

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr.A. No.37-A of 2012

Date of hearing: _____

Petitioner _____

Respondents _____

LAL JAN KHATTAK, J. Appellant Khalid Khan through the instant appeal has impugned the judgment dated 15.02.2012 of the learned Additional Sessions Judge-III, Haripur, delivered in case FIR No.420 dated 27.09.2010 under Sections 302/452 PPC of Police Station Kot Najibullah, District Haripur, whereby he has been convicted and sentenced to death under Section 302(a) PPC. He has also been convicted under Section 452 PPC and sentenced to seven years rigorous imprisonment with a fine of Rs.5000/- or in default to further undergo two months S.I. The learned trial Court further directed him to pay Rs.3,00,000/-, as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C. or in default thereof to further undergo simple imprisonment of six

months. Benefit under Section 382-B, Cr.P.C. has been extended to him. The appellant has impugned his conviction and sentence while the learned trial Court has sent Murder Reference to this Court under Section 374 Cr.P.C. Both the matters are being decided through this single judgment.

2- Brief facts of the case are that on 27.09.2010, Mst. Shakeela Bibi (PW-9) reported to Riasat Khan, ASI (PW-15) in the emergency ward of Civil Hospital, Haripur, to the effect that in the morning after finishing her household work she had visited the house of her elder daughter, namely, Mst. Tasleem Bibi. No sooner than she left her daughter's house, her cousin Mst. Akhtar Bibi met her there and told that her nephew Khalid had fired at her daughter Mst. Saira in her house. On this, Mst. Shakeela Bibi rushed to her house where Ali Asghar Khan (PW-10), her brother Shafique Ahmad (PW-11), Abdul Jalil and Ali Zaman (both not produced) had reached there after hearing the fire shot. They found the kitchen's door bolted from inside which, on knocking, was opened where they saw Mst. Saira lying on floor of the kitchen in injured condition while appellant Khalid was standing there holding a pistol in his hand, who after opening the door, succeeded in fleeing from the scene. Mst. Shakeela charged her nephew Khalid for the *qatl-i-amd* of her daughter Saira but disclosed no motive for the occurrence.

3- Appellant was arrested on 01.10.2010 and after completion of the case investigation challan was put in Court, which indicted him on 10.11.2010 for the commission of offence to which he pleaded not guilty and claimed trial. Prosecution in order to prove its case produced 15 witnesses whereafter statement of the accused under Section 342 Cr.P.C. was recorded. It is pertinent to mention here that in his such statement the appellant confessed his guilt. The learned trial Court after conclusion of the trial found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned in para No.1 of this judgment.

4- Learned counsel for the appellant contended that there is no eyewitness to the occurrence and case against the appellant is of no evidence; that there was no motive for the appellant to commit the murder of Mst. Saira; that the learned trial Court has illegally placed reliance on the statement of the appellant recorded under section 342 Cr.P.C. for recording his conviction and that the prosecution purposely has not produced Mst. Akhtar Bibi, who, as per FIR, had informed the complainant about the occurrence; that no sanctity is attached to the report of FSL, as the recoveries of crime empties and pistol were effected on 27.09.2010 and 01.10.2010 respectively but were received in the Laboratory on

06.10.2010, and delay in sending the articles has not been explained by the prosecution plausibly which fact has made the recoveries doubtful and of no legal worth. At the tail end of his arguments, learned counsel for the appellant submitted that without prejudice to his case on merits, the learned trial Court has erred in law by awarding capital punishment to the appellant, therefore, the sentence be reduced to imprisonment for life, as neither there was any motive for the appellant to commit the crime nor there is any evidence to show that what had happened before the occurrence which prompted the appellant to fire at the deceased.

5- As against the above, learned counsel for the complainant and learned AAG for the State supported the judgment of conviction and sentence.

6- We have heard learned counsel for the parties and gone through the case record with their assistance.

7- Perusal of the case record would show that while appearing before the Court as PW-9 complainant of the case, namely, Mst. Shakeela reported the awful act of *qatl-i-amd* of her daughter within a short span of 35 minutes not only charging therein the appellant by name as perpetrator of the offence but also cited in her report two persons by name as eyewitnesses in whose presence

the kitchen's door was opened and all of them saw there the appellant standing with the deceased duly armed with a pistol. Version of the complainant has been duly corroborated by PW-10 Ali Asghar Khan, who deposed before the Court that on hearing the fire shot, he had rushed to the spot where complainant Shakeela Bibi and PW Shafique were present. He further deposed that door of the kitchen was closed from inside which was opened on their knocking and then they saw appellant Khalid Khan standing inside the kitchen, who was duly armed with pistol and the deceased was lying on the kitchen's floor in injured condition. He further went on to depose that the moment kitchen's door was opened appellant Khalid Khan made his escape good therefrom. Same is the testimony of Shafique Ahmad, who appeared before the court as PW-11. Complainant and the two aforesaid were subjected to the test of cross-examination but nothing was brought from their mouths, which could have shattered their evidence.

8- Apart from the above, Lady Dr. Shagufta Iltaf MWO, who had examined the deceased and conducted autopsy, appeared before the Court as PW-8. According to her report (Ex.PW8/1) she had found the following injuries on the person of the victim:-

1. *An entry wound with brain matter and profuse bleeding at left teporo-perital area with*

fracture bone with blackening measuring 2 x 2 cm.

2. *An exit wound measuring 3 x 3" with brain matter coming out with profuse bleeding at right occipital area 1½ " away from right ear, behind.*

9- Evidence furnished by the Lady Doctor fully corroborates the complainant's version. Investigating Officer of the case, namely, Zarbat Khan S.I. appeared before the Court as PW-14. He deposed that on the pointation of complainant and other witnesses, he had prepared the site plan (Ex.PW14/1) and recovered from the spot four empties of .30 bore pistol (Ex.P2) besides live 13 bullets of .30 bore (Ex.P3) and two spent bullets (Ex.P4). According to the testimony of this witness, he had arrested the appellant on 01.10.2010 vide his card of arrest Ex.PW14/4. He has further deposed before the Court that on arrest, the appellant led police party to the fields of one Safdar Zaman and pointed out a place where he had concealed the crime weapon i.e. 30 bore pistol, which was recovered vide recovery memo Ex.PW13/1. It is worth to mention that ibid recovery has been witnessed by an independent person of the locality, namely, Saleem Khan, who appeared before the Court as PW-13 and duly supported the factum of recovery. It is noteworthy that the recovered pistol and empties were sent to Forensic Science Laboratory for ascertaining whether the empties

have been fired from the pistol or not? The report of FSL (Ex.14/9) is positive.

10- Above resume of the prosecution evidence shows that the version given by the complainant and PWs 10 & 11 is fully corroborated by circumstantial aspects of the case. No doubt, there is no eyewitness to the act of firing made by the appellant at the deceased but the evidence furnished by complainant, PW-10 and PW-11, as has been discussed above, coupled with the recoveries of crime empties from the spot and the crime pistol on pointation of the appellant fully support the prosecution case and connect the appellant with commission of the offence he is charged with. Presence of the appellant, just after the occurrence, duly armed with pistol in the kitchen, where the deceased was lying in the pool of blood undoubtedly shows his clear nexus with murder of the deceased.

11- In addition to the evidence so furnished by the prosecution on 18.01.2012, the appellant himself had moved an application before the learned trial Court for pleading his guilt and thereafter on 23.01.2012, on conclusion of the prosecution evidence, appellant recorded his statement under Section 342 Cr.P.C. wherein he confessed his guilt. In his such statement, he admitted the report lodged against him by the complainant as correct.

Pronounced question put to the appellant is question No.3, which alongwith its answer is reproduced as under:-

*“ **Q-3.** It is in the evidence that you on 27.09.2010 at about 09.00 AM trespassed into the house of complainant situated in village Bhera after having made preparation for causing injuries to Mst. Saira (deceased) daughter of complainant while duly armed with pistol. What do you say about it?”*

***Ans:** “It is correct”.*

12- It would not be out of place to mention that in order to know about the appellant’s health condition, this Court on 09.05.2012 ordered for production of the appellant from Jail and he was so produced before the Court on 12.09.2012, on which this Court passed the following order:-

“Khalid Khan was made to enter the Court without his handcuffs and interviewed by the Court. He insisted that he had committed the offence and was prepared for the consequences thereof. His demeanor was natural and he realized the consequences of his present statement. He also brought to the attention of the Court that his family members had insisted upon him to change his stance, which had declined”.

13- To get further satisfaction qua health condition of the appellant, this Court had referred him to

the Standing Medical Board for his medical check-up keeping in view the application submitted by him before the learned trial Court for pleading his guilt and the answers given by him to the questions put to him under Section 342, Cr.P.C. The standing medical board after his thorough medical check up reported as under:-

“The Standing Medical Board comprising the following members assembled in the office of the Medical Superintendent Police / Services, Hospital, Peshawar to examine accused Khalid Khan s/o Muhammad Younis.

The Standing Medical Board is of the opinion that the accused after a period of observation and repeated assessment in detention unit of Central Prison Peshawar. The Standing Medical Board is of the opinion that at the moment he has no mental illness. He talks rationally, coherently. He does not exhibit any delusion or hallucinations. He understand the nature of his crime, its consequences court proceedings and is therefore fit to pleaded in the court of law”.

14- We have re-appraised the ocular and circumstantial evidence of the case and the 342 Cr.P.C. statement of the appellant with care and caution. From perusal of the entire case record, it appears to us that the prosecution has successfully proved its case against the appellant through worth reliable and confidence inspiring

evidence. Complainant of the case and PWs 10 & 11 are consistent with each other on all material aspects of the case. The ocular account is fully supported by medical evidence, site plan, recovery of crime empties and the crime pistol.

15- It was vehemently argued by learned counsel for the appellant that awarding the sentence of death as *qisas* under Section 302(a) PPC to the appellant by learned trial Court was not justified as no proof of *qisas* was available on the case file. Ibid contention of the learned counsel is of no help to him, as the appellant himself made a voluntary and true confession of his guilt before the Court. According to section 304(1)(a) PPC when an accused makes before a Court competent to try the offence a voluntary and true confession of commission of the offence with which he is charged then under section 302(a) PPC the sentence of committing *qatl-i-amd* shall be death as *qisas*. Now the question is whether statement made by an accused under section 342 Cr.P.C. is a confession? Answer to this question is in yes. The honourable Supreme Court of Pakistan in a judgment reported in 2015 SCMR 423 has held that “*statement of an accused recorded under Section 342 Cr.P.C. is more reliable than compared to the statement recorded under section 164 Cr.P.C.*” Therefore, it can safely be held that statement recorded by an accused under Section 342

Cr.P.C. is a confession as envisaged under section 302(1)(a) PPC and if that statement is corroborated by ocular and circumstantial evidence of the case then the Court can proceed to convict and sentence the accused under section 302(1)(a) PPC. Not only the appellant had admitted his guilt in his 342 Cr.P.C. statement but prior to that on 18.01.2012, he had moved an application to the trial Court for recording his guilt. Furthermore, before this Court on 12.09.2012, as stated earlier, the appellant stuck with what he had admitted in his 342 Cr.P.C. statement.

16- For the above reasons, awarding of the normal penalty of death by the trial Court to the appellant under Section 302(a) PPC is quite legal.

17- Submission of the learned counsel that as the crime empties and crime pistol were received by FSL on 06.10.2010, therefore, same has no legal worth too is of no help to the appellant, as delay per se in sending crime weapon and crime empties to FSL shall not overweigh the ocular evidence found in line and supported by the medical evidence. Wisdom is derived from a judgment of the Honourable Supreme Court of Pakistan reported in 2010 SCMR 1752.

18- Learned counsel for the appellant had also argued that as no motive has been assigned to the appellant for commission of the offence, therefore,

awarding of capital punishment to him does not commensurate with his act. Suffice it to say that weakness, insufficiency or even absence of any motive in murder cases cannot be considered as a mitigating circumstance for awarding lesser punishment to an accused, therefore, alternate submission of learned counsel for the appellant for converting the death penalty into imprisonment for life is turned down. Reliance is placed on 2003 SCMR 747.

19- From the foregoing discussion, it is clear that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt and, as such, the learned trial Court has rightly convicted and sentenced him for the *qatl-i-amd* of Mst. Saira through the impugned judgment to which no exception could be taken by this Court. Consequently, the instant criminal appeal, being bereft of any merit, is hereby dismissed. Murder Reference stands answered in affirmative.

Announced.
25.11.2015.

J U D G E

J U D G E

Muhammad Rustam,
P/S

