

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

Crl. Appeal No.1197-P/2019

Wahid Khan son of Shamshi Khan,
 r/o Yousaf Abad, Ring Road, Peshawar.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Appellant :-	<u>Mr. Shabbir Hussain Gigyani, Advocate.</u>
For State :-	<u>Mr. Muhammad Nisar, AAG.</u>
For complainant:-	<u>Mr. Asad Khan Shehzada, Advocate.</u>
Date of hearing:	<u>07.11.2019</u>
Date of announcement:	_____

JUDGMENT

ROOH-UL-AMIN KHAN, J:- At a trial held by learned Additional Sessions Judge/Judge Model Criminal Trial Court, Peshawar, Wahid Khan accused, having been found guilty of committing *Qatl-e-Amd* of his wife Mst. Khadija, has been convicted under section 302 (b) PPC and sentenced to undergo life imprisonment as Ta'azir and to pay Rs.4,00,000/-, as compensation in terms of section 544-A Cr.P.C., to legal heirs of the deceased and in default thereof to undergo 06 months S.I. in case FIR No.969 dated 10.10.2017, under sections 302/34 PPC and section 15 Khyber Pakhtunkhwa Arms Act, 2013, Police Station Pahari Pura, Peshawar.

2. Convict Wahid Khan, has filed the instant appeal against his conviction and sentence, whereas, Mohabat

Khan complainant/petitioner has filed connected Cr.R. No.233-P/2019, seeking enhancement of sentence of the convict/respondent from life imprisonment to normal penalty of death as provided for the offence of murder. Similarly, Mohabat Khan complainant, has also filed Cr.A. No.1303-P/2019, against acquittal of respondent/accused under section 15 KP Arms Act, 2013, but under the Act *ibid*, the State would be the only aggrieved party in case of acquittal of the accused, hence, the above appeal being filed by the complainant is not maintainable, hence, is hereby dismissed.

3. The criminal appeal filed by the appellant/convict and the revision petition for enhancement of sentence filed by complainant being emanating from one and the same judgment of the learned trial Court, are being decided through this single judgment.

4. The prosecution case as unfolded in the FIR is that on 10.10.2017 at 0850 hours, complainant Mohabat Khan (PW.5) alongside the dead body of his daughter Mst. Khadija deceased in Trauma Room of LRH, Peshawar reported to police that his deceased daughter was married to Wahid Khan (appellant) some 8/9 years back. From the wedlock of the spouses, two daughters and a son were born. From sufficient time there was ill will between the spouses over domestic affairs relating to women folk. On the previous night he (complainant) had gone to the house

of his brother-in-law, namely, Riaz where Wahid Khan along with his brother Zahid Khan (absconding co-accused), came and make a complaint to him about behavior of the deceased. He (complainant) advised them to settle the dispute themselves as well he will also visit their house for settlement of the dispute. On the fateful day, at 0815 hours, he (complainant) received information that his daughter Mst. Khadija has committed suicide with firearm and her dead body has been shifted to LRH, Peshawar. On the said information he reached the hospital where he found dead body of his daughter having marks of violence over her body, due to which he satisfied that she has not committed suicide, rather has been murdered by her husband Wahid Khan and his brother Zahid Khan. Report of the complainant was reduced into writing in the shape of Murasila Exh.PA by Noor Asghar ASI (PW.6) on the basis of which FIR mentioned above was registered. He (PW.6) prepared injury sheet and inquest report Exh.PW.6/1 and Exh.PW.6/2 of the deceased and referred her dead body to the mortuary where Dr. Maimona Murad (PW.9) conducted post mortem examination and found the following injuries on her person:-

1. A firearm entry wound on left side of front of chest 0.8.x0.8 cm in size, 2 cm away from midline and 4 cm below mid clavicle with surround tattooing 10x8 cm in size.

2. Firearm exit wound on left side of back 1x1 cm in size, 4 cm away from midline, 15 cm below base of skull.
3. Crescent shape laceration with irregular margin seen on left thigh 3x1 cm in size, 10 cm above kneed joint with surrounding bruised area of 6x6 cm.
4. Multiple bruises in linear atterren 10x5 cm in size of different parts of body.

Opinion: The deceased died due to injuries to left lung and corresponding vessels and chest wall due to firearm.

5. Doran Shah Inspector (PW.4) conducted investigation in the case, who proceeded to the spot and prepared site plan Exh.PB at his own observations. During spot inspection he secured blood through cotton Exh.P.1 from the place of the deceased, two crime empties of 30 bore Exh.P.2, a spent bullet of 30 bore Exh.P.3 and a 30 bore pistol No.TA.29 along with magazine with 03 live rounds of the same bore Exh.P.4 vide recovery memo Exh.PW.3/1. Vide recovery memo Exh.sPW.4/1 he took into possession the last worn bloodstained garments of the deceased and sealed the same in parcel, placed on file postmortem report of the deceased, sent the bloodstained articles and the crime empties and pistol to the FSL, reports whereof are Exh.PZ and Exh.PZ/1 respectively. He initiated proceedings under section 204, 87 and 88 Cr.P.C. against the accused, recorded statements of the PWs under section 161 Cr.P.C. and on completion of investigation

handed over case file to SHO, who submitted challan under section 512 Cr.P.C. against the accused.

6. After arrest of the accused/appellant Wahid Khan and completion of necessary investigation, supplementary challan was submitted against him before the learned trial Court, where he was formally charge sheeted to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as eleven witnesses. After closure of the prosecution evidence, statement of the appellant was recorded under section 342 Cr.P.C., wherein he denied the prosecution allegations and professed innocence. He, however, declined to be examined on oath under section 340 (2) Cr.P.C., or to produce evidence in defence. On conclusion of trial, the learned trial Court, convicted and sentenced the appellant as mentioned in the first paragraph of the instant judgment, hence, this appeal and revision.

7. We have considered the arguments of learned counsel for the parties advanced at the bar and perused the record with their able assistance.

8. No doubt, complainant is not the eyewitness of the occurrence, however, it is an admitted fact that Mst. Khadeja was the legally wedded wife of the appellant Wahid Khan, residing with him in his house situated in Yousafabad. It is also un-denied fact that the crime spot shown by the prosecution is the residential room of

Mst. Khadeja and the appellant in a house, situated in Yousafabad, Peshawar. The positive Serologist report Exh.PZ with regard to the blood of the deceased secured from the spot, confirms the place of occurrence to be the room of the spouses i.e. the appellant and the deceased. Neither in cross-examination of the PWs nor in his statement under section 342 Cr.P.C. he has questioned the place of occurrence. In this view of the matter, the first circumstance which goes against the appellant is the murder of his wife inside his room, therefore, at least onus was on the shoulder of the appellant to explain about the unnatural death of his wife. From inception of registration of the case till his statement under section 342 Cr.P.C., the appellant has nether negated his presence in his dwelling house nor has taken any plea of his absence in the house on the day and time of occurrence. The occurrence has taken place at 10.10.2017 at 08.00 a.m. i.e. in early hours, therefore, presence of the appellant in his house during early hours is natural. The dispute between the spouses over wrangle between the women folk in the family has fully been proved by Mohabat Khan (PW.5), father of the deceased Mst. Khadeja, who in his initial report has directly charged the appellant and co-accused Zahid for murder of his daughter on the ground that on the night of the day of occurrence he was present in the house of his brother-in-law, namely, Risaz when appellant Wahid Khan

and his brother Zahid Khan (absconding co-accused) came there and complained against the behavior of his deceased daughter. He (complainant) told them it being their internal domestic matter they should settle at their own as well as he (complainant) ensured them that in few days he will visit their house for counseling his daughter Mst. Khadeja deceased. The aforesaid version of the complainant has been substantiated by Riaz, who while appearing as PW.11 deposed that on that day he was present in his home along with guests in connection with fixation of date of marriage of his daughter. Complainant Mohabat Khan was also present in his house when in the meanwhile, absconding co-accused Zahid called the complainant on mobile phone to come out of the house. The complainant when came out the accused threatened him of dire consequence to make understand his daughter Mst. Khadeja to live good life in the appellant's house, otherwise he (complainant) will cry her death. PW.11 further deposed that he and complainant told the accused that being their domestic matter settle the same themselves; however, on Friday they will visit their home and will advice Mst. Khadeja deceased. On next morning at 08.00 hours, the deceased was done to death inside a room of the appellant. Admittedly, appellant is the son-in-law of the complainant. His deceased daughter is survived by three children i.e. two daughters and a son. On the face of record, there exists no reason as to why he will

charge innocent father of his grand children, particularly, in the circumstances when his grand children have already been deprived of their mother. An iota of evidence is not available on record remotely showing false implication of the appellant by the complainant, either on the basis of any previous grudge or ulterior motive. Post-mortem report depicts that firearm injury to internal vital organs of the deceased resulted in her death. Besides, the multiple bruises in liner pattern on different part of body of the deceased suggest that prior to murder the deceased has been subjected to acute torture. Reading of the postmortem report, would lead one to the conclusion that fire shot on the deceased was not immediate, rather she has been handled recklessly and with a treat of extreme brutality.

9. Appellant being husband of the deceased was legally, morally and ethically under an obligation to take notice of murder of his wife or at least, if his hands were not sullied with her blood, he should have shifted her dead body to the hospital and made a report. Contrary, he went into hiding and did not bother to participate in the funeral ceremony of his deceased wife or at least to give courage and support to his orphans' children. The appellant has not furnished any explanation, much less plausible, with regard to his abscondence after the occurrence, thus, noticeable and willful abscondence of the appellant speaks volume about his guilty conscious. As observed in the preceding

para that appellant and the deceased (spouses) were normally residing in one room of a dwelling house. The appellant is charged for murder of his wife. The prosecution has succeeded in proving that the spouses had spent the night together in the room of their house. The deceased/wife of the appellant has been murdered in early morning inside her room; therefore, the appellant/husband was under laden duty to explain the death of his wife. If he could not offer any explanation how his wife received injuries and bruises or offer any explanation which is found to be false, it is a strong circumstance, which indicates that he (the appellant) is responsible for murder of his wife.

10. The above discussed circumstances make an unbroken chain, one end of which touches the dead body of the deceased and another neck of the appellant. Though, during cross-examination of the PWs the appellant has tried his level best to make it a case of suicide, but on one hand, he has not brought an iota of evidence to prove that his deceased wife was fed up of her life and wanted to get rid of herself, while on the other hand, medical evidence belies his said plea. The marks of violence on the body of the deceased in the shape of laceration and multiple bruises coupled with recovery of two crime empties of 30 bore pistol, a spent bullet from the spot and a 30 bore pistol from the room of the appellant, coupled with positive FSL report in respect thereof, squarely proves that the deceased has not

committed suicide rather she had been done to death by the appellant.

11. For what has been discussed above, the prosecution has proved the guilt of the appellant through cogent and confidence inspiring circumstantial evidence supported by medical evidence; hence, the learned trial court has rightly held him guilty of the offence to which no exception can be taken. As regards the quantum of sentence, admittedly, the deceased is survived by two daughters and a son, who have already lost their mother and if they are also deprived from their father by awarding him capital sentence, they would suffer to the maximum because in absence of their parents, they would become shelter less. Therefore, the sentence of life imprisonment already awarded to the appellant by the learned trial Court would be sufficient to meet the ends of justice.

12. Accordingly, this appeal and the connected revision petition being meritless are hereby dismissed.

Announced:

M.Siraj Afridi PS

JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and
Hon'ble Mr. Justice Ishtiaq Ibrahim.