

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Crl.Appeal No.363-P/2013

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.-

This appeal, filed by appellant Bakht Munir, calls in question the legality and propriety of judgment dated 10.06.2013, rendered by learned Additional Sessions Judge-VI, Mardan, whereby the appellant having been found guilty of committing the murder of his wife Mst. Bushra deceased, has been convicted under section 302 (b) PPC and sentenced to undergo life imprisonment and to pay Rs.1,00,000/-, as compensation to legal heirs of the deceased in terms of S.544-A Cr.P.C. or in default thereof to undergo 06 months S.I. further.

2. The prosecution case is that, on receipt of information qua incident of murder in the

limits of Qazi hospital Par Hoti Mardan and that the culprit was decamping from the spot, Mohmand Khan ASI, rushed there, noticed a person running. who was chased and apprehended by him near Faisal Steel alongwith 30 bore pistol. On query, said person disclosed his name as Bakht Munir (appellant-convict herein). The pistol containing two live rounds in its chamber giving smell of freshly discharge was taken into possession vide recovery memo Exh.PW.2/1. On cursory interrogation, the appellant disclosed that since he was suspecting the character of his wife Mst. Bushra, therefore, did her away with the said pistol. He was formally arrested, murasila Exh.PA/1 was drafted and sent to Police Station, on the basis of which FIR No.24 dated 14.01.2012 under section 302 PPC in Police Station Par Hoti Mardan was registered against the appellant.

3. Lady doctor Nasra Anjum conducted autopsy on the dead body of the Mst. Bushra deceased and found the following injuries on her person:-

1. A firearm entry wound on left occipital region (back of skull) 1 x 1 cm.
2. A firearm exit wound in front of right ear 2 x 2 cm.
3. Firearm entry wound on right forearm dorsal side (lower 1/3rd) of 2 x 2 cm.
4. A firearm exit wound on right forearm ventral aspect (lower 1/3rd) of 5 x 4 cm.

Opinion: According to her opinion the deceased met her unnatural death due to firearm injury to her brain.

Probable time between injuries and death has been given as “within minutes” while between death and postmortem as “one to two hours.

4. Muhammad Akbar S.I. visited the crime venue and prepared site plan Exh.PB. He also prepared the sketch of the place of arrest of the appellant, recorded statements of the PWs, secured blood from the place of the deceased vide recovery memo Exh.PW.7/1, took into possession 2 crime empties of 30 bore vide recovery memo Exh.PW.7/2, bloodstained last worn garments of the deceased vide recovery memo Exh.Pw.5/1, sent the empties and pistol to

the FSL as well as the bloodstained articles, reports whereof are Exh.PZ and Exh.PZ/1. He also collected record of the family suits between the deceased and appellant, produced Mst. Zubaida and Shah Zeb for recording their statements under section 164 Cr.P.C. before the learned Judicial Magistrate, interrogated the accused/appellant and after completion of investigation handed over case file to Nihar Ali Khan SHO, who submitted challan against the appellant.

5. On receipt of challan by the learned Trial Court, appellant was summoned and formally charge sheeted, to which he pleaded not guilty and claimed trial. To prove its case, prosecution examined as many as eight 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 his innocence. He, however, declined to be examined on oath or to produce evidence in defence. On conclusion of trial, learned Trial Court, after hearing both the sides, convicted

and sentenced the appellant, as mentioned above, hence, this appeal.

6. Learned counsel for the appellant argued that impugned judgment of the learned trial Court is based on surmises and conjectures as there is no eyewitness of the occurrence; that alleged admission of guilt by the accused before the police is not a judicial confession, therefore, has no evidentiary value under article 38 of the Qanun-e-Shahadat Order, 1984, therefore, cannot be used against him; that on the one hand, the recovery of the alleged pistol from possession of the appellant is highly doubtful, while on the other hand, it has been sent to the FSL with the alleged crime empties after a delay of seven days, for which no explanation, much less plausible, has been furnished by the prosecution, therefore, the positive FSL report in respect thereof would not advance the prosecution case. He further contended that first husband of the deceased, namely, Farooq, from whom she had three sons, namely Adnan, Noman and Zeeshan had been murdered, whereafter she contracted second marriage with

one Ibrahim, but she get divorce from him through a court decree and lastly she married the appellant so it does appeal to mind that she might have been murdered by her second husband or the relatives of first husband. He lastly, contended that it is a blind murder and the prosecution miserably failed to prove the guilt of the appellant through cogent and confidence inspiring direct or circumstantial evidence, therefore, impugned judgment of the learned Trial Court is liable to be set aside and the appellant be acquitted.

7. Conversely, learned AAG assisted by learned counsel for the complainant contended that appellant has been arrested red handed alongwith the crime pistol, who admitted his guilt before the police; that the positive FSL report qua the crime empties and pistol coupled with medical evidence and recoveries from the spot support the prosecution case. They while supporting the impugned judgment, sought dismissal of the appeal.

8. We have heard and arguments and perused the record carefully.

9. Admittedly, it is a case of no eyewitness. Muhammad Akbar Khan SI (PW.7), who conducted investigation in the case categorically, admitted that the occurrence is un-witnessed as nobody has come forward to furnish the ocular account.

10. The only circumstance against the appellant which prevailed before the learned Trial Court is his alleged admission before the police about his guilt, but he has not confessed his guilt before the competent Court of law, therefore, his alleged statement before the police would amount to confession before the police and such statements have no evidentiary value under Article 38 of the Qanun-e-Shahadat Order, 1984. Another piece of evidence which prevailed before the learned Trial Court for recording conviction of the appellant is the positive FSL report about the crime empties and the crime pistol. Mohmand Khan ASI, who arrested the appellant alongwith crime pistol appeared as PW.7. In cross-examination he deposed that after arrest of the accused, he himself brought him to Police Station and put

him in the lockup; that after that he drafted murasila and recovery memo; that first he prepared recovery memo and then after two minutes drafted murasila. He further deposed that the pistol and live rounds were sealed on the spot in parcel by him. Contrary to his statement, Feroz Khan FC (PW.3), who stood as marginal witness to the recovery memo Exh.PW.2/1 vide which the alleged crime pistol was taken into possession, deposed that the murasila was drafted on the spot and he shifted the accused and murasila to Police Station. Both the star witnesses of the recovery are not consistent with each other about drafting of murasila and shifting the accused to Police Station. Both have furnished squarely different versions, which one is true would be best known to them, however, it create serious doubts about the arrest of the appellant and recovery of alleged pistol from his possession.

11. Besides, the crime pistol had been allegedly recovered on the same day of incident i.e. 14.01.2012, but has been sent to the FSL with the crime empties on 21.01.2012 i.e. after a

delay of seven days, for which no explanation, much less plausible has been furnished by the prosecution as to where and in whose custody the pistol and empties remained for this period and whether these were in safe hands.

Muhammad Akbar Khan S.I

(PW.7/Investigating Officer deposed that he has not recorded statement of any concerned person regarding delay in sending the articles to the FSL. In the circumstances, two interpretations of this piece of evidence are possible, one that the alleged empties and pistol have not been tampered, and the other, that these were not in safe hand and have been tampered. It is settled law that when two interpretations of evidence are possible, the one favouring the accused shall be taken into consideration. In this view of the matter, the positive FSL report qua the crime empties and pistol being delayed without any plausible explanation, would not advance the prosecution case, therefore, has wrongly been relied upon by the learned trial Court.

12. There is no direct or circumstantial evidence to bring home the guilt of the

appellant. Rather, there are so many circumstances, discussed above creating serious doubts in the prosecution case which go to the roots of the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim “it is better that ten guilty persons be acquitted rather than one innocent person be convicted” which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent”.

13. For what has been discussed above, we allow this appeal, set aside the conviction and sentence of the appellant recorded by the learned

Trial Court vide impugned judgment dated 10.06.2013 and hereby acquit him of the charge levelled against him. He be set at liberty forthwith, if not required in any other case.

These are reasons of our short order of even date.

Announced
17.09.2015.

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