

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.189-A of 2019

JUDGMENT

Date of hearing.....19.02.2020.....

*Appellant...(Abdur Razzaq) by M/S Syed Hammad Hussain Shah Gilani and
Amber Rashid Durrani, Advocates*

Respondent...(Irfan Ahmad etc)

AHMAD ALI, J:- Abdur Razzaq, appellant/
complainant has called in question the acquittal of
accused/respondent, Irfan Ahmad, in case F.I.R No.
248 dated 04.04.2013 under Section 302 PPC of PS
Mir Pur, District Abbottabad, vide impugned
judgment dated 02.05.2019 of the learned Additional
Sessions Judge-VI/Model Court, Abbottabad by filing
instant appeal under section 417 (A-2) Cr.P.C.



2. Brief facts of the case are that the
complainant/appellant, Abdur Razzaq, reported the
matter to the local police on 04.04.2013 at 10.30 AM
alongwith dead body of his sister, Mst. Nasreen Gul
in Police Post, Ayub Teaching Hospital, Abbottabad,
alleging therein that in the morning at 08.00 AM, he

was present on his duty at English Biscuits Factory, Hattar, Haripur, when he received information through telephone that his sister was killed and her dead body was lying in Ayub Teaching Hospital, Abbottabad; that he reached ATH, Abbottabad and found the dead body of his sister in Emergency Ward, who was killed by strangulation having signs of rope on his neck; that on query, he came to know that his sister was sleeping in home at night and in the morning her dead body was found on bed; he charged her husband, Muhammad Ishaq, stepson Asmat Ullah and stepdaughter, Safia Bibi. No motive was disclosed by the complainant in his report.

3. During investigation, accused/respondent Irfan Ahmad was arrested, who made confessional statement before the Magistrate, wherein, he also charged one Naila, co-accused for commission of the offence. Subsequently, the complainant charged the accused/respondent, Irfan Ahmad and co-accused Niaila and exonerated the accused charged in the report. After completion of investigation, complete challan was submitted in the Court of Sessions for trial against acquitted accused/respondent Irfan

Ahmad, and acquitted co-accused Mst. Naila. Where, after completion of codal formalities charge was framed to which the accused/respondent pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined seventeen witnesses and statement of accused/respondent Irfan Ahmad was also recorded under section 342 Cr.P.C, wherein, he denied the allegations of the prosecution leveled against him in this case. However, he wished not to produce defence or to appear on Oath as his own witness within the contemplation of section 340(2) Cr.P.C. The learned trial Court, after hearing the arguments of learned counsel for the parties, acquitted the accused/respondent vide impugned judgment/order dated 02/05/2019. Hence, the present appeal.



4. Arguments of the learned counsel for the appellant heard. Record perused.

5. Perusal of record reveals that initially the complainant charged three persons in his report, who were later on during investigation of the case were exonerated by him and instead acquitted accused/respondent, Irfan Ahmad and co-acquitted

accused, Mst. Naila were charged by him in his supplementary statement and that too after confessional statement of the accused/respondent Irfan Ahamad, whereas, the accused charged in the report were made witnesses in the case. The prosecution in order to establish its case against the acquitted accused/respondent has relied upon the statements of complainant Abdur Razzaq (PW-11), Molvi Muhammad Ishaque (PW-12), Mst. Safia Ishaq (PW-13), who appeared and furnished their testimony as eyewitnesses of the occurrence, medical evidence furnished by Lady Doctor Sadia, Women Medical Officer (PW-9), who conducted postmortem of deceased Mst. Nasreen Bibi, Ehtisham-ul-Haq Danishmand, Judicial Magistrate (PW-10), who recorded confessional statement of accused/respondent Irfan Ahmad, Sajjad Ahmad (PW-16) marginal witness to recovery memo Ex.PW 15/9 through which crime ropes (Ex.P-2) and (Ex.P-3) were recovered and Khurram Shahzad (PW-17), witness of pointation memo alongwith other formal witnesses.

6. Admittedly, the complainant is not an eyewitness of the occurrence. He was initially informed on telephone about the murder of the deceased Mst. Nasreen Bibi, his sister, however, he did not disclose as to who informed him about the occurrence and this fact remained unrevealed during entire evidence of the prosecution. The version of the prosecution, as mentioned in F.I.R, referred to above, was that the occurrence took place in between the night of 03-04 April, 2013, whereas, the report was lodged on 04.04.2013 at 10.30 A.M. Asmatullah and Mst. Safia Bibi, who were initially charged as accused, were subsequently become eyewitnesses of the occurrence. Admittedly, no effort was made to lodge report by the husband or stepson or stepdaughter of the deceased. PW-13, Mst. Safia Ishaq and PW-14, Asmat Ullah furnished their testimony as an eyewitness of the occurrence, who deposed in their Court statements that on 04.04.2013 they were sleeping in their room, when their father asked them to get up for '*Fajar*' prayer and her father left the house for '*Masjid*'. She noticed some hue and cry/voice from the room of their mother, they went



towards the room of their mother, when they reached there, accused/respondent Irfan Ahmad, who is their paternal cousin, was putting rope around the neck of their mother. On seeing him, accused/respondent took out the rope from the neck of his mother. Accused/respondent caught hold of Asmatullah and threatened them not to disclose the occurrence to anyone, else he would kill them and thereafter he ran away. Asmatullah (PW-14) informed his father in 'Masjid' and his father in the company of Professor Mushtaq Ahmad (PW-6) came to the house and they took her mother to the hospital, where they came to know that their mother had expired. They narrated the whole story to their father and their father tried to inform Abdur Razzaq, their maternal uncle but he was angry and did not listen to his father and he lodged report against them. However, when this Court examined the evidence of both the eyewitnesses, it become clear that they informed the police about the commission of the offence by accused/respondent Irfan Ahmad on the day of occurrence but their statements and the statement of Abdur Razzaq, complainant, under section 161 Cr.P.C were recorded



after delay of about nine days on 13.04.2013 and no explanation in this regard is furnished by the prosecution. Such delay could not be ignored in peculiar facts and circumstances of the case. The statements of the alleged eyewitnesses were also contradictory with each other in material particulars. The minute analysis of the entire evidence on record, suggests that the occurrence had not taken place in the mode and manner as alleged by the prosecution. The witnesses have given an exaggerated account of the occurrence by involving two persons therein, as there were no corroboration to their testimony from any independent source, therefore, their deposition could not be relied upon for safe administration of justice. Reliance can be placed on PLD 1980 SC 2011, 1996 SCMR 1411, 1998 SCMR 1823, PLD 2003 SC 14, 2007 SCMR 670 and 2011 SCMR 323.



7. According to the F.I.R, time of occurrence was shown to be midnight in between 3-4 April, 2013, while report was lodged on 04.04.2013 at 10.30 AM. Postmortem was conducted by the doctor on 4.4.2013 at 11.00 AM. It has been mentioned in the PM report that time between death and postmortem was within

12-15 hours. PW-9 Lady Doctor admitted during cross-examination that: *"It is correct that death might had been occurred at about 11 P.M of 03/04/2013 or 8 PM of even date. It is correct that it is not my personal opinion that death was occurred in between 8to 11 PM of 03/04/2013 but it is the biological changes in the body after the death which suggest the time of death. It is correct that it is not possible at all that rigor mortis would develop within 4, 5 or 6 hours after the death. The bruises and injuries on the body of deceased lady qua bruises and laceration suggest that deceased lady was subjected to torture prior to her death by strangulation. According to medical jurisprudence written by Modi and Parikh, the rigor mortis starts developing on dead body after 3 hours of death and completes within 12 hours and remains for next 12 hours, so it means that the time of death was not the same as mentioned in the F.I.R. This fact is further strengthened by the statement of PW-9 who mentioned time between death and postmortem as 12-15 hours. So by calculation the time of death comes as 11.PM at night, while at that time husband of the deceased lady was with her, as such, in this peculiar*



situation how accused could murder the deceased lady. Thus, the story narrated by complainant is highly doubtful and medical evidence totally negates the prosecution version. Reliance is placed on 2015 YLR 2498.

8. Now coming to the confessional statement of the accused/respondent, Irfan Ahmad, recorded by Judicial Magistrate (PW-10) on 09.04.2013. In his statement accused/respondent stated that he was in love with co-accused Mst. Naila Bibi and he asked the deceased for marriage with her, however, the deceased did not agree with his proposal, as such, in order to remove the hurdle from his way, he killed her by strangulation and at the time of commission of offence, some voice created from his mouth, as a result, Asmatullah, son of deceased woke up and he threatened him not to disclose the occurrence to anyone, otherwise he would kill him. However, the learned Judicial Magistrate did not observe the procedural formalities before recording the confessional statement, as no second warning was given to accused to ponder over the matter and he was also handed over to Naib Court for onward

transmission to judicial custody, thus, such statement could not be held to be voluntary. The learned trial Court has discussed in detail all the aspects relating to voluntariness of the confessional statement and has rightly discarded this piece of evidence. The recovery of two pieces of crime rope from inside the kitchen/mess of poultry farm and from an open ground of Army is not believable and the evidence of the witnesses in this regard are also not confidence inspiring. Accused person could not be convicted on the sole ground of retracted judicial confession without corroboration from independent evidence. Reference can be made to case law reported as **2015 SCMR 856, PLD 2015 Peshawar 01 and 2015 YLR 1448.**



9. In view of above discussions, it is crystal clear that the case of the prosecution is full of doubts and the statements of the complainant and eyewitness are contradictory on material particulars, which create serious doubts about the mode and manner of the occurrence and veracity of the testimony furnished by the alleged eyewitnesses. As such, the learned trial court has rightly acquitted the

accused/ respondent and its judgment does not need to be interfered with by this Court in its Appellate jurisdiction.

10. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled **Ghulam Qadir Vs. The State** (2008 SCMR 1221), wherein, it has held that:

“It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case.”

Reliance is also placed on case law reported as **1992 SCMR 366, 1995 SCMR 1345, 1995 SCMR 1730, 2004 SCMR 215, 2004 SCMR 140, 2009 SCMR**

230, 2013 SCMR 192, 2016 SCMR 2073, 2016 PSC (Criminal) 612, 2017 PSC (Criminal) 14, and 2017 S C M R 986.

11. Accordingly, for the reasons stated hereinabove, this Court is of the considered view that the prosecution has failed to prove its case beyond any reasonable doubt against the accused/respondent, hence, the instant appeal being devoid of substance is hereby dismissed in *limine*.

JUDGE

JUDGE

Announced.
Dt.19.02.2020.

/*M.Saleem*/

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali