

Judgment Sheet

**PESHAWAR HIGH COURT, ABBOTTABAD BENCH.**

*JUDICIAL DEPARTMENT*

**Cr.A No.85-A of 2016**

**JUDGMENT**

*Date of hearing.....15.11.2018.....*

*Appellant... (Asia Kosar) by Ms. Rabia Gul Awan,  
Advocate.....*

*Respondent... (The State etc) by M/s Fizza Ahmad Nizami, State counsel and Syed Waqas  
Naqvi, Advocate for complainant.....*

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**SYED MUHAMMAD ATTIQUE SHAH, J:-** Mst.

Asia Kosar, appellant was tried by the learned Additional Sessions Judge-IV, Abbottabad, in case F.I.R No.119 dated 06.07.2013 for the offence under section 302 PPC, Police Station Bakot, District Abbottabad, which trial was ultimately culminated upon her conviction and she was sentenced under section 302(b) PPC to imprisonment for life on three counts for 'Qatl-i-Amd' of her children, namely, Hashim, Sameer and Mst. Shumaim Bibi. Benefit of section 382-B Cr.P.C was also extended to the appellant. Being aggrieved, appellant assailed the

judgment and order dated 28.05.2016 of the learned trial Court before this Court in the instant criminal appeal.

2. The facts, as narrated in the F.I.R., lodged by Sultan Mehmood, complainant, in his house on 06.07.2013 at 03.00 AM, are that his marriage took place with Mst. Asia Kosar daughter of Muhammad Nisar about 9/10 years back and out of the wedlock, three children, namely, Hashim Khan, aged about 7/8 years, Sameer Khan, aged about 4/5 years and Shumaim Bibi aged about 3½ years were born; that the attitude of his wife was not proper towards him after the marriage and she mostly used to leave the house being unhappy and lived in the house of her parents and she was brought back every time by them; that two days before 28.06.2013, he came back home from his private job in a bungalow at Ayubia and when he was going back on his duty on that day, his wife threatened him that she would do such a thing beyond his imagination that he would not even see his children; that on 05.07.2013 at 10.15 PM, his elder

brother, Khurram Shahzad conveyed him information on his mobile phone to come back home and when he reached home, he saw his three children lying dead in their room; that on his query, he was informed by his father that after taking dinner, they were not feeling well and daughter Mst. Shumaim died on the spot, while other two children Hashim and Sameer were being taken to hospital, as they were constantly vomiting, who were passed away on the way; that he believed that his wife had illicit relations with someone, as a result thereof, she gave some poison to them and killed them. The report of complainant was recorded by Khawaj Muhammad Khan, SHO (PW-7) in shape of '*Murasila*' (Ex.PA), and the case was registered vide FIR (Ex.PA/1). PW-7 also prepared injury sheets and inquest reports (Ex.PW 7/1 to Ex.PW 7/6) of deceased children, Mst. Shumaim Bibi, Hashim and Sameer, respectively, and sent the dead bodies to DIHQ hospital, Abbottabad for postmortem examination.

3. Dr. Zia Qamar, (PW-1) conducted postmortem examination of deceased Hashim Khan and Sameer on 06.07.2013 at 10.00 AM and 10.30 AM, respectively. During postmortem examination, he had taken samples of different parts of the body of both the deceased and kept pending his opinion till receipt of report of Forensic Laboratory. The probable time that elapsed between injury and death was 30 minutes to one hour and between death and postmortem was more than 12 hours.

4. Dr. Nusrat Ara, (PW-5) conducted autopsy on the dead body of deceased Shumaim Bibi on 06.07.2013 at 9.30 AM, who had taken specimens of heart, liver, lung, stomach, kidney small and large intestine of the deceased and handed over to police for sending the same to the Forensic Science Laboratory and she also kept pending her opinion regarding cause of death till receipt of report of expert. However, the probable time that elapsed between injury and death was mentioned as 15 to 30 minutes and between death and postmortem was about 10 to 12 hours.

5. Safer Ahmad, ASI (PW-11) conducted investigation in the present case, who prepared site plan (Ex.PW 11/1), recoveries memos, whereby, three small bottles, towels, Nokia Mobile, two sims, organs of the deceased were taken into possession by him, recorded the statements of P.Ws and obtained CDR data of two sims and collected particulars of one Shafiq-ur-Rehman from NADRA and obtained warrant under section 204 and proclamation under section 87 Cr.P.C against absconding accused Shafiq-ur-Rehman and received the forensic Science Agency, Lahore (Ex.PW 11/24).

6. Mr. Ehitisham ul Haq Danishmand Khan, the then Judicial Magistrate-III, Abbottabad (PW-9) recorded confessional statement of appellant Mst. Asia Kosar.

7. After completion of investigation in the case, complete '*challan*' was submitted by Muhammad Javed SHO (PW-4) against the appellant before the learned trial Court. Appellant was formally charged

by the learned trial Court for causing '*Qatl-i-Amd*' of three deceased Shumaim Bibi, Hashim and Sameer under section 302 PPC, to which she pleaded not guilty and claimed trial.

8. The prosecution, in order to prove its case, examined as many as eleven witnesses, which include Dr. Zia Qamar (PW-1), Malik Munir (PW-2), who was neighbourer of complainant and called by father of complainant on his mobile phone and informed him about the incident, Muhammad Arshad (PW-3) was marginal witness and he had also incorporated the contents of '*Murasila*' in F.I.R (Ex.PA/1), Muhammad Javed SHO (PW-4), Dr. Nusrat Ara (PW-5), Muhammad Pervez IIC (PW-6) marginal witness to recovery memo (Ex.PW 3/2), Khawaj Muhammad SI (PW-7), Muhammad Gulistan, grandfather of deceased children (PW-8), Ehtisham ul Haq Danishmand Khan, the then Judicial Magistrate (PW-9) recorded confessional statement of appellant Mst.Asia Kosar, Sultan Mehmood, complainant (PW-10) and Sultan Mehmood complainant (PW-11).

9. After close of prosecution evidence, statement of the appellant/convict was recorded under Section 342 Cr.P.C, wherein, she denied the allegations of the prosecution and pleaded innocence. However, she wished not to produce defence evidence or to appear as his own witness on Oath under section 340(2) Cr.P.C.

10. Arguments of learned counsel for the parties heard and record perused with their valuable assistance.

11. In this unfortunate and tragic incident, three minor children, namely, Mst. Shumaim Bibi, Hashim and Sameer have lost their lives and the charge of their Qatl-i-Amd was leveled by the complainant, father of deceased against her wife, the present appellant. The appellant during investigation recorded her confessional statement, which was recorded by PW-9, who at the time of occurrence was Judicial Magistrate, Abbottabad, wherein, she stated that the complainant at the time of leaving home for his duty gave her a plastic bottle by saying that mix the same in "*Ajwain*

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(*اُجواہن*) and administer it to the children and she could not understand that it was poison and she thought that it was a medicine of cough and she mixed the same in "*Ajwain*"; that she remained busy in marriages of family and on 05.07.2013, Sameer at the time of sleeping asked for "*Ajwain*" as he was complaining of pain in stomach; that she picked up the bowl of "*Ajwain*" and first of all Hashim moved his hand forward for the same; she gave "*Ajwain*" to him and thereafter she also gave the same alongwith water to other two children, however, the children started weeping and she called her father-in-law (**PW-8**), wives of younger and elder brothers of complainant, who gave them '*Desi Ghee*' but they could not survive and lost their lives one by one and she was not aware that the liquid mixed in "*Ajwain*" was poison, otherwise she would not have administered the same.

12. The only material incriminating evidence in this case against the present appellant is her abovementioned confessional statement before the Court. However, it is well settled principle of criminal



jurisprudence that whenever prosecution is relying on solitary confessional statement of an accused in the absence of direct ocular account or circumstantial evidence, then confessional statement is to be accepted or rejected in whole/toto. However, where direct ocular account and circumstantial evidence is available, besides confessional statement of accused, in that eventuality, the portion of confessional statement, which is supporting the version of the prosecution would be taken into consideration, whereas, other portion of confessional statement, which is inconsistent with it would not be taken into consideration. Reliance is placed on case titled “Ganga ram Versus The State (1999 P.Cr.L.J 490)” and “Ajab Khan Versus The State (1995 MLD 1199)”. Admittedly, there is no ocular or direct evidence against the appellant in this case. This Court would consider the confessional statement of the appellant as a whole, wherein, she stated that the complainant at the time of leaving home for his duty gave her a plastic bottle by saying that mix the same

with "*Ajwain*" and on the eventful day on the complaint of pain in stomach by Sameer, she gave the same to him as well as to the other two children which resulted into their death. The statement of appellant would be taken into consideration in its entirety and not merely the inculpatory part of it to the exclusion of the exculpatory part unless there is other reliable evidence which supplements the prosecution case. The criminal cases are to be decided on the basis of cogent and reliable and confidence inspiring evidence and not on the basis of presumptions. The prosecution has produced Muhammad Gulistan (PW-8) grandfather of deceased children and none else from other inmates of the house was produced. PW Gulistan during cross-examination admitted that the wife of his son Khuram used to get ready the deceased children for school and she would give them food when they returned home, as the appellant never looked after her children. He further admitted that mostly wife of Khurram used to give meal to the children and on the eventful day, wife of Khurram, Mst. Sabiah Bibi cooked vegetables and

they all had the same dinner including the children on that night. The prosecution has failed to establish allegation of illicit relations of the appellant with anybody. The relations of complainant and appellant being husband and wife were not established to be so strained, which forced the appellant to such extent to take life of her minor children. No plausible reason has been furnished by the prosecution, which in peculiar facts and circumstances of the present case would justify such an act and that too by a mother. Having thus considered in this back-ground, this Court has no doubt that the charge against the appellant has not been proved beyond any shadow of reasonable doubt.

13. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled 'Ghulam Qadir Vs. The State' (2008 SCMR 1221), wherein, it has held that:


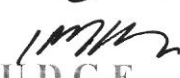
*"It needs no reiteration that for the purpose of giving benefit of doubt to an accused*

*person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."*

Reliance is also placed on case law reported as 2009 SCMR 230, 1995 SCMR 1345, 2017 SCMR 596 and 2017 SCMR 709. In this view of the matter, The learned trial Court has not properly appreciated evidence and the law applicable thereto, which needs interference by this Court in its Appellate jurisdiction to that extent.

14. Thus, in view of above discussion, this appeal is allowed and the conviction and sentence awarded to the appellant are set aside and she is acquitted of the charge leveled against them in this case, who be released forthwith, if not required in any other case.

Above are the detailed reasons for short order  
of this Court of even date.

  
JUDGE  
  
JUDGE

Announced.  
Dt.15 /11/2018.

/\*M. Saleem\*/

(DB) Mr. Justice Lal Jan Khattak and Mr. Justice Syed Muhammad Attique Shah

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BENCH  
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*Cr.Appeal No. 85-A/2016*

**JUDGMENT**

Date of hearing.....**15.11.2018**.....

Appellant (Mst. Asia Kosar) By Ms. Rabia Gul Awan, Advocate.

Respondent (State) By Ms. Fiza Ahmed Nizami, Advocate and  
(Complainant) By Syed Waqas Naqvi, Advocate.

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**SYED MUHAMMAD ATTIQUE SHAH, J.-**

For the reasons to be recorded later, this appeal is allowed. The conviction & sentence of appellant namely, Mst. Asia Kosar w/o Sultan Mehmood, recorded by the learned Additional Sessions Judge-IV, Abbottabad vide judgment dated 28.05.2016 in case FIR No. 119 dated 06.07.2013 registered at Police Station Bakot (Abbottabad) are set-aside and she is acquitted of the charge, leveled against her. She be released from Jail forthwith, if not required in any other case.

Announced:  
15.11.2018.

  
**JUDGE**

  
**JUDGE**