

JUDGMENT SHEETIN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENTCr.A No: 78-A of 2011JUDGMENT

Date of hearing.....14-04-2015.....

Appellant(s)/Petitioner (s).....Abdul Waheed 870 Nizam Road By
Dale Shams-ud-Din By AdvocateRespondent (s).....The State By A.A. Gani Niaz Muhammad
By Yas Muhammad Advocate

QALANDAR ALI KHAN, J:-

Since this

appeal by appellant, Abdul Waheed, and Cr.R

No.29/2011 emanate from one and the same

judgment of learned Additional Sessions

Judge-IV, Mansehra, dated 17.05.2011, in

case vide FIR No.316 dated 16.08.2008

under Sections 302/34 PPC Police Station

Baffa, this single order shall also dispose of

criminal revision by Niaz Muhammad,

petitioner/complainant.

2. The case was registered on the

report of the complainant who charged the

appellant and his brother Abdur Rashid for

'Qatl-i-Amd' of his brother Dil Muhammad

and wife of the appellant, Mst Noreen Bibi, inside the house of the appellant. In his report, the complainant disclosed that while he was present in the Tobacco shop of one Khaliq Dad and his deceased brother, who was employed with the appellant, was also present on the road side, a boy approached him and took him to the house of the appellant where-from he heard voice of fire shots, whereupon he rushed to the scene of occurrence and found dead bodies of both Dil Muhammad and Mst Noreen Bibi besmeared with blood. The complainant also mentioned name of Chan Khan son of Shamal Khan to have witnessed the occurrence as an eye witness, along with other people.

3. After registration of the case, the local police conducted investigation, during which, the postmortem examination of both the deceased revealed death of Dil Muhammad caused by multiple fire arm injuries whereas death of Mst Noreen Bibi caused by stab wounds. A 30 bore pistol was

recovered from the appellant and 9 crime empties of 30 bore were also recovered from the spot during spot inspection by the Investigating Officer. The axe used for causing 'Qatl-i-Amd' of deceased Mst Noreen was also recovered from the house of the appellant. Both the appellant and co-accused, Abdur Rashid, were arrested, and the appellant recorded confessional statement before the learned Judicial Magistrate, Mansehra, wherein beside confessing 'Qatl-i-Amd' of both Dil Muhammad and Mst Noreen Bibi, he revealed motive/reason for the offence as illicit relations between the two deceased, which enraged and provoked him when he saw them in objectionable condition as he entered his house.

4. After completion of investigation, challan was submitted to the trial Court, where the accused were charged under Sections 302/34 PPC, to which they pleaded not guilty and claimed trial. During trial, the prosecution produced as many as 11

witnesses including Lady Dr. Bushra Manan (PW.4), Dr. Muhammad Amjad (PW5), Ijaz-ur-Rehman, Judicial Magistrate, Mansehra (PW.6), Muhammad Afzal khan SHO (PW.10) and Niaz Muhammad (PW.11), beside other formal witnesses. PW.4 conducted P.M examination of deceased Mst Noreen Bibi, PW.5 conducted P.M examination of deceased Dil Muhammad, PW.6 recorded confessional statement of the appellant, PW.10 is the investigating officer and PW.11 is complainant. It may, however, be added here that even the complainant is not an eye witness as he himself stated in the FIR that he was attracted to the spot on hearing of fire shots. In other words, not a single eye witness was produced by the prosecution, and the prosecution case was, as such, based on the confessional statement of the appellant, which was also reiterated in the statement under Section 342 Cr.PC of the appellant. During trial, major legal heirs of deceased Mst Noreen Bibi, namely, Mst

Begum Jan, her mother, and Mst Parveen Bibi, her sister, entered into compromise with accused and also recorded their statements in the trial Court to the effect that they have pardoned the accused facing trial, by further disclosing that deceased Mst Noreen Bibi was also survived by a minor brother, Khursheed aged about 8 years, and minor sister, Mst Amna aged about 6 years, who were being looked after by their mother, Mst Begum Jan, who also expressed no objection to the acquittal of the accused on behalf of her minor children.

5. On conclusion of trial, the learned trial Court/Additional Sessions Judge-IV, Mansehra, while acquitting the co-accused Abdur Rashid of the charge levelled against him "due to lack of proof", convicted the appellant for offence punishable under Section 302 PPC "vis-à-vis Qatl-i-Amd of deceased Dil Muhammad"; and sentenced him to rigorous imprisonment for a term of fourteen years with fine of Rs.100000/-. In case of

non-payment of fine, the convict was to further undergo simple imprisonment for six months. Benefit of Section 382-B Cr.PC was extended in his favour. As for charge of offence relating to 'Qatl-i-Amd' of deceased Mst Noreen Bibi, the appellant was also convicted for the offence in the terms that; "For the matter on sentence of latter conviction, it is apt to clarify that he i.e. convict Abdul Waheed would have been liable for the sentence of 'Qisas', if two out of the four legal heirs of deceased Mst Noreen Bibi had not waived their right of Qisas as discussed earlier in Paragraph-11 of this judgment. Therefore, having regard to the observations in Paragraph-11 *ibid*; convict Abdul Waheed is held liable for payment of 'Diyat', within the meaning of Subsection (2) read with its proviso of Section 309 PPC, to two legal heirs (namely Khursheed and Mst Amina) of deceased Mst Noreen bibi who have neither waived nor compounded the right of Qisas. The amount of 'Diyat' to the extent of

respective shares of said legal heirs shall be determined having regard to the monetary value of 'Diyat' notified by the Federal Government for the fiscal year commencing from July 1, 2008."

6. In the detailed reasons recorded in the impugned judgment/order dated 17.05.2011, the learned trial Court accepted the plea of sudden provocation to the extent of 'Qatl-i-Amd' of deceased Dil Muhammad and, therefore, convicted him under Section 302© PPC; but, on the other hand, declined to accept the plea of sudden provocation in respect of 'Qatl-i-Amd' of Mst Noreen Bibi on the grounds that 'Qatl-i-Amd' of deceased Dil Muhammad was caused by fire arm whereas 'Qatl-i-Amd' of Mst Noreen Bibi was caused by stab wounds and some blunt means causing fracture of skull, damage to brain matter; coupled with the fact that time between death and P.M examination of deceased Dil Muhammad was shown less

than 12 hours while that of Mst Noreen Bibi was revealed as more than 12 hours.

7. Arguments of learned counsel for the appellant, Additional Advocate General assisted by learned counsel for complainant heard, and record perused.

8. At the very outset, the learned counsel for the appellant submitted a certificate from the Superintendent, Central prison, Haripur, showing that substantive sentence including sentence in default of payment of compensation of the appellant had expired on 17.11.2014 and that he was presently confined in jail only for non-payment of 'Diyat' amount. The learned counsel for the appellant, therefore, stated at the bar that he would not press his appeal against conviction and sentence of the appellant under Section 302 © PPC regarding 'Qatl-i-Amd' of deceased Dil Muhammad, and that he would confine his arguments to the conviction of the appellant and his liability to pay 'diyat' within the meaning of subsection-

2 read with its proviso of Section 309 PPC to two legal heirs (namely Khursheed and Mst Amina) of deceased Mst Noreen bibi. The Learned counsel vehemently contended that in the absence of other corroborative ocular evidence, the sole basis for conviction of the appellant on both counts was his confessional statement, also reiterated in his statement under Section 342 Cr.PC; therefore, the confessional statement should have been either accepted or rejected in toto instead of accepting one part of the confessional statement, while rejecting the other. The learned counsel challenged the wisdom of making a distinction on the ground of nature of weapon of offence and a slight difference in duration between death of both the deceased and their P.M examination. Learned counsel further contended that the learned trial Court should have either accepted compromise of the legal heirs of deceased Mst Noreen Bibi, including minor legal heirs, under Section 309 PPC read with

Section 345 (2) Cr.PC or should have also convicted the appellant under Section 302 (c) PPC on account of 'Qatl-i-Amd' of Mst. Noreen Bibi.

9. The learned Additional Advocate General assisted by learned counsel for the complainant, on the other hand, argued that the appellant had confessed his guilt of committing the gruesome murder of both the deceased, including his wife, but was treated leniently, though deserving normal penalty of death. They maintained that in addition to his confessional statement before Judicial Magistrate during investigation, the appellant had also confessed again before the trial Court in his statement under Section 342 Cr.PC, without showing any remorse and penitence. They further contended that the prosecution had established its case beyond any shadow of doubt, therefore, the appellant deserved capital punishment for the double murder.

10. Adverting straightaway to the conviction of the appellant and his liability to pay 'diyat' to minor legal heirs of deceased Mst Noreen Bibi, it would, indeed, be relevant to refer to record of the case, and point out, without fear of contradiction, that the entire case of the prosecution hinges on the confessional statement of the appellant, reiterated in his statement under Section 342 Cr.PC; and, undoubtedly, conviction of the appellant is also, primarily, based on his confessional statement, therefore, in the circumstances, the confessional statement being solitary piece of evidence, must have been relied upon in toto without any pick and chose **(2004 SCMR 1808)**. It has consistently been held by the superior Courts in the country that statement of the accused has to be accepted in totality and without scrutiny **(1992 SCMR 2017 and PLD 1996 Karachi 316)**. Since the occurrence and 'Qatl-i-Amd' of both the deceased was for the same reason i.e. provocation of the appellant

after seeing his wife in objectionable condition with deceased Dil Muhammad, use of different weapons of offence and difference in duration of death and P.M of the deceased became immaterial, so as to judge the 'Qatl-i-Amd' of the two deceased differently by holding one as result of sudden provocation and the other devoid of such consideration, rendering the same liable to 'Qisas'. Moreover, Mst Begum Jan, being mother of both her minor son and daughter, was their natural guardian and thus fully competent to also enter into compromise on behalf of her minor children **(2002 MLD 1277, Lahore)**. Therefore, the trial Court should have either accepted compromise between major legal heirs of deceased Mst Noreen Bibi also on behalf of her minor legal heirs, or should have convicted the appellant under Section 302 © PPC while accepting the plea of grave and sudden provocation of the defence in respect of 'Qatl-i-Amd' of deceased Mst Noreen Bibi as

well. The conviction of the appellant and making him liable to pay 'diyat' to the minor legal heirs of Mst Noreen Bibi was, therefore, not justified in view of the forgoing discussion.



11. As regards revision petition for enhancement of sentence of the appellant from imprisonment to death, suffice it to say that the appellant has already undergone the substantive sentence of imprisonment including sentence in default of payment of compensation, therefore, enhanced sentence of death would amount to double jeopardy **(2002 SCMR 1993)**. Therefore, the revision petition, being bereft of substance, is dismissed.

12. Consequently, the appeal to the extent of conviction of appellant under Section 302© PPC in respect of 'Qatl-i-Amd' of deceased Dil Muhammad is dismissed as not pressed; while his conviction and liability to pay 'diyat' to the minor legal heirs of deceased Mst Noreen Bibi is converted into

conviction under Section 302 © PPC and the appellant, Abdul Waheed, is deemed to also have been sentenced to rigorous imprisonment for a term of 14 years with fine of Rs.100000/- and in case of non-payment of fine to further S.I for six months, with benefit of Section 382-B Cr.PC; and sentences on both counts i.e. 'Qatl-i-Amd' of Dil Muhammad and Mst Noreen Bibi, running concurrently.

13. The appeal and revision petition are disposed of accordingly.

Announced:
14.04.2015


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