

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

Cr.Appeal No. 197-A/2010

JUDGMENT

Date of hearing.....**05.10.2017**.....

Appellant (Riaz Ahmad) By Qazi Shams-ud-Din and Mr. Saeed Ahmad Awan,
Advocates.

Respondents. (State) By Raja Muhammad Zubair, AAG & (Complainant) By Mr.
Ghulam Mustafa Khan Swati, Advocate.

SYED MUHAMMAD ATTIQUE SHAH, J.- Indicted on a

murder charge, appellant, Riaz Ahmad, at a trial held by the

learned Additional Sessions Judge-III Mansehra, was found

guilty for the crime and upon conviction has been

sentenced to imprisonment for life with a fine of

Rs.5,00,000/- as compensation under Section 544-A

Cr.P.C, payable to the legal heirs of deceased or in default

thereof to suffer further six (06) months S.I with benefit of

Section 382-B Cr.P.C.

2. The epitome of this tragic incident, as spelt out

from the FIR (Ex.PA), is that initially vide *Mad* No. 10

dated 20.02.2009 (Ex.PW-10/1) the complainant Mst. Bibi

Ayesha (PW-10) in the company of her brother-in-law

namely, Deedar (PW-11) reported to the local police of Police Station Sarokalay District Charsadda at 10:00 hours to the effect that her daughter Mst. Razmina (deceased) was married to Muhammad Riaz (the convict-appellant) some six (06) years back and both the couples were happily living their marital life, rather her daughter was in good visiting terms with them, however, after a year her husband (the convict-appellant) left for Kuwait to earn his livelihood and when he returned back to his country after three (03) years, he blamed her daughter that she was having illicit relation with one Wahid s/o Khiyal Muhammad with whom she was also stigmatized to have taken photographs as well, thus, their relations became strained and thereafter she was stopped from visiting her (the complainant) house. She further narrated in the FIR that ten (10) days ago, Mst. Naz Gul, sister of the convict-appellant, informed her that Mst. Zarmina (her daughter) was killed by her brother and thrown the dead body in the well, thus, she charged the convict-appellant alongwith his

brother namely, Jawad and mother Mst. Nasreen for commission of the offence. PW Deedar also verified report of the complainant (Mst. Bibi Ayesha), whereafter it was sent to the Police Station City Mansehra through Deedar, which was incorporated there vide Daily Diary No. 46 dated 22.02.2009, thus, enquiry was launched under Section 156 (3) Cr.P.C and the matter was entrusted to Naik Muhammad, ASI, as a result whereof, he recovered the dead body of deceased Mst. Razmina from a well in the house of Malik Aman at Lalazar Colony Thakra, hence, the FIR was registered accordingly on 23.02.2009.

3. After completion of the investigation, complete challan was submitted against the convict-appellant and acquitted co-accused (Jawad) before the learned trial Judge, who were formally charge sheeted, to which they pleaded not guilty and claimed trial while the absconding co-accused (Mst. Nasreen) was proceeded against under Section 512 Cr.P.C. However, in order to prove its case at

the trial, the prosecution examined as many as fifteen (15) witnesses in all.

4. After close of the prosecution evidence, statements of the convict-appellant (Riaz Ahmad) and acquitted co-accused (Jawad) were recorded under section 342 Cr.P.C, wherein they denied the allegations leveled against them. However, they neither opted to be examined on oath under section 340 (2) Cr.P.C nor wished to produce defence evidence, thus, the trial culminated into acquittal of the co-accused (Jawad) and conviction of the present appellant, who was sentenced as above, hence, the present appeal.

5. We have heard the arguments of learned counsel for the parties as well as the learned AAG and gone through the record with their valuable assistance.

6. Perusal of the FIR (Ex.PA) reveals that the occurrence took place some forty five (45) days prior to the lodging of first information report and Mst. Bibi Ayesha (PW-10) is the complainant of the present case, who has charged the appellant alongwith the acquitted co-

accused (Jawad) and absconding co-accused (Mst. Nasreen) for the murder of her daughter (Mst. Razmina) with a motive behind the offence, which was her alleged illicit relation with one Wahid, with whom she had also taken photographs. The occurrence is an unseen one because according to the complainant she was informed on telephone by Mst. Naz Gul, sister of the convict-appellant about the incident but the latter was not examined in order to support the case of prosecution.

7. Though there are number of witnesses in this case but most of them are police officials, thus, the most noteworthy piece of evidence in this case is the testimony of complainant (PW-10), who lodged the report, Deedar (PW-11), who identified the dead body of deceased, lady doctor Aalia (PW-6) who conducted autopsy, Muhammad Suleman (PW-4) who given the house on rent to the convict-appellant, Muhammad Asif Khan (PW-2), in whose presence the convict took the police party to the place of occurrence wherefrom the crime weapon was

taken into possession, Naik Muhammad (PW-13), who conducted enquiry under Section 156 (3) Cr.P.C and Jehanzeb Khan (PW-15), who was entrusted with the investigation of the case, gist of which is required to be discussed.

8. First of all we would discuss the statement of Muhammad Asif (PW-2), who is marginal witness to the recovery memos Ex.PW-2/1 and Ex.PW-2/2. He stated that by profession he is a retired police officer and in his presence the convict-appellant led the police party to the house of one Malik Aman and presented a pistol (crime weapon) to the police, whereafter he himself pointed out the *well* in which the dead body of the deceased was thrown. However, during the course of cross-examination he deposed that he did not know that when and where the dead body of the deceased was recovered as he was not present there at the time of discovery of the dead body while, on the other hand, he admitted as correct that he was witness to the recovery memo of discovery of deceased's

dead body and recovery of weapon of offence. He further stated in his cross-examination that it is correct that the house, wherefrom the weapon of offence recovered, was abandoned one and he does not know that the said house was belonged to whom, thus, his testimony cannot be relied upon, being inconsistent.

9. Appearing as PW-4, Muhammad Suleman, stated that the house situated at Lalazar Colony (where the occurrence took place) is the ownership of his brother (Malik Aman), who advised him to give the same on rent to any body and on 05.09.2009 he handed over the same on rent to convict-appellant in lieu of Rs.2000/- per month, however, during the course of cross-examination he admitted as correct that he was having no knowledge about the presence of dead body in the said house rather stated that he was informed by the Investigating Officer, thus, his testimony too is of no worth to be relied upon.

Moreover, this PW has not produced ownership documents of his brother in respect of the house

wherefrom the dead body of deceased was recovered. So far as the photocopies of alleged agreement and CNIC of the accused is concerned, the same cannot be taken into consideration in absence of original as photocopies in absence of original documents cannot be legally brought on record of a case nor the same has any legal worth and strength.

10. The most important piece of evidence in this case is the statement of lady doctor Aalia, who appeared in the witness box as PW-6 and stated that she examined the dead body of deceased and prepared the postmortem report. During cross-examination she deposed that dead body of the deceased was completely mutilated and decomposed i.e. the skin (outer) was absent and feature of the face was not recognizable while, on the other hand, Deedar (PW-11) stated that he identified the dead body of the deceased, thus, there is sharp contradiction in their statements, benefit of which must have to be extended to the convict-appellant.

11. PW-10 (Mst. Bibi Ayesha) is the star witness of the occurrence, being complainant of the case, who supported the version as given in the FIR, wherein too she admitted that she was informed by Mst. Naz Gul, sister of the convict-appellant, some ten (10) days prior to lodging of the report but she kept mum for no reason rather nothing in the shape of explanation could be offered by her.

Apart from the above, during the course of cross-examination she admitted as correct that she does not know the exact date when the occurrence took place and also when the informer informed her about the occurrence. She admitted as correct that she had her own mobile, but denied to have known the contact number of the informer, which is a question looking askance that how it is possible that one should not know the number of informer and that too who informed a person regarding such an important news, like the one in this case. Therefore, her such immature statement too is not worth consideration and thus, cannot be relied upon.

12. Deedar, who is uncle of the deceased, while appearing in the witness box as PW-11 deposed that he was marginal witness to the recovery of dead body of the deceased rather he claimed to have identified the dead body of the deceased which in other words, keeping in view the statement of lady doctor, was not appealing to a prudent mind as the doctor while recording her statement handed down that the dead body was completely mutilated and decomposed rather her outer skin was absent and feature of the dead body was not recognizable, then, how he could identify the same?

Besides, he himself twisted the story while stating during his cross-examination that ***“it is correct that the dead body of the deceased was mutilated / decomposed”*** and again in the next line he stated that ***“the dead body was partially decomposed”***. It appears that he himself contradicted his own statement by narrating two versions in the same breath, thus, possibility of concoction cannot be ruled out.

13. Now another most important piece of evidence in this case is the statement of Naik Muhammad, who while appearing in the witness box as PW-13, stated that in light of Mad No.46 dated 22.02.2009 he started enquiry and when reached to the house of Sher Ali, he inquired from him that since when the convict-appellant was residing in his house, whose reply was that about fifteen (15) days ago. However, Sher Ali further disclosed to him that prior to it the convict-appellant was residing in the house of Shafique *Kababi*, however, the prosecution has failed to produce the said person in order to further strengthen its case.

While cross-examining, the said PW admitted as correct that he had neither recorded the statement of Sher Ali under Section 161 Cr.P.C nor had taken into possession any agreement / rent deed in respect of residence of the convict-appellant. He further admitted as correct that Sher Ali is not the relative of accused but only friend of him. He further went on to say that he did not record the statement

of Shafique *Kababi* under Section 161 Cr.P.C. In reply to a question qua maltreatment of the accused with the deceased, he disclosed that he did not record the statement of womenfolk, mentioned in *Zimnis*. He further admitted as correct that the deceased had brothers but at the time of discovery none from them was present with him, which is not at all appealing to a prudent mind that on such a serious occasion, a brother will absent himself. Further deposed that the dead body of the deceased was so decomposed that's why he could not prepare the injury sheet. Keeping in view the above glaring discrepancies, one could reach to the conclusion that the statement of this witness too is not up to the mark, thus, cannot be safely relied upon.

14. Jehanzeb Khan, SHO, while appearing in the witness box as PW-15, deposed that he was entrusted with the investigation of the case and on 24.02.2009 he arrested the acquitted co-accused Jawad Ali, who, on interrogation, pointed out the place of occurrence and the *well* wherein

the dead body of the deceased was thrown. He further deposed that the convict-appellant was already arrested in FIR No. 249/3 under Section 302 / 324 / 34 PPC, FIR No. 1014/3 under Section 3/4 Explosive Act read with Section 452 PPC, FIR No. 633/3 under Section 13 A.O and FIR No. 879/05 under Section 13 A.O, thus, on application to Magistrate, his transfer was sought from District and Sessions Judge Charsadda and upon his transfer then his physical custody was obtained from the learned Senior Civil Judge Mansehra, however, astonishingly it has not been shown anywhere either in his statement or in the application submitted for his transfer from Charsadda to Mansehra that from when he was in judicial lockup. He further went on to say that during interrogation the accused disclosed that his wife developed illicit relation with one Wahid, whereafter he committed her murder, however, when produced before the concerned Magistrate for recording confession, he refused to confess his guilt, thus, was sent to judicial lockup, hence, a question also arises

that if he had committed the offence and confessed his guilt before the I.O then why and for what reason he refused to confess before the concerned Magistrate, despite the fact that he remained in police custody for long forty eight (48) hours.

15. Apart from the discrepancies and contradictions in the statements of PWs, discussed above, there are many more things which are necessary to be debated upon.

16. According to the FIR, the complainant stated that she was informed by Mst. Naz Gul, who is real sister of the convict-appellant, regarding the occurrence which is not appealing to a prudent mind because how a sister could inform mother of the deceased in respect of the crime, moreso, when it was committed by her real brother and she, being the citizen of Pakistan, will, of course, have the knowledge of consequences thereof.

17. Another intriguing aspect of the matter is that, while informing about the tragedy, sister of the convict-appellant (Mst. Naz Gul) called from Karachi to the complainant,

who is residing at Charsadda, but the prosecution has never ever taken pain either to obtain call DATA or to get transcript of conversation, so that to strengthen the prosecution's version or at least to mention the cell or telephone numbers of the talkers.

18. Apart from the above, another interesting feature of the case is that according to the FIR mother of the deceased was informed by sister of the convict-appellant some ten (10) days prior to registration of the FIR, however, the complainant has failed to give any plausible explanation for such a delay and otherwise too it is not understandable that after getting information regarding such a terrible incident then what for she kept mum for long ten (10) days. Wisdom may be drawn from the case law reported as **2017 SCMR 144** titled “*Muhammad Sadiq Vs. The State*”.

19. The most important piece of evidence in this case is the statement of lady doctor Aalia, who, while examining the dead body of deceased, mentioned that the dead body

of deceased was completely mutilated and decomposed rather her outer skin was absent and feature of the face were not recognizable, if it is so, then how the uncle of the deceased identified her, moreover, when mother of the deceased was also present at Mansehra but she too did not bother to accompany her brother-in-law for identification of the dead body.

The learned Lahore High Court in the case titled *“Javed Iqbal Vs. The State”* reported as **PLD 2014 Lahore 62**, while placing reliance on the judgment of Madhya Pradesh High Court reported as **1998 Cr.L.J 3934** almost in similar nature case, where too only skeleton was found, has held that when cause of death could not be known on postmortem for the reason that only skeleton was produced before the doctor for conduct of postmortem, the prosecution ought to have referred the dead body to Anatomy Expert, which was not done and that was considered as serious lacuna in the prosecution case, which is the case in hand.

20. The entire prosecution evidence was thoroughly searched with the valuable assistance of learned counsel for the parties but nothing is available on record which could show either the report regarding gender of the deceased or sending of samples for DNA test to confirm that the deceased was daughter of the complainant.

21. Above all, the prosecution has also failed to examine other most important witnesses, Sher Ali, Shafique *Kababi*, womenfolk of the locality and Malik Aman, whose names were mentioned by the Investigating Officer during his statement as Sher Ali, Shafique *Kababi* and Malik Aman are the owners of the houses where the convict-appellant was remained there on rent while the womenfolk have been mentioned to have noticed maltreatment of the convict-appellant towards his wife i.e. the deceased.

22. So far as the motive i.e. illicit relation of the deceased with one Wahid s/o Khiyal Muhammad is concerned, the same has not been proved by the

prosecution. Similarly, the recovery of pistol too cannot be believed for the simple reason that as the body of the deceased was fully mutilated and decomposed, thus, was not sent for anatomy expert for determination of firearm injury on the person of deceased.

23. In the present case neither the substantive evidence in the shape of ocular account, furnished by the star witnesses i.e. PW-10 and PW-11, is worth reliance, being full of contradiction nor the corroborative evidence in the shape of motive, recovery have been proved by the prosecution in accordance with settled principles of law, besides even the alleged photocopies mentioned in the statement of PW-4 were not put to the appellant in his statement recorded under Section 342 Cr.P.C. Even otherwise, photocopy of a document in absence of its original is not admissible in evidence. Reliance is placed on the case law reported as **(PLD 2005 SC 418)** and **(2007 SCMR 06)**.

24. Moreover, it is settled principle of law that when the substantive evidence in the shape of ocular account, furnished by the star witnesses, is not worth reliance, being full of material contradictions, then, corroborative evidence in the shape of motive, recovery and discovery would be of no use to the prosecution, which otherwise, in the peculiar facts and circumstances of the present case, are not worth reliance, being not proved and established in accordance with the parameters set by the superior courts of the country in the administration of criminal justice.

Wisdom can be drawn from the case law reported as **(YLR 2011 Peshawar 1965)**.

25. It is settled principle of law that for extending benefit of doubt to an accused person, it is not essential that there should be bundle of doubts rather a single doubt, if found reasonable for a prudent mind, would entitle the accused to the benefit of it and would be entitled to acquittal.

26. The Hon'ble Supreme Court in its celebrated judgment reported as **1997 SCMR 25** titled "***Muhammad Ilyas Vs. The State***" has observed that: -

"It is well settled principle of law that where evidence creates doubt about the truthfulness of prosecution story, benefit of such a doubt had to be given to the accused without any reservation"

27. The above view has further been strengthened by the Hon'ble Apex Court in the case of "***Muhammad Khan & another Vs. The State***" reported as **1999 SCMR 1220** by holding that "***conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused.***"

28. It is the case of the prosecution that the appellant had committed the murder of his wife but the entire evidence collected by the prosecution is of no avail, being full of contradictions, thus, merely on presumption that the appellant is husband of the deceased, he cannot be convicted. Reliance in this regard may be placed on the cases law reported as **PLD 2005 SC 63** titled "***Pir Mazhar-ul-Haq Vs. The State***", **2012 SCMR 754** titled "***President Balochistan High Court Bar Association Vs.***

Federation of Pakistan” and 2017 SCMR 724 titled “Nasrullah alias Nasro Vs. The State”.

29. Judged and considered from all angles and keeping in view the combined study & careful reappraisal of the entire evidence in the above manner, we are of the considered view that the prosecution has failed to prove the guilt of appellant beyond any shadow of doubt thus, extending him the benefit of doubt, he deserves acquittal.

30. Accordingly, this appeal is allowed. The conviction & sentences of the appellant recorded by the learned Additional Sessions Judge-III Mansehra vide judgment dated 15.11.2010 are set-aside and he is acquitted of all the charges, leveled against him. He be released forthwith from Jail, if not required in any other case.

These are the detailed reasons for our short order of the even date.

Announced:
05.10.2017.

J U D G E

J U D G E

/*Saif*/