

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

**Cr.A No. 476-M/2019**

*(Rashid Khan Versus The State and others)*

**Present:**

Mr. Shabbir Hussain Gigyani, Advocate for the appellant/convict.

Mr. Haq Nawaz Khan, Assistant A.G. for State.

Mr. Rahim Zada, Advocate for complainant

Date of hearing: **17.02.2021**

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** The present appellant Rashid Khan and his acquitted co-accused Sarafaraz, Ibrahim and Alam Khan were charged u/s 302/34 PPC vide case FIR No. 87 dated 15.06.2015 registered at P.S *Jagam*, District *Dir Upper* for committing murder of Miraj Bibi, wife of the present appellant, through firing. After their joint trial for the said offence before learned Additional Sessions Judge/ Izafi Zilla Qazi, *Dir Upper* at *Wari*, the present appellant was convicted u/s 302 (b) PPC vide judgment dated 15.10.2019 and sentenced to imprisonment for life as *Tazir* with compensation of Rs.500,000/- u/s 544-A payable to legal heirs of the deceased or in case of default thereof to suffer simple imprisonment for six months. Benefit of

section 382-B, Cr.P.C was extended to him whereas co-accused were acquitted of the charge.

2. According to report lodged by complainant Yousaf Zada (PW-A1) on 14.06.2015 at 23:30 hours, who was present with dead body of his sister Mst. Miraj Bibi in the house of the present appellant, marriage of the deceased had been solemnized with the present appellant/convict some 15/16 years ago and the wedlock had resulted into birth of four children, two sons and two daughters. Relations of the deceased were strained with her in-laws, therefore, the complainant had gone to her house alongwith Taj Muhammad Khan (PW-1 but subsequently abandoned after arrest of the present appellant) and Muhammad Zada (PW-A2) for reconciliation. During conversation, the present appellant and his co-accused started firing at the deceased; resultantly she sustained injuries by firing of the appellant/convict and died on the spot. The occurrence was stated to have been witnessed by the above named PWs.

3. After recording report of the complainant in *Murasila* Ex.PWA1/1, Gul Zamin Khan SHO (PW-6A) prepared injury sheet and inquest report of the deceased and sent the dead body to civil hospital Wari, however, due to non-availability of lady doctor, the dead body was shifted to Dir Hospital where the corpse was medically examined by Dr. Bushra Naureen (PW-7). Her report Ex.PW-7/1 and remarks recorded in inquest report and injury sheets are Ex.PW-7/2 and Ex.PW-7/3 respectively which are as under:

A dead body brought to casualty by police and relative only for external examination.

1. Entry wound on right temporal region adjacent to right eye about three to four inches in size with irregular margins and active bleeding. Bone exposed.
2. Entry wound on right arm 6 inches above the elbow joint medical aspect of arm.
3. Exit wound on lateral aspect of right arm about two inches above elbow joint.
4. Entry wound on left forearm about four inches below left elbow joint.
5. Exit wound on left forearm (medial aspect) about four inches below elbow joint.
6. Entry wound on dorsum of left hand about two inches above the wrists joint.
7. Exit wound on palmar aspect of left hand in the middle.
8. Entry wound on right thigh about 7 inches below right hip joint anteriorly.
9. Exit wound on posterior aspect of right thigh about 7 inches below hip joint.
10. Entry wound on right leg medial aspect about 5 inches below the knee joint.
11. Exit wound on right leg posteriorly about 8 inches below knee joint.

Nature of injury: Firearm  
Probable duration of injury: 6 hours.  
Rigor mortis developed.  
Cause of death: Injures to vital organs due to  
firearm.  
Kind of weapon: firearm.

4. Initially all the accused including the present appellant/convict went into hiding, however, co-accused were arrested on 29.06.2015 and challan was put in Court for their trial. Formal charge was framed against them on 14.11.2015 to which they did not plead guilty whereas the present appellant was proceeded u/s 512, Cr.P.C and prosecution was directed to lead its evidence in his absence, thus, prosecution examined Taj Muhammad, complainant Yousaf Khan and Gul Zamin Khan as PW-1 to PW-3 respectively. On arrest of the present appellant/convict on 23.07.2018, supplementary challan was put in Court and he was formally indicted for the offence. On his not pleading guilty to the formal charge, the learned trial Court directed the prosecution to produce its evidence against all the accused alongwith re-examination of the PWs already examined in absence of the appellant/convict. Prosecution

examined twelve witnesses in support of its case and closed the evidence. During examination u/s 342, Cr.P.C, the appellant and his co-accused denied the allegation of prosecution, however, they neither recorded their own statements on oath nor produced any witness in their defense. On conclusion of trial, the learned trial Court vide impugned judgment acquitted co-accused Sarfaraz, Ibrahim and Alam Khan whereas convicted the present appellant for the murder of deceased and sentenced him in the manner already discussed in the earlier part of this judgment, hence, this appeal.

5. We have heard the arguments of learned counsels for the parties including the learned Assistant A.G. and perused the record with their able assistance.

6. It is the case of prosecution against the present appellant that he committed murder of his wife Mst. Miraj Bibi inside his house due to strained relations. Although the complainant, at the time of lodging report, had also charged co-accused Sarafarz, Ibrahim and Alam Khan but

the role of effective firing was attributed only to the present appellant. According to prosecution version, the occurrence was witnessed by complainant Yousaf Zada, Muhammad Zada and Taj Muhammad who had gone to the house of appellant for reconciliation between the spouses as the relations between them were not cordial. Complainant Yousaf Zada appeared before the trial Court as PW-A1 and reiterated in his examination-in-chief the contents of his report. The other eye witness Muhammad Zada was produced as PW-A2. He also supported the allegation against the present appellant by stating that he had gone to the house of appellant alongwith complainant and PW Taj Muhammad for patching up the matter between the spouses during which the appellant committed murder of his wife through firing. It is noteworthy that initially PW Taj Muhammad was examined as PW-1 whereas the complainant was examined as PW-2 on commencement of trial against the co-accused, however, after arrest of the appellant and commencement of joint trial against all the


accused including the present appellant/convict, PW Taj Muhammad was abandoned. No doubt, the complainant and other eye witnesses are residents of village *Kohan* which is at a walking distance of 40/45 minutes from village *Manzai* where the occurrence took place, however, the complainant has explained that he and other eye witnesses were present in the house of appellant for the purpose of compromise between his sister and her husband. This version of the complainant, being in accordance with the prevailing customs in the area for patching up domestic resolutions, stands to reason, as such, their presence on the spot at the time of occurrence could not be doubted. The statements of both the eye witnesses i.e PW-A1 and PW-A2 support each other on material particular of the occurrence and their testimony could not be shattered despite lengthy cross-examination. No doubt, both the PWs are closely related to deceased being her real brother and real uncle respectively but their testimony, which is otherwise trustworthy and confidence inspiring,

cannot be discarded mere on the ground that they are closely related to deceased. It is not a rule of universal application that a person not related to deceased will always speak the truth and a witness closely related to the deceased will necessarily tell lie in his favour rather it is the intrinsic worth of the evidence of a witness which is required to be considered and his relation with the deceased would not come in the way of his evidence. Wisdom is drawn from "Abid Ali and 2 others Vs. The State" reported as **2011 SCMR 208**. The rule laid down in the said judgment is as under:

21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be universal principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on the scene of crime and that he is making true statement. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement.

7. Admittedly, deceased Mst. Miraj Bibi was wife of the present appellant and he committed





her murder inside his house as per prosecution version. The Investigating Officer Salahuddin S.I (PW-5A) has collected blood stained sand as well as seven crime empties of 30 bore and a bullet-hit silver bowl from the room where the occurrence took place. The recovery memos in this regard are available on record as Ex.PW-5/2 to Ex.PW-5/4 respectively. One of the marginal witnesses thereof namely Anwar Zada was produced as PW-11 in support of the said recoveries who has supported the same in his statement and nothing could be from him on the record during his cross-examination to create a doubt regarding the genuineness of the recovery memos. Moreso, both the eye witnesses have stated in their cross-examination that they alongwith abandoned witness Taj Muhammad were present inside the room of deceased and they were sitting on a mat at the time of conversation whereafter the occurrence took place. Thus, the place of occurrence i.e a room in the appellant's house is established. No doubt, the prime duty of proving its case against an accused lies on prosecution but in cases like the present one when husband is charged for the murder of his wife and vice versa, responsibility lies on the surviving party to explain that what had happened to

them. In the present case, the wife was done to death through firing; the appellant, being her husband, neither shifted her to hospital for saving her life nor he reported the incident to police rather he went abroad soon after the occurrence and made his entry to Pakistan after three long years. Likewise, neither he has recorded his statement on oath to raise the plea that he was not present in his house at the time of occurrence nor he has uttered a single word in this regard during his examination u/s 342, Cr.P.C. Even the defense has not put a single suggestion to this effect while cross-examining the PWs to cast a shadow of doubt on his presence in the house at the time of occurrence. The above conduct of the appellant and his silence to explain that what had happened to his wife, have made his position very much suspicious which has lightened the burden of prosecution to a great extent. The Court can take notice of such situation under Article 122 of the Qanun-e-Shahadat Order, 1984 which reads:

**122. Burden of proving fact especially within knowledge.** When any fact is especially within the knowledge of any person the burden of proving that fact is upon him.


Keeping in view the fact that the appellant was husband of the deceased and only he could better explain the occurrence which had taken

place inside his house. In absence of any evidence on his behalf to the effect that he was away from his house at the time of occurrence, his failure to explain his position with regard to non-fulfillment of his responsibility to protect his wife from the aggression she had faced, casts a doubt on him. Guidance in this regard is sought from judgment of the august Supreme Court of Pakistan in the case of Saeed Ahmad Vs. The State reported as **2015 SCMR**

**710** wherein it was held that:


8. In criminal cases it is for the prosecution to establish its case against an accused. It is a fundamental principle of law that the burden of proof is on the prosecution (Article 117 of the Qanun-e-Shahadat Order, 1984). However, in this case the young wife of the appellant, who was living with him, was murdered. The appellant did not participate in her last rites and disappeared for a period of two months. The question that needs consideration is whether such unreasonable conduct of the appellant is of any consequence and also whether certain matters exclusively within his knowledge were not explained by him, that is, not informing the police about his wife's murder, not taking her to the hospital, not participating in her last rites and disappearing for a long period of two months.

8. The case of prosecution is also supported by medical evidence. According to medical report Ex.PW-7/1, there are 06 entry wounds on the body of deceased which means that it was a clear cut case of *qatl-e-amd*. No doubt, in



cases where medical evidence is doubtful with regard to the nature of death as homicide or suicide, in such like situation the benefit can be given to the inmates of the house but in this particular case the injuries referred above lead us to an irresistible conclusion that it was a case of homicide. The I.O has also recovered seven empties of 30 bore and three damaged bullets from the room where the deceased was done to death through firing. The contents of site plan and statements of eye witnesses also support each other and no conspicuous disparity could be found between the ocular account and site plan. According to FSL report Ex.PW-5/8, the blood recovered from the spot has matched with the blood on the clothes of deceased secured by I.O during investigation. Although the crime weapon has not been recovered in the present case but non-recovery of crime weapon in view of abscondence of the appellant/convict for more than three years is not harmful to the prosecution case because recovery of crime weapon after such long period could not expected. Reliance is placed on Khalida Bibi Vs. Nadeem Baig (PLD 2009 Supreme Court 440) wherein it was observed by Hon'ble apex Court that:


8. As regards the second ground that found favour with the learned High Court related to the non-recovery of the weapon of offence, it is also not available to the accused for the reason that he remained absconder for a considerable period of time and even did not surrender despite cancellation of his hail by the High Court as well as by the Sessions Judge.



Though there is another lapse on the part of prosecution, as argued by learned counsel for the appellant, of non-sending of crime empties to FSL for determination of the number of crime weapons used in the occurrence, however, in light of the above discussion on ocular account and the unexplained conduct of the present appellant as husband of the deceased who had met an unnatural death inside his house, the prosecution could not be penalized for the above lapse of the Investigating Officer. Wisdom is drawn from the judgment of the august Supreme Court of Pakistan in the case of Ansar Mehmood Vs. Abdul Khaliq and another reported as 2011 SCMR 713 wherein it was held that:

Should a complainant suffer for the fault of the prosecution, who was negligent in discharging duties and functions? Answer should be, readily, in negative.

9. Learned counsel for the appellant also objected delay in lodging the FIR by questioning not



only presence of the complainant on the spot but also contended that the appellant was charged in the case after consultation and deliberation. Presence of the complainant on the spot at the time of occurrence has already been discussed in detail, therefore, there is no need of further discussion on the said point. So far his objection with regard to nomination of the appellant/convict after consultation is concerned, the record shows that the parties are related with each other and the occurrence had taken place inside the house of the appellant where the parties had gathered for resolution of dispute between the appellant and deceased. We have already believed the version of complainant that he was present at the time when his sister was shot dead by the present appellant, therefore, in the circumstances when there was no apprehension of mistaken identity of the assailant, the delay caused in lodging the report would not damage the prosecution case most particularly when nothing has been brought on the record to suggest false implication of the appellant on the basis of ill-will or mala fide. Guidance is sought from the judgment of the august Supreme Court in the case of Ayaz Ali Shah Vs. The State

reported as 1997 SCMR 1296 wherein view of this

Court was confirmed in the following words:

12. We find that there was no delay in lodging the report so as to cast any shadow of doubt on the integrity of the prosecution case. Nonetheless, the question of delayed report came up for consideration before Peshawar High Court in *Mir Aftab v. The State* (PLD 1981 Peshawar 23) which was approved by this Court, wherein it was held that the question of delayed report would be material only if there was any doubt about the name of the culprit. In the instant case, there was no doubt about the two culprits, particularly the petitioner because the occurrence had taken place in broad daylight in the Bazar of the village and, therefore, chances of substitution, in the circumstances of the case, were quite remote. Besides, 'the learned counsel for the petitioner has not been able to pinpoint any animus for the false charge against the petitioner.

10. In addition to above, the appellant went abroad soon after the occurrence and returned to Pakistan after more than three years. He has offered no explanation except the bald statement that he had gone there for earning his livelihood. Thus, his long and unexplained abscondence further corroborates his involvement in commission of the offence.

11. The complainant has stated that relations of the appellant with the deceased were strained. Although prosecution has produced no evidence in this regard, however, the complainant,

while recording his statement as PW-A1, has explained in his cross-examination that:

میرے بہن اور ملزم کے مابین گائے کے تنازعہ تھا۔۔۔۔۔ گائے جس پر تنازعہ تھا اس وقت ان کی قیمت 30/40 ہزار روپے تھا۔ گائے جس پر تنازعہ تھا وہ ہلاک ہوئی تھی۔ جبکہ بہن ام نے مذکورہ گائے ذبح کر کے بطور صدقہ لوگوں میں تقسیم کیا تھا۔ میں گائے کے ہلاکت کا صحیح تاریخ اور وقت نہیں بتا سکتا۔۔۔۔۔ وقوعہ کے روز مقتولہ اور ملزم رشید گاؤں کھنڈر ایک اور گائے خریدنے کے لیے گل روز خان کے گھر گئے تھے اور گاؤں ڈب میں ملزم کے بہنوئی کے گھر بھی گئے تھے۔

It is evident from the above narrations of the complainant that there was a dispute regarding a cow between the spouses and it appears that because of the said motive the appellant shot dead his wife through firing. Though the motive set up by prosecution has not been proved but it is settled law that an accused cannot be acquitted on the sole ground of absence of motive or failure of prosecution to prove the same, however, the said gap can be considered towards mitigation of the sentence and the learned trial Court has already taken lenient view while awarding the sentence of life imprisonment to the appellant/convict. Reliance is placed on State/Government of Sindh through Advocate-General, Sindh, Karachi Vs. Sobharo (1993 SCMR 585). The Hon'ble apex Court confirmed its former view by observing that:



No doubt absence or weakness of motive would not come in the way of the case of prosecution and can be condoned if there is otherwise strong and reliable evidence in support of the case. Reference can be made to the case of Mushtaq Ahmed v. Muhammad Siddiq and another (PLD 1975 SC 160).

12. In light of what has been discussed above, no ground could be found for interference in the impugned judgment which is well-reasoned and based on proper appreciation of law and evidence on record. Resultantly, this appeal, being devoid of merits, is accordingly dismissed.

Announced.  
17.02.2021

JUDGE

JUDGE

Office  
13.3.2021  
WR