

**THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

*[Judicial Department].*

**Cr.A No. 280-B of 2017**

***Mst. Shazia Bibi alias Sharjika Bibi***

**Vs.**

***The State etc.***

**JUDGMENT**

*Date of hearing: 13.11.2019.*

*For Appellants: Mr.Muhammad Shoaib Khan Saduzai*  
**Advocate.**

*For State: Mr.Shahid Hameed Qurashi Addl:A.G.*

*For Respondents: Mr. Noorzada Khan Ahmadzai Advocate.*

 **SAHIBZADA ASADULLAH, J.---** This criminal appeal

No. 280-B of 2017, is filed by convict/ appellant Mst. Shazia

Bibi alias Sharjika Bibi against the judgment of conviction

dated 14.12.2017 rendered by learned Additional Sessions

Judge-II, Bannu, where as Cr. R No. 70-B of 2017, filed by

the complainant Ijaz Khan for enhancement of sentence of

the accused/ appellant in case F.I.R No. 169 dated

02.06.2014 under sections 302/201/120-B/34 P.P.C, Police Station Domel, District, Bannu.

2. Since, the appeal and criminal revision are the outcome of one and the same occurrence/ F.I.R, therefore, these are being disposed of by way of this single judgment.

3. It was on 05.03.2014, when complainant Ijaz Khan reported the matter to the local police, which was initially entered through *Naqalmad* No.11, to the effect that on the tragic night, he, his brother Umer Khitab alongwith other family members were sleeping in their respective rooms, at about 03.00 a.m he heard the voice of fire shot from the room of Umer Khitab, upon which he and other family members rushed towards and saw Umer Khitab was lying in a pool of blood with having a .30 bore pistol in his right hand and his wife, Mst. Shazia Bibi alias Sharjika Bibi was weepin and crying. Umer Khitab succumbed to the injuries at the spot. No one was charged for the offence, however, the complainant produced "*Ladawa Nama*" and *Panchaiyat* Nama to the police. Thereafter on 02.06.2014,

the complainant submitted an application before the SHO of the Police Station concerned, alleging there in that wife of deceased Mst. Sharjika Bibi told him and his other brothers that she had committed the murder of her husband/ deceased Umer Khitab in collusion with her paramour Hamidullah. Both the accused were booked for the offence and F.I.R Ex:PW7/1 was registered. On completion of investigation complete challan was submitted against the accused/ appellant, while under section 512 Cr.P.C against the accused Hamidullah. On commencement of trial, after providing relevant copies in compliance with provision under section 265-C Cr.P.C, formal charge was framed against her, to which she pleaded not guilty and claimed trial. The prosecution in order to prove guilt of accused/appellant produced and examined as many as eleven (11) PWs. On conclusion of trial, statement of accused/ appellant was recorded under section 342 Cr.P.C, wherein she professed innocence and false implication. She neither wished to produce defence evidence nor opted to be examined on oath

as provided under section 340(2) Cr.P.C. Learned trial Court after hearing arguments of learned counsel for the parties vide impugned judgment dated 14.12.2017, convicted and sentenced the accused/ appellant. The convict/ appellant being aggrieved from the judgment of conviction of learned trial Court moved instant criminal appeal No. 280-B/2017, while the complainant moved Cr.R No. 70-B/2017 for enhancement of sentence of the appellant.

4. We have heard arguments of learned counsel for the parties and have carefully gone through the evidence on record.

5. It was the tragic night falling between 4/5-03-2014 when the deceased lost his life due to firearm injuries. The complainant soon in the morning at 07.00 a.m reported the matter to the local police of Police Station Domel, Bannu, which was initially taken down vide station diary No.11 dated 05.03.2014. The heart breaking story was narrated by PW 10, Ijaz, the complainant of the case and brother of the deceased, that he while fast in sleep in his room heard a fire

shot from the room of the deceased, he with rest of his family members ran towards, saw the accused weeping and the deceased then injured lying on bed waiting his fate with a .30 bore pistol in his hand, it was within few minutes that his soul left his body, the appellant stated that the deceased committed suicide.

6. Initially the complainant's report was taken as information in respect of suicide and no one was suspected and also to solace all interested a "*ladawa nama*" was written duly signed by brothers and elders of the village with all assurance of suicide and the matter was hushed up and so silence prevailed, appellant was still living in the house as a widow with all respect, and privileges, but the silence was broken when on 20<sup>th</sup> of the May, 2014, Syed Imtiaz-ud-Din Mansoor District Public Prosecutor, Bannu wrote to District Police Officer, Bannu to reinvestigate the already buried matter and to fix the responsibilities, the letter finds itself as Ex:PW 11/7 on file. The concluding Para of the letter was a warning to all connected with the investigation and to the

inmates of the house of the deceased. This disturbed all concerned so much that non care for non and all out efforts were made to shift the responsibility from one to the other.

7. This was on 02.06.2014 that the complainant wrote an application to the SHO concerned for registration of case against the appellant, the proceedings were so mechanical that on the same day application was submitted, arrest was made, pointation and spot verification was carried out, 161 Cr.P.C statement of the appellant was recorded and even at 11.45 a.m the appellant was dragged to the Court of Judicial Magistrate where her confession was recorded.

8. The learned Trial Court while awarding sentence was highly influenced to hold that the confession so recorded was voluntary and true, but the Court failed to appreciate and search that how within the shortest span of three hours all become possible especially, when the accused charged was a female. Few questions are haunting and despite efforts the prosecution failed to answer.

- i. That when and at what time the appellant was arrested?
- ii. That why only Ijaz PW-10 requested the registration of case against the appellant?
- iii. That at what time the spot pointation was made?
- iv. That when and where her 161 Cr.P.C statement was recorded?
- v. Whether the judicial Magistrate while recoding the confession followed the procedure?

9. The record transpires that after the initial investigation the matter was laid to rest, as on one side the local elders and brothers of the deceased put their satisfaction in writing and on the other Abdul Rashid ASI who was examined as PW-05 and who submitted final report in the first round, declared the case as one of suicide and the reason given was the partition of landed property among the

brothers and the mounted tension therefrom. But the law enforcing agency i.e. the police department still in hot pursuit and to our mind it was the directions from the District Public Prosecutor Ex: PW 11/7, with its warning note that infused worries in the officials who were connected with the previous investigation and who in turn pressurized the family of the deceased with negative consequences if, they failed to charge. The mounted pressure left the family with no choice but to charge the accused/ appellant in order to save themselves from the wrath of the law enforcing agency, rather both the sides chose to survive at the cost of the appellant. The prosecution wanted us to believe that the appellant was arrested after the F.I.R was chalked out but a prudent mind will not accept because, an investigating officer who otherwise takes hours to inspect the spot and thereafter to prepare the site plan, how he made it possible within the shortest span of time i.e. they travelled a distance of 40 kilometers in total, investigated the lady, recorded her statement and took her before the Judicial Magistrate for



recording her confession. In order to reduce our curiosity, we took the pains to read the zimnis dated 02.06.2014, where we were shocked to see that her 161 Cr.P.C was recorded prior to registration of F.I.R i.e. early in the morning, we further searched out that the spot pointation and confirmation was made in the late afternoon which too was recorded in the relevant Zimnis whereas, according to the statement of judicial Magistrate, she after recording her confession was sent to the judicial lockup. The witnesses spoke but with mala fide, that too at the cost of the honour of a young widow, who lost her husband and honour.

10. We find it necessary to mention that the deceased had five brothers in all, why only Ijaz chose to register the case. In the initial final report one Abdul Rashid ASI had mentioned that there was a dispute among the brothers on the day over partition of the property. So we cannot exclude the possibility that may be, out of the brothers some chose to do away with their brother as right from the beginning the seat of injuries had excluded the possibility of

suicide, and we exclude that possibility even today. But the question is still unanswered that who killed the deceased? The appellant allegedly confessed her guilt before the Court of Judicial Magistrate, where she introduced one Hameed the co-accused, with negative relations but to say “yes” the prosecution will have to establish on record that it was none else but the appellant. The prosecution lost its honour, when it concealed the truth regarding her arrest and investigation before registration of case and after her confinement in the judicial lock up. In case titled, “Sadi Ahmad and another Vs the State”, (2019 SCMR 1220), wherein it is held that:

***“Prosecution has not been able to drive home the charge beyond reasonable doubt, therefore, in the absence of reliable evidence appellants’ conviction on moral satisfaction alone cannot sustain; they are extended the benefit of the doubt.”***

11. The prosecution claimed its success merely on the strength of confessional statement of the appellant and this is

what the trial Court happily acceded to, without taking pains to assess, as to whether the Judicial Magistrate followed the guide lines laid down by the High court Rules and that by the Superior Courts from time to time? In case titled **"Muhammad Azhar Hussain and another Vs the State and another" (PLD 2019 SC 595)**, wherein it is held that:

*"We have also not felt comfortable with the printed form, purportedly used to administer warnings to the accused before recording of their statements. A confession may entail formidable consequences for an accused facing indictment and thus it is incumbent upon the Magistrate to ensure that the maker consciously comprehends the consequences of his choice and thus it is most important that the Magistrate himself, face to face, faithfully communicates to the accused all the relevant warnings, as contemplated by Section 364 of the Code of Criminal Procedure, 1898, a surer way to establish that the confession is free from all taints, thus we would not approve convenience procuring accused's signature on a printed format."*

12. After reading the confessional statement and going through the statement of the concerned Magistrate who was examined as PW-03, we were shocked to see that it was recorded in utter disregard of law and principles laid down and even PW-03 fell a prey to willful errors, which cannot be condoned. While reading the confessional statement the questionnaire was a printed proforma with "Yes"& "No" replies neither the necessary questions were asked nor the magistrate could explain in the way he was supposed to, so much so he did not identify to her, himself. The lady was rushed to him in unholy haste and the time provided for thinking was only five minutes, what in a hurry the Magistrate was, that left him unrealized that the accused before him was a house wife of tender age. He could not explain that the accused was made to understand in Pushto being uneducated , no opportunity was provided to consult some one of her trust, rather she was examined in an atmosphere of tension and uncertainty, not only she was confused but the judicial Magistrate was also confused ,who

in his examination in chief constantly stated “He’ Instead of “She” which later on was corrected and even this finds mention in the certificate Ex:PW 3/3, when this is the state of affairs, what sanctity can be attached to the Magistrate and to the confession he recorded, the judicial Magistrate has mentioned that the accused after recording her confession was handed over to the Naib Court who lodged her in the judicial lockup but PW-8 haji Sher Ahmad stated in the following words “From district Courts the accused was taken to the central Jail, Bannu and from there we proceeded to the house of absconding co-accused for house search”, so the Magistrate too went on telling lie and his this conduct has seriously questioned the integrity of his office and status and his this conduct can neither be ignored nor condoned. In case titled “Azeem Khan and another Vs Mujahid Khan and others” (2016 SCMR 274), wherein it is held that:

***“15. Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364***

*read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official*

*of the Court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused."*

13. The prosecution went with a set of interested witnesses to ravish the life of a young lady and even badly failed to collect evidence against the co-accused, who was already acquitted by the trial Court. The complainant admitted that she was a house wife, he further admitted that no mobile was found in her possession and even the

prosecution could not collect the cell data record to link her with the co-accused. We are further surprised that why rest of the inmates did not charge her but only the interested one.

14. The complainant stated that when he arrived the room the deceased was lying in serious condition with a .30 bore pistol in his hand, so it further disturbs that how the pistol came in his hand. The mode and manner of killing is still a mystery. The investigating officer stated that he collected blood stained earth from beneath the “cot” but why the mattress and *charpaye* were not stained with blood. The prosecution failed in all respects to tell that who killed the deceased and this burden was never shifted to the accused that too when confession was later on retracted. In case titled

**“Muhammad Azhar Hussain and another Vs the State and another” (PLD 2019 SC 595)**, wherein it is held that:

***“On an overall analysis of the prosecution case, confessional statement cannot be relied upon without potential risk of error. In the absence of evidentiary certainty, it would be unsafe to maintain the convictions on moral***



*satisfaction that certainly cannot equate with legal proof."*

15. One important factor of the case is that the co-accused Hamidullah was acquitted by the trial Court and the appeal filed therefrom has also been dismissed by this Court, as the evidence led by the prosecution was found unsatisfactory, the appellant allegedly confessed her guilt before the Court of Judicial Magistrate, where the cause of the death was given as love affairs with Hamidullah and as such Hamidullah was the source of inspiration for her to kill and marry, but once the involvement of Hamidullah has been disbelieved by this Court then singularly the accused/appellant cannot be held responsible for commission of the offence as no cause was there for her to commit the murder. Admittedly, the complainant stated that she was a house wife and initially no mobile was there in her possession to contact the co-accused and also the prosecution did not collect the Call Data Record to substantiate the affair between the two, even otherwise the mode and manner of the occurrence is shrouded in mystery and till end it could not be ascertained

as to how and who was the actual culprit and as such the entire case is the outcome of hypothesis without any legal proof and when this is the situation then the benefit of doubt if any must be extended to the accused.

16. After reading the prosecution case in depth this Court has reached to an inescapable conclusion that the prosecution has miserably failed to prove the case against the appellant. Resultantly, this criminal appeal is allowed and the appellant is acquitted of the charges levelled against and she is to be released forthwith if not required to be detained in connection of any other criminal case. The connected Cr. R No.70-B of 2017, is dismissed.

Above are the reasons of our short order of the even date.

Announced:  
13.11.2019

  
**JUDGE**  
  
**JUDGE**

