

JUDGMENT SHEET

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

Cr.A. No. 206-M/2013.

JUDGMENT

Date of hearing: **15.5.2017.**

**Appellant:- (Mst. Bano) by Hafiz Ashfaq Ahmad,
Advocate.**

**Respondents:- (Mst. Rubina and the State) by Mr.
Jehangir Advocate and Mr. Rahim Shah, A.A.G.**

MOHAMMAD IBRAHIM KHAN, J.- The prayer

set in this criminal appeal is:-

*“ It is therefore humbly prayed that in light
of the above and many other grounds to be
advanced at the time of hearing of the
instant criminal appeal, the order/judgment
dated 07.07.2013 of the learned Additional
Sessions Judge-1, Swat may kindly be set
aside and the Respondent/accused be
awarded punishment in accordance with
law.”*

2. Mst. Robina aged about 17 years under the Juvenile Justice System by the charge dated 30.10.2012 has faced the allegations that on 11.03.2012 at *Isha* time the occurrence happened in the house of the complainant situated at Mangar Kot

with co-accused Saba Khan and Mst. Taj Bibi sharing their common intention thrown acid (تیزاب) on Mst. Tahira resulting burns all over her body including from throat to navel, half of the face and both arms have been injured. Later she succumbed to the injuries. The charge is for *Qatl Shibh-i-Amd* covered under section 316/34 of the Pakistan Criminal Code.

3. The prosecution in order to bring home the charges examined PW-1 Dr. Manzoor Ali Said Group of Teaching Hospital Saidu Sharif Swat who being one of the members of the Medical Board examined injured Mst. Tahira and found the following:-

“The Standing Medical Board today on 20.04.2012 at 10.00 A.M examined Mst. Tahira W/O Saba Khan R/O Mangar Kot PS Malam Jabba. Patient was brought by Zortalab Khan IHC Investigation No. 853, Police Station Malam Jabba. She is a victim of Burns. She has burns on Chest, abdomen, both arms up to belt line below and Neck above. Collectively the Burns are 30% (9% Chest, 9% Abdomen front, 9%

arms, 3% Neck). These wounds are partly superficial and partly deep. These burns are 1-2 months old. At this stage it is not possible for the Medical Board members to differentiate between Thermal and acid Burns or else. The Board recommended that Forensic expert from the Saidu Medical College Swat be involved in this case for final decision.

On the same dated 20.04.2012 (11.20 A.M) Dr. Mir Alam Senior Lecturer Forensic Department Saidu Medical College Swat examined the above mentioned patient. The patient injury is 1-2 months old with scab formation over the wounds and quack remedies (Hakeem's powder) which has masked the identification features further. However there is no spillage effect. Therefore the possibility of corrosives is unlikely.

PW-2 is constable Muzahireen who is marginal witness to the recovery memo Ex. PW-2/1, vide which clothes of the deceased were taken into possession. PW-3 is Dr. Mir Alam Afridi, who

submitted his report Ex. PW-1/1 alongwith other members of the Medical Board which bears his signature. PW-4 is constable Shujahat Ali No. 2184, in his presence the Investigating Officer from the place of occurrence recovered plastic bottle 1.5 liter having logo of gourmay on it through Ex. PW-4/1. It was given the smell of Kerosene oil. PW-5 is Zoor Talab Khan police constable who is marginal witness to the recovery memo Ex. PW-5/1 via which plastic bottle was sealed and sent to FSL for chemical analysis. PW-6 is Lady Doctor Shaukat Haider Ali Said Group of Hospital, who has examined corpus of Mst. Tahira and found the following:

External appearance:

No mark of ligature present

A young lady eyes and mouth partially open, extremely emaciated body lying straight wearing a plain maroon colour shalwar not wearing a shirt, the interior of the chest and abdomen covered with Henna colour powder.

The victim had extensive burn wounds on neck, lower face, chest, abdomen, anterior surface of right

thigh and both arms with contractures present in both hands.

The burn wounds covered about 30-35% of the victim body, some portion of the body showed burns while the rest were not healed as yet and were covered by some Henna like covered.

Cranium and spinal cord: cranium opened NAD.

Thorax: After opening the thorax cavity heart taken sent for chemical analysis.

Abdomen:- Stomach and its contents sent for chemical analysis.

Specimen taken and sent for chemical analysis. Liver was very friable.

Remarks by Medical Officer:- This young lady with extremely emaciated body, rigor mortis fully developed. Extensive burns with super imposed infection present and such extensive burns can lead to renal failure. Specimen of heart, liver, stomach and its contents sent for chemical analysis.

**Cause of death: Awaiting the result of
chemical analysis.**

PW-7 is Haji Ghami in whose presence the corpus of Mst. Tahira was handed over to her relatives, in this respect a receipt of handing over of corpus is Ex. PW-7/1. PW-8 is Haider Ali who is identifier of the body of Mst. Tahira. PW-9 is Muhammad Israr ASI Kabal, who has conducted the investigation, which pertains to proceedings from Ex. PW-9/1 to Ex. PW-9/21. PW-10 is Doctor Umair, who has examined Mst. Tahira for her burns injuries. PW-11 is Said Ali Shah constable No. 3166 who is marginal witness to the recovery memo Ex. PW-9/8. PW-12 is Sanaullah Constable No. 2548 who has received photocopies of the discharge slip bearing admission No. 1347310312 from 22.3.2012 to 05.04.2012 of Khyber Teaching Hospital Peshawar. PW-13 is Yousaf Khan SI who has recorded statements of the PWs under section 161Cr.PC. PW-14 is Mohammad Iqbal Khan SI who has submitted complete challan in the case. PW-15 is Said Mahmood Khan ASI who has conducted rest of the investigation. PW-16 is Jamshed brother of the deceased who has narrated the occurrence and throwing of acid upon her sister Mst. Tahira.

4. At the end after closure of the prosecution evidence, accused/Respondent was examined under section 342, Cr.P.C, wherein she denied the charges, posed innocence and stated to have falsely been implicated in the case. She however wished to produce no defence, not to examine herself on oath as required under section 340(2), Cr.P.C.

5. On conclusion of the trial, the learned Additional Sessions Judge/Izafi Zila Qazi 1st Swat acquitted the accused/Respondent Mst. Robina (juvenile) from the charges of murder levelled against her through the judgment impugned herein.

6. Having heard arguments of the learned counsel for the complainant/Appellant, learned counsel for the accused/Respondent and learned A.A.G, record gone through with their valuable assistance.

7. Learned counsel for the complainant/Appellant though did not rely any dictum of the Hon'ble superior Courts, however

vehemently argued the case of his client i.e. complainant by submitting that heinous offence has been attributed to the accused/Respondent Mst. Rubina due to which a young lady has lost her life in brutal manner. On the other hand, learned counsel for the accused/Respondent referred to **1991 P Cr.LJ 113 (Lahore) “ Afzaal Hussain Shah vs the State”,** **2013 YLR 230 (Lahore) “ Bakht Zada vs the State”,** **2013 P Cr. LJ 708 (Peshawar) “ Umer Zaman vs the State”** and **2014 P Cr. LJ 611 (Sindh) “ Qazi alias Dost Muhammad and another vs the State”** and prayed for the dismissal of the appeal out-rightly being shorn of merits.

8. Although the requirement was that this being a juvenile trial under Juvenile Justice System, the trial was to be conducted exclusively by recording statements of the prosecution witnesses, yet the learned Trial Court has recorded statements of all the prosecution PWs in verbatim form as the trial of the co-accused in Sessions Case No. 31/7

of the year 2012 was also under trial side by side.

Thus when the allegations as per report of the complainant Mst. Tahira are taken up for consideration, deposition in her report that she was in the wedlock of one Saba Khan. Out of their wedlock the spouses were blessed with one male child Asmat Ali. Later the relationship became strained and she opted to live in the house of her parents. Her husband Saba Khan made several attempts in person as well as through *Jirga* to bring her back to her house and finally after hectic efforts on behalf of the husband Saba Khan she came to the house of her husband on 07.08.2012. When on 11.03.2012 she being present in her house alongwith her husband Saba Khan and her son, who at that time was listening songs through mobile when she came outside her room and opened the door someone else not named, thrown something on her body and due to darkness of the night she could not identify anyone. However she is in doubt that her mother-in-law

Mst. Taj Bibi and sister-in-law Mst. Rubina had thrown acid upon her body. She was severely injured due to acid burns and became unconscious. She was brought to the casualty hospital by her husband and inmates of the house. Because of the strained relationship mother-in-law and sister-in-law are suspected, therefore for the offence Mst. Robina alongwith other co-accused have been charged in the present case.

9. It is obviously happening of an untoward incident happened in the house of the complainant Mst. Tahira at *Isha* time, there was no one in the house except inmates. According to her own words of Mst. Tahira, the acid was thrown upon her which resulted into burns on her body, but this fact in the statements of the Medical Officers has been totally negated. All Medical Officers whether that be PW-1 Dr. Manzoor Ali member of the Medical Board constituted on 20.04.2012, PW-3 Dr. Mir Alam Afridi who is Associate Professor of Forensic

Science Saidu Group of Teaching Hospital and is a senior lecturer as well as PW-6 Lady Doctor Shaukat Haider Ali who has examined the injured Mst. Tahira. It is by all such evidence through medical experts that the burns on the body of Mst. Tahira were caused by Thermal and not acidic burns. The burns were 1-2 months old with scab formation over the wounds and quick remedies (Hakeem's powder) were applied on it which has masked the identification features further. The statement of Lady Doctor Shaukat Haider Ali who has conducted postmortem of the deceased has also given her opinion as member of the Medical Board alongwith other medical experts which too is not in line with the version of the prosecution. So by all probabilities accused/Respondent who has been acquitted of the charges levelled against her to be a young girl of 17 years has only been charged on account of suspicion of the relationship with the deceased Mst. Tahira being her sister-in-law (بہابی).

10. Rest of the findings contained in the judgment of learned trial Court being rendered in accordance with settled principles of criminal administration of justice are not open to any exception, as there are reasons to believe that such findings are based on proper appreciation of the medical evidence and other material brought by the prosecution on the record.

11. The cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree in quality and shall be sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons alongwith guilty one by the prosecution. The golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient for the acquittal of accused, giving him/them benefit of doubt, because bundle of doubts is not required to be extended to the accused in this regard. Reliance is placed on a view held by the Hon'ble Supreme Court

in the case of *Muhammad Shafi vs. Muhammad Raza and another (2008 SCMR 329)*.

12. Above all, there is no cavil to the proposition that the scope of interference in appeal against acquittal is most narrow and limited because in case of acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence that an accused shall be presumed to be innocent unless proved guilty. Simple is that the presumption of innocence is doubled and the Courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, based on gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence. Such judgments should not be usually interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Reliance is placed on the judgment of the Hon'ble Supreme Court

in the case of "Riaz Masih alias Mithoo Vs. State"
(N L R 1995 Cr.SC 694).

13. After reappraisal of evidence, evaluation of record in view of above discussion and criteria laid down by the Hon'ble Supreme Court, this court does not propose to draw a different conclusion from what the learned trial Court has drawn, thus we uphold the acquittal of the accused/Respondent, ergo, maintain the impugned judgment and accordingly dismissed the appeal in hand being shorn of merits.

Announced.
Dt: 15.05.2017.

JUDGE

JUDGE