

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.A No.159-A of 2012.

JUDGMENT

Date of hearing.....

Appellant...(s).....

Respondent(s).....

QALANDAR ALI KHAN, J:- The instant Criminal Appeal by convict/appellant, Hassan Rahim, J.Cr.A No.01-A/2012 by convict/appellant, Mst. Rabia, and Cr.R No.04-A/2013 by Anwar Zeb, complainant, arise out of the same case vide FIR No.314 dated 06.08.2011 under Sections 302/34 PPC P.S Oghi, therefore, this single judgment/order shall also dispose of the connected criminal appeal/revision.

2. The FIR was lodged on the report of Anwar Zeb, complainant, whereby, he reported to the Inspector SHO P.S, Oghi that he along with his wife Mst. Akhtar-un-Nisa was asleep in the Courtyard of their house whereas his deceased son Waqar Ahmed and daughter-in-law Mst. Rabia, convict/appellant, were asleep in their room when at about 0200 hours at night his daughter-in-law called them and told them about the murder of their son Waqar Ahmed by some one who entered their room and fired at the deceased. In the room, they saw their son had fallen victim to firing at his skull and already expired as a result thereof. Even on their inquiry, their daughter-in-law expressed her ignorance about the culprit, though present and asleep in the same room with the deceased, and simply stated that at the time of going to steep the door of the room was not closed. In his report, the complainant stated that he or his deceased son had no previous enmity, therefore, he charged unknown accused for commission of the offence.

3. During investigation, the I.O secured blood through cotton from the double bed of the deceased in the room where occurrence took place, and also recovered a double barrel shotgun 12 bore with three live rounds and an empty stuck in the gun on the pointation of convict/appellant Mst. Rabia from the cattle-shed adjoining the house, after her arrest on 08.08.2011. The I.O prepared the site plan on 06.08.2011 and made addition of the place of recovery of the shotgun on the pointation of Mst. Rabia on 08.08.2011. The Postmortem examination of deceased Waqar Ahmed revealed the following;

“External appearance:

Stout young man, rigor mortis with P.M lividity is in developing stage. Clothing vest and pillow are stained with blood.

1. A big wound on the head starting from the left side of orbital region up to the occipital region of head. Most part of the head skull bones, scalp, left eye totally, right eye partially, bone of nose are shattered. Cofanieal cavity is totally open and some brain matter are lying on the underlying

pillow. Bleeding noted on the under lying pillow, bed sheet. Some tattooing marks are noted on the nose, left side cheek, some charring marks are also noted on the cheek.

Internal

Cranium and spinal Cord.

Scalp, skull bones are badly injured. Cranial cavity is mostly shattered. Scalp is shattered and flape of scalp is reflected backward on the neck.

Membranes & brain matters are totally injured and most part are shattered. Some brain matters is found on the pillow.
Stomach and contents. Normal in shape has some fluid of mixed digestal food content.

Remarks In my opinion the cause of death is fire-arm injuries causing damage to the vital organs brain matters, blood vessels in the head region leading to hemorrhage, un-consciousness shock and death.

Probable time between injury & death: instantaneously. Between death & P.M examination: 5 to 6 hours approximately."

4. Immediately after her arrest on 08.08.2011, the convict/appellant, Mst Rabia, made a

confessional statement before the learned Judicial Magistrate, Mansehra, wherein she disclosed her relationship with convict/appellant Hassan Rahim and their desire to get married to each other before her marriage with the deceased and also marriage of Hassan Rahim with another girl, and further her committing *Qatl-i-Amd* of her deceased husband Waqar Ahmed with double barrel shotgun after the deceased refused to divorce her in accordance with the prior plan of both the convicts/appellants to secure divorce from the deceased and then marry each other. The recovered double barrel shotgun, live cartridges and crime empty were subjected to examination by the fire-arms expert who furnished his report in the affirmative. Likewise, the report of the chemical examiner in respect of blood stained cotton and blood stained garments of the deceased was in the affirmative. After recording statements of the PWs and completion of investigation, complete challan was submitted by the police/prosecution to the trial Court against both the accused, leading to their trial after framing of charge against them under Sections 302 PPC read with Section 34 PPC. During trial of

the case, the prosecution produced as many as 13 PWs, a resume of which is as under;

- Bashir Ahmed (PW.1) is marginal witness to the recovery of blood vide recovery memo EXPW.1/1.
- Mubarak Hussain, Inspector/SHO P.S Oghi (PW.2) reduced into writing the report of Anwarzeb, Complainant, and also prepared the injury sheet and inquest report of the deceased and referred him to the hospital for P.M examination, and on completion of investigation, also submitted complete challan in the case on 19.08.2011.
- Muhammad Iqbal (PW.3) is marginal witness to the recovery of weapon of offence on the pointation of Mst. Rabia Bibi vide recovery memo EXPW.3/1.
- Anwar Zeb (PW.4) is the complainant.
- Rafaqat Ali (PW.5) is witness to the recovery memo whereby the blood stained garments sent by the Medical Officer were taken into possession.

- Muhammad Salim (PW.6) escorted the dead body to the hospital for P.M examination and also took *murasila* for registration of the case to the Police Station and further handed over copy of FIR to the I.O. and was also present with the I.O at the time of spot inspection.
- Dr. Niaz Muhammad (PW.7) is the Medical officer who conducted P.M examination of the deceased.
- Shabbir Ahmed Durrani (PW.8) is the Judicial Magistrate who recorded confessional statement of accused Mst. Rabia.
- Naseeb (PW.9) took the sealed parcel containing the weapon of offence to the Laboratory and also took blood secured through cotton and blood stained garments of the deceased to the laboratory.
- Syed Liaqat Shah MHC (PW.10) handed over the sealed parcel to

constable Naseeb for taking the same to FSL.

- Muhammad Zubair, HC (PW.11) registered FIR on the basis of *Murasila* of the SHO.
- Muhammad Akbar ASI (PW.12) is investigating officer in the case.
- Iqbal Khan SI/OII (PW.13) procured one day police custody of accused Hassan Rahim and also produced him for recording confessional statement but he refused to confess his guilt.

5. After prosecution closed its evidence, statements of both the accused were recorded under Section 342 Cr.PC wherein they refuted allegations of the prosecution, but declined to be examined on oath under Section 340 (2) Cr.PC or produce defence evidence. After hearing arguments of both sides, the learned trial Court/ASJ-II, Mansehra, Camp Court Oghi, found both the accused, Mst Rabia and Hassan Rahim, guilty of the offence and convicted them under Section 302 (b) PPC for the murder of deceased

Waqar Ahmed and sentenced them to imprisonment for life and payment of compensation of Rs.100000/- each under Section 544-A Cr.P.C, to be paid to the legal heirs of deceased, if realized. The accused were, however, extended benefit of Section 382-B Cr.P.C. The convicts/appellants filed criminal appeals against their conviction and sentences awarded to them, whereas the complainant moved Criminal revision petition for enhancement of punishment and awarding sentence of death to both the accused.

6. Arguments of the learned counsel for the convicts/appellants and learned Additional Advocate General assisted by learned counsel for the complainant heard, and record perused.

7. Admittedly, no ocular account was furnished by the complainant in the FIR, as he along with his wife was asleep in another room while his deceased son was asleep in his room along with his wife, Mst. Rabia, at 0200 hours on 06.08.2011, when the occurrence took place. Mst. Rabia did not disclose actual facts to the

complainant before lodging the report though she was present in the same room with the deceased at the time of occurrence. The complainant or his deceased son had no previous enmity to raise suspicion of commission of the offence by some one who was at loggerheads with them. It was only after the arrest of convict/appellant, Mst Rabia, that the actual facts came to the fore, as not only the weapon of offence i.e. double barrel shotgun with empty stuck in it and three live cartridges were recovered from the cattle-shed adjoining the house on her pointation, but she also narrated true facts about motive for the offence, and commission of the offence itself. After Mst. Rabia revealed her relationship with co-accused Hassan Rahim prior to her marriage with the deceased and refusal of the deceased to divorce her thus enabling her to get married with the convict/appellant Hassan Rahim as motive for the offence, the police also implicated him in the case. She, however, nowhere, either in her confessional statement or during trial, ever stated that either Hassan Rahim was present and took

active part in the commission of offence or the crime was committed by her at his instigation/behest or with his help. She clearly stated that it was only she who planned the murder of her deceased husband and executed the plan on 06.08.2011 at the relevant time when she and the deceased were sleeping together in their room. The weapon of offence i.e. double barrel shotgun, which belonged to the deceased, was also recovered by the police on her pointation from the cattle-shed adjoining joint house of the complainant and the deceased. As such, there was no material, except confessional statement of co-accused Mst. Rabia and recovery of weapon of offence, that too, connecting Mst. Rabia with the offence, to warrant conviction of Hassan Rahim in the case. Therefore, convict/ appellant Hassan Rahim is acquitted of the charges. He is in jail and be released from the prison if not required in any other case.

8. So far role of convict/appellant Mst. Rabia in the commission of offence of *Qatl-i-Amd*

of her deceased husband is concerned, it is abundantly proved from her confessional statement before the Judicial Magistrate on the very day of her arrest in the case, without being remanded to police custody for a single day. In her confessional statement, she not only disclosed motive for the offence but also *Qatl-i-Amd* of her deceased husband Waqar Ahmed with double barrel shotgun belonging to the deceased on the night of occurrence when she was the only other person present with the deceased in the room. Her confessional statement is corroborated by recovery of the weapon of offence with empty stuck in it from the cattle-shed adjoining the house of the complainant and the deceased on her pointation to the police immediately after her arrest. The learned defence counsel laid much stress on the fact that there was no proof that the convict/appellant was explained the necessary pre-requisites in local language/mother tongue of the accused to ensure that her confession was voluntary, but the certificate appended with the

confessional statement would leave no doubt that communication with the accused by the learned Judicial Magistrate was through Saeed Naeem Ahmed Shah, junior Scale Stenographer. The learned defence counsel contended that the prosecution should have produced the said stenographer in order to lend credence to the voluntary nature of the confession, but it may be pointed out here that nowhere during the trial or even in her statement under Section 342 Cr.PC, the convict/appellant ever raised the plea that she was not made to understand the nature and consequences of her confessional statement, as she simply stated 'No' when a specific question about her confessional statement was put to her during recording her statement under Section 342 Cr.P.C. The voluntarily nature of the confessional statement is further substantiated by the statement in Court during trial by Mr. Shabbier Ahmed Durrani, Judicial Magistrate, Abbottabad (PW.8), who remained consistent about the voluntary nature of the confessional statement, and no dent was created in his

testimony by the defence despite searching cross examination on him. The P.M report showing tattooing/charring marks on the 'big' fire-arm wound sustained by the deceased on his head tend to further support version of the prosecution that the deceased was fired at from a very close range with shotgun, obviously, by some one in close proximity of the deceased in the same room, who was none else than the convict/appellant, Mst. Rabia, as established on record. The case of the prosecution was further augmented by recovery of shotgun used as weapon of offence along with crime empty stuck in it and three live cartridges on the pointation of Mst. Rabia from the cattle-shed adjoining the house where the occurrence took place. All these facts, proved on record, remained un-rebutted on the part of the defence which failed to advance a version other than the one furnished by the prosecution. There also appears no motive on the part of complainant to falsely implicate Mst. Rabia in the case as he proved to be a honest witness, because he did not charge Mst. Rabia,

initially at the time of lodging the report; and reported the facts on the basis of whatever story was narrated to him by Mst. Rabia subsequently; who was, incidentally, the only other person present in the same room with the deceased at the time of occurrence. Her answer 'No' to the specific question with regard to her confessional statement would, as such, not amount to retraction of confession in the strict sense of the word; which, indeed, received corroboration from other incriminating evidence against her. Therefore, there was overwhelming evidence to warrant conviction of Mst. Rabia. Consequently, her Jail Criminal Appeal No.01-A/2012 is dismissed; and the impugned judgment of learned trial Court/Additional Sessions Judge-II, Mansehra, Camp Court Oghi, dated 04.12.2012, to the extent of her conviction under Section 302(b) PPC for committing *Qatl-i-Amd* of her deceased husband Waqar Ahmed and sentence of imprisonment for life and compensation of Rs.100000/- under Section 544-A Cr.PC, with

benefit of Section 382-B Cr.PC are upheld/maintained.

9. As regards revision petition for enhancement of sentence awarded to convict/appellant Mst. Rabia, suffice it to say that there appears no ground to interfere with the finding of the learned trial Court with regard to the quantum of sentence i.e. life imprisonment awarded to the convict/appellant for *Qatl-i-Amd* of her deceased husband on the basis of her confessional statement and other circumstantial evidence. The complainant was unable to show ground for enhancement of the sentence to death in the facts and circumstances of the case. Consequently, the revision petition of the complainant stands dismissed.

Announced.
03.02.2012.

(Ayub)

J U D G E

J U D G E