

## **Judgment Sheet**

IN THE PESHAWAR HIGH COURT,  
PESHAWAR.

**JUDICIAL DEPARTMENT**

**Cr.A No. 539-P of 2013.**

### **JUDGMENT**

Date of hearing.....29.03.2017.....

Appellant/State: (Muhammad Ramzan Sharif) By Mr. Jalal-ud-Din Akbar-e-Azam Khan (Gara), Advocate, for the appellant.

Respondent/State:(Hussain Gul) By Mian Arshad Jan, AAG, assisted by Mr. Abdul Qayyum Khan, Advocate, learned counsel for the complainant.



**QALANDAR ALI KHAN, J:-** This single judgment in the instant appeal shall also dispose of Criminal Revision No.03/2014 titled The State..Vs..Muhammad Ramzan Sharif, as both the Criminal Appeal and the Criminal Revision pertain to the same case vide FIR No.114 dated 11.07.2012 under section 302

PPC, Police Station, Shakardara, District Kohat.

2. The appellant, Muhammad Ramzan Sharif, himself lodged report in his house to the SHO who was on mobile patrol duty and received information about murder of an unknown person in the house. The appellant reported to the SHO that he was employee of a Survey Company in Shakardara and after performing duty when he entered his house at 21:30 hours on 11.07.2012 he found an unknown person with his wife Noshad Begum in the room in objectionable compromising condition, which made him to take out his pistol and fire at that person with which he was hit, sustaining serious injury, and died on the spot. The SHO drafted *murasila*, bearing signature of the appellant; and after recovery of 30 bore pistol with fixed spare charger and five live rounds of 30 bore, the appellant was arrested. An identity card was also recovered from the deceased showing his name as

Mansoor Ali son of Hussain Gul resident of Dargai, District Malakand. On the basis of *murasila*, case/FIR was registered, leading to investigation in the case.

3. During investigation, the I.O inspected the spot, and secured blood from the place assigned in the site plan to the deceased, and also an empty shell of 30 bore, emitting smell of fresh discharge, from the place assigned to the appellant/accused. The site plan was prepared by the I.O on the pointation of Mst. Noshad Begum. The postmortem examination of the deceased revealed one firearm entry wound with corresponding exit wound. The FSL furnished positive report about the blood stained earth and blood stained *shalwar* and *banyan* of the deceased. Likewise, report of the firearms expert about the 30 bore pistol with a spare magazine and five 30 bore live cartridges and one 30 bore crime empty was in the affirmative. The appellant/accused was arrested from the spot on the date of

occurrence i.e. 11.07.2012, and on the following day of the occurrence i.e. 12.07.2012, he recorded confessional statement before the learned Judicial Magistrate, Kohat, wherein he furnished graphic details of the occurrence, while saying that he killed Mansoor Ali because he could not bear the situation which he witnessed. The I.O also recorded statements of the PWs, including wife of the appellant/accused and the eyewitness, Mst. Noshad Begum, and father of the deceased, namely, Hussain Gul; and after completion of investigation, complete challan was submitted in the case by the local police to the learned trial Court against the appellant/accused for facing trial.

**4.** In the trial Court, the appellant/accused was formally charged under section 302 PPC as well as 13 Arms Ordinance; but the appellant/accused pleaded not guilty and claimed trial. During trial, as many as thirteen prosecution witnesses (PWs)

were examined, including material PWs like Shaukat Saleem SI PS Shakardara, Kohat (PW-1), who drafted *murasila* (EX.PA/1) on the report of the appellant and also conducted initial investigation besides submitting complete challan in the case; Doctor Javed Iqbal (PW-3), conducted postmortem examination of deceased Mansoor Ali and submitted postmortem report (EX.PM); Hussain Gul (PW-5), father of the deceased; Noshad Begum (PW-8), wife of the appellant/accused, and the eye witness; Amanullah Khan (PW-9), the Judicial Magistrate, Kohat, recorded confessional statement of the appellant/accused; and Inspector Sami Ullah Khan (PW-11), the Investigation Officer; besides other formal witnesses; where after the prosecution closed its evidence; and statement of the appellant/accused was recorded under section 342 Cr.P.C. He neither opted to be examined on oath nor expressed the desire to produce defence evidence. Thereafter, having

heard the Additional Public Prosecutor for the State assisted by learned counsel for legal heirs of the deceased and learned defence counsel, the learned trial Court/Sessions Judge, Kohat, rendered the impugned judgment dated 02.10.2013, thereby convicting the appellant under section 302 (b) PPC and awarding him the sentence of imprisonment for life, with the direction to pay compensation of Rs:200000/- and in default thereof to undergo further simple imprisonment for six months. The compensation, if recovered, was to be paid to the legal heirs of the deceased within the meaning of section 544-A Cr.P.C. The appellant/accused was also convicted under section 13 Arms Ordinance and sentence to two years RI and fine of Rs:5000/- and in default of payment of fine to further one month SI. The learned trial Court extended benefit of section 382-B Cr.P.C to the appellant, and directed that the sentences of imprisonment

shall run concurrently. Hence the instant appeal.

5. Arguments of learned counsel for the convict-appellant and learned AAG assisted by learned counsel for the complainant/respondent heard; and record perused.

6. The promptly lodged FIR on the report of the appellant, bearing his signature, therein confessing the *qatl-i-amd* of deceased Mansoor Ali by him, his arrest from the scene of occurrence which happens to be his house and recovery of the pistol from his possession, which was emitting smell of fresh discharge, recovery of one crime empty of 30 bore from the spot and matching result of the firearms expert, confirmation of scene of occurrence situated inside room of the house of the appellant through positive result of the FSL regarding blood stained earth secured from the spot and blood garments of the deceased, PM report showing one firearm entry wound

on the deceased, and above all, confessional statement of the appellant are too overwhelming pieces of evidence to cast any doubt about commission of the offence in the mode and manner disclosed in the FIR by the appellant himself and also affirmed by him in his confessional statement on the following day of the occurrence. The *qatl-i-amd* by the appellant under section 302 PPC is therefore proved on the record, notwithstanding denial of allegations of prosecution by the appellant and retraction of his confession in his statement under Section 342 Cr.PC and concessional statement of his wife and the sole eyewitness, namely, Noshad Begum (PW-8), who was declared as a hostile witness on the request of prosecution.

7. Having said that, the question falling for determination would be whether the appellant was rightly convicted by the learned trial Court under section 302 (b) PPC or keeping in view facts and circumstances of



the case he was liable to conviction under section 302 (c) PPC.

8. It is an admitted fact that *qatl-i-amd* of Mansoor Ali, hailing from Dargai, District Malakand, was committed by the appellant in his house situated miles away from the native village of the deceased at Shakardara, Kohat, inside a room in his house when the former was found by the latter in objectionable/compromising condition with his wife. It is also a fact that a single shot was fired at the deceased by the appellant, which caused his death, while the appellant spared the life of his wife, which would leave no doubt that this was not a case of *honour killing* as according to all renowned dictionaries, the *honour killing* is defined as killing by a male of female member of the family, considered to have brought dishonour to the family. The very act of sparing the life of his wife and effectively firing at the deceased and causing his *qatl-i-amd*, when seen in the light of both the below reproduced statements of the

appellant, firstly, in the FIR; and, then, in his confessional statement, would make it abundantly clear that it was not a case of *honour killing* to invoke the provision of section 302 (b) PPC and award sentence of life imprisonment to the appellant.

In the FIR, the appellant narrated the occurrence as follows;

”میں سروے کمپنی شکر درہ میں ملازم ہوں بوقت ۲۱:۳۰ بجے ڈیوٹی سے فارغ ہو کر خانہ خود کے اندر داخل ہوا تو کمرے کے اندر اپنی بیوی مسماۃ نوشاد بیگم کے ساتھ ایک شخص نامعلوم کو نازیبا حرکات کرتے ہوئے دیکھ کر جس کے دیکھنے سے میرا صبر کا پیمانہ لبریز ہو کر میں نے پستول نکال کر شخص مذکورہ پر سامنے سے ایک فائر کر کے جس سے وہ شدید زخمی ہو کر موقع پر جاں بحق ہوا۔“

In his confessional statement, recorded on the following day of the occurrence, after repeating his statement in the FIR, though, the appellant added that he hit his wife with the butt of his pistol and that she made hue and cry and escaped to the adjoining house; he, nevertheless, stated that “I killed Mansoor Ali

because I cannot bear the situation which I witnessed”.

9. The above reproduced two statements of the appellant would prove one thing for sure that after seeing an unknown person with his wife in a room of his house, the appellant was enraged/angered to the extent that he lost control and committed the *qatl-i-amd*, which would fall in the category of *grave and sudden provocation*, excluding the possibility of premeditated murder, falling under section 302 (c) PPC. In a similar situation, where the wife was spared and deceased was strangled to death by the accused in objectionable/compromising condition with his wife, the august apex Court held in the case titled *Ali Muhammad-appellant..Vs..Ali Muhammad and another-respondents (PLD 1996 Supreme Court 274)* that the *qatl-i-amd* of deceased was result of *grave and sudden provocation*, making accused in the case

liable to conviction and punishment under section 302 (c) PPC.

10. On the other hand, there is nothing on the record, even in the statements of father of the deceased (PW-5) and that of uncle of the deceased (PW-6), to explain presence of the young man of 21 years from a distant place i.e. Dargai, District Malakand, at a faraway place inside the house of the appellant, situated in Shakardara, Kohat, at odd hours, other than his illicit relations with the wife of the appellant, thus causing enrage/anger to the appellant when he saw the deceased in objectionable/compromising condition with his wife. His loss of control was but natural on such sight inside the room of his house.

11. Consequently, while maintaining conviction of the appellant, the punishment is altered from life imprisonment under section 302 (b) PPC to rigorous imprisonment for ten (10) years under section 302 (c) PPC, and also maintaining/upholding rest of the

impugned judgment/order with respect to payment of compensation of Rs:200000/- and in default thereof to further six months simple imprisonment. Accordingly, the compensation, if recovered, shall be paid to the legal heirs of the deceased within the meaning of section 544-A Cr.P.C. Likewise, the conviction of the appellant under section 13 Arms Ordinance is maintained/upheld in view of evidence of recovery of the unlicensed 30 bore pistol alongwith fixed charger and five live rounds of the same bore, together with the sentence of imprisonment of two years R.I and fine of Rs:5000/-and in default thereof to one month S.I. Similarly, the benefit of section 382-B Cr.P.C shall remain extended to the appellant, with order/direction of both the sentences of imprisonment to run concurrently. The impugned judgment/order of the learned Sessions Judge, Kohat, dated 02.10.2013 is modified to the above extent; and the criminal appeal is disposed of, accordingly, in the above stated terms.

12. The Criminal Revision (Cr.R No.03-P/2014) by the State for enhancement of the punishment awarded to Muhammad Ramzan Sharif by the learned trial Court vide the impugned judgment/order stands dismissed following reduction in the period of sentence of imprisonment from life under section 302 (b) PPC to ten (10) years RI under section 302 (c) PPC.

**Announced.**  
**29.03.2018.**

**J U D G E**

**J U D G E**

*\*M.Iqbal\**

*(D.B) Hon'ble Mr. Justice Qalandar Ali Khan.  
Hon'ble Mr. Justice Ishtiaq Ibrahim.*