

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Crl. Appeal No.996-P/2019

Muhammad Zahid Khan son of Ameer Ullah,
r/o Shereen Abad Kata Khat Mardan.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Petitioner :-	<u>Mr. Shabbir Hussain Gigyani, Advocate..</u>
State :-	<u>Mr. Mujahid Ali Khan, AAG.</u>
For Respondent :-	<u>Mr. Arbab Shabbir Ahmad, Advocate.</u>
Date of hearing:	<u>09.10.2019</u>

ORDER

ROOH-UL-AMIN KHAN, J:-Accused Zahid Khan, Rasheed Khan, Kashif Khan and Ramzan Khan, were jointly tried by learned Additional Sessions Judge/Judge MCTC, Mardan in case FIR No.368 dated 29.10.2014, registered under sections 302/34 PPC, at Police Station Rustam Mardan, on conclusion whereof, accused Muhammad Zahid having been found guilty of committing murder of his wife Mst. Tabasum, has been convicted under section 302(b) PPC and sentenced to undergo imprisonment for life and to pay Rs.4,00,000/-, as compensation to LRs of the deceased in terms of section 544-A Cr.P.C. and in default thereof to undergo 01 year S.I., however, co-accused Rasheed Khan, Kashif Khan and

Ramzan Khan, have been acquitted vide judgment dated 20.07.2019.

2. The instant appeal has been filed by convict Muhammad Zahid Khan against his conviction and sentence. Jawad Khan petitioner has filed **Cr.R. No. 179-P/2019**, seeking enhancement of sentence of convict from life imprisonment to normal penalty of death as provided for the offence. He has also filed **Cr.A. No.998-P/2019**, against acquittal of co-accused, named above.

3. As, all the three matters are the outcome of one and the same judgment of the learned trial Court dated 20.07.2019, therefore, we propose to decide the same through this common judgment.

4. Appellant Muhammad Zahid Khan is the husband of Mst. Tabasum Begum. Acquitted co-accused, namely, Rasheed is the brother of appellant Muhammad Zahid whereas acquitted co-accused Ramzan Khan and Kashif are the sons of co-accused Rasheed.

On 22.10.2014 at 1900 hours, appellant Muhammad Zahid in company of dead body of his wife Mst. Tabasum Begum deceased reported to police in DHQ hospital Mardan to the effect that deceased was married to him some twenty years back. On the night of occurrence an altercation took place between him and the deceased on some domestic affairs, during which course he slapped the

deceased on which she annoyed and did not talk him entire night. At morning he left for Mardan and at 3.00 p.m when returned home he noticed his deceased wife laying in unconscious condition on a cot (charpai). He with the help of his brothers and other people shifted her dead body to the hospital. He did not charge anyone for murder of his wife and disclosed that smell of wheat preservation pills from the mouth of the deceased shows that she has committed suicide. His report was incorporated in daily diary No.7 dated 22.10.2014 by Zahoor Khan SI (PW.5). He prepared injury sheet and inquest report of the deceased Exh.PW.5/1 and Exh.PW.5/2, respectively and shifted her dead body to the mortuary for postmortem examination. As the cause of death of the deceased was unknown, therefore, during postmortem examination contents from stomach and liver of the deceased were taken by the Medical Officer. Inquiry under section 174 Cr.P.C. was initiated by Muqadam Khan SHO (PW.3), who visited the spot and prepared site plan Exh.PB and vide recovery memo Exh.APW.3/1 he took into possession the contents of stomach and piece from liver of the deceased preserved by the Medical Officer during postmortem and sent the same to Forensic Medicine MMC Mardan.

5. On 29.10.2014, Jawad Khan (brother of the deceased), recorded his statement under section 164 Cr.P.C. before the learned Judicial Magistrate, wherein he

charged the appellant and acquitted co-accused for murder of his deceased sister by administering her poison, resultantly, FIR mentioned above was registered against the accused. Sher Bahadur SI (PW.9), arrested the accused/appellant and issued their arrest card Exh.PW.9/2, obtained their physical custody, interrogated them and recorded their statements under section 161 Cr.P.C. He also placed on file the Forensic Medicine report as Exh.PK/1 and on completion of investigation handed over case file to SHO for submission of *challan* against the accused.

6. On receipt of challan by the learned trial Court, the accused/appellant were summoned, tried and ultimately, convicted and sentence the appellant as mentioned above, however, acquitted the co-accused named above vide judgment impugned herein.

7. Arguments of learned counsel for the parties heard and record perused.

7. It appears from record that no one has furnished ocular account of the occurrence. Jawad Khan (PW.8), brother of the deceased is also not the eyewitness of the occurrence. No doubt, in his statement recorded under section 164 Cr.P.C. on 29.10.2014, he has directly charged the appellant and co-accused for murder of the deceased, but has not disclosed the source of information on the basis of which he got satisfied about culpability of the accused.

The only circumstance on the basis of which he charged the appellant is the motive which he has furnished in his statement that from the wedlock of his deceased sister and the appellant three daughters have born while they were having no male child. The appellant used to blame her for not giving birth to a male child which was a perpetual cause of altercation between them. He also advanced another motive that the appellant had eloped with another woman and the deceased was not allowing him to get marry her, on which the appellant used to beat her. However, on thorough search of record an iota of evidence was not found in support of the above mentioned contentions of PW Jawd to prove the alleged motives.

8. FSL report Exh.PK/1 in respect of stomach and liver contents of the deceased sent to Laboratory were opined by the analysts that *“the stomach and liver samples are analyzed and found Negative for poison/drug”*. The negative FSL report squarely shatters the entire prosecution case built on the testimony of Jawad (PW.8). No direct and circumstantial evidence is available on file to prove the guilt of the accused upto the hilt beyond shadow of reasonable doubt.

9. It appears from the record that two other sisters of the complainant, namely, Mst. Azra Begum and Mst. Najama are married to Muhamamd Aslam and Rasheed, respectively, who were living in the same house jointly.

Initially statement of the above named two ladies were recorded by the Investigation Officer under section 161 Cr.P.C., but during trial they were abandoned. Jawad PW.8 was cross-examined about the stance of inmates of the house i.e. his sisters and brothers-in-law who replied in the following manner:

“It is correct that I have five sisters and one brother besides my deceased sister. It is also correct that my sister Najma and Azra Begum are married in the same house to accused Rasheed Khan and Muhammad Aslam. It is correct that my sisters and other brother Amanat had not charged the accused.....”

“It is correct that my sisters Najma Begum and Azra had recorded their statements under section 161 Cr.P.C. before the local police where they stated that the deceased committed suicide and that Jawad complainant/PW is only pressurizing them for transferring of their ancestral property in his name. The witness added that in fact the police had wrongly recorded their statements and they have not recorded such statements.”

Besides, the conduct of the appellant i.e. shifting the deceased to the hospital and reporting there to police about the occurrence by furnishing the actual story as well as his participation in the entire funeral ceremony of the deceased being a natural conduct of a responsible husband, speaks about his innocence. Had his hands smeared with the blood

of his deceased wife, he would have never shifted her to the hospital, rather would have absconded. This being the case of no evidence, the learned trial Court has erred in law by recording conviction of the appellant on mere presumptions and conjectures which exercise is unwarranted in criminal justice system. Resultantly, this appeal is allowed. Conviction and sentence of the appellant recorded by the learned trial Court through impugned judgment is hereby set-aside. Resultantly, he is acquitted from the charge leveled against him. He be set at liberty forthwith, if not required in any other case.

10. On acquittal of the convict, the connected Cr.R. No.179-P/2019 filed by Jawad Khan, has become infructuous which is hereby dismissed.

11. Similarly, Cr.A. No.998-P/2019, against acquittal of co-accused being meritless is hereby dismissed.

12. These are reasons of our short order of even date, which is reproduced below:-

“For reasons to be recorded later, we allow this appeal, set-aside the conviction and sentence of appellant-convict Muhammad Zahid Khan son of Ameer Ullah, recorded by the learned Additional Sessions Judge/Judge MCTC, Mardan under section 302(b) PPC, vide judgment dated 20.07.2019, in case FIR No.368 dated 29.10.2014, under sections 302/34 PPC, at Police Station Rustam and hereby acquit him of the charge in the cited

case. He be set at liberty forthwith, if not
confined in any other case.

Announced:

09.10.2019

M.Siraj Afridi PS

JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and
Hon'ble Mr. Justice Ahmad Ali.