admitted that they do not know about any illicit relations between the accused. Even the Investigation Officer, while appearing as PW-8 has also admitted during cross-examination that according to the CDR data on the same day i.e. 25.8.2015 there was no conversation between both the accused. In the said confessional statement, the appellant Mst. Amina Bibi did not say that she was present at the time of murder of the deceased in the jungle. Whereas addition made in the site plan, Ex. PW-8/1 by the Investigation Officer on the pointation of the co-accused Ghulam Sardar, Mst. Amina Bibi was shown present at the place of occurrence at point No. 3. Thus, the contents of the confession recorded by her is not corroborated by the other evidence, therefore, the same does not appear to be true.

15. As stated above, the retracted confession if confidence inspiring can be made a ground for conviction of the accused, however, when the same appears to be untrue and involuntary, it would not be safe to solely rely on the said confession for conviction of the accused without further corroboration of the said confessional statement through confidence inspiring circumstantial evidence. Thus, in the circumstances, the benefit of doubt must be given to the accused/appellants. The alleged articles recovered from the house of the accused are ordinary tools of farming and there is no evidence that the same were used in commission of offence.

16. Similarly, it is settled law embodied in Article 43 of the Qanun-e-Shahadat Order, 1984 that the confession of the accused facing joint trial is only a corroborative piece of evidence against the co-accused, which requires strong corroboration. In the present case, when we have disbelieved the said confession against its maker i.e. the

appellant Mst. Amina Bibi, then the same has no evidentiary value against the co-accused Ghulam Sardar. Even otherwise, there is no other corroborative piece of evidence available on the file, which connects the co-accused Ghulam Sardar with the commission of offence. In this regard reliance is placed on the judgment of the august Supreme Court of Pakistan titled *"Mushtaq and others vs the State (2012 SCMR 109)"*, wherein it was held that:- *"As the accused did not admit to have killed the deceased, therefore, he could not be held responsible for killing on the confessional statements of co-accused."*

The same ratio further reflects in *"Abdur Rehman's case reported as 2018 YLR 1629"*, wherein it was observed by the Hon'ble High Court:- *"Confession made by accused could not be used as a substantive piece of evidence to make the same basis of conviction of co-accused. Confessional*

statement could be used a corroborative piece of evidence, if corroborated by independent evidence.”

17. In the above backdrop and after reappraisal of the entire evidence, this Court is of the firm view that the prosecution case against both the accused/appellants has not been proved beyond any reasonable doubt and the judgment of learned trial Court dated 02.03.2017 is based on wrong appreciation of evidence. Hence, we accept both these connected appeals and set-aside the impugned judgment rendered by the learned trial Court. Therefore, the accused/appellants Mst. Amina Bibi and Ghulam Sardar are acquitted of the charges leveled against them. They be released forthwith if not required in any other case.

18. Likewise, the connected criminal revision bearing No. 31-M of 2017 preferred by the State (petitioner) for enhancement has become infructuous, which is accordingly dismissed.

19. These are the reasons of our
short orders of even date.

Announced
Dt. 18.02.2019


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

Cr.A. No. 66-M/2017

JUDGMENT

Date of hearing:- 18.02.2019

Appellant:- *(Mst. Amina Bibi)*
By Mr. Javaid Akhtar Tajak, Advocate.

Respondents: *(The State & another) by*
Mr. Haq Nawaz, Asstt. Advocate General.

SYED ARSHAD ALI, J.- For reasons to be recorded later on in the detailed judgment, we allow this appeal, set-aside the judgment of conviction dated 02.03.2017 passed by the learned Additional Sessions Judge/Izafi Zila Qazi Chakdara Camp Court at Timergara in case FIR No. 278 dated 25.08.2015 registered under sections 302, 34 PPC at police station Talash District Dir Lower and resultantly acquit the appellant namely Mst. Amina Bibi wife of Rahim Zada (deceased) from the charges levelled against her. She be released forthwith if not required in any other case.

Announced.
Dt:18.02.2019


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