

[Balochistan]

Before Muhammad Ejaz Swati and Abdullah Baloch, JJ

Syed TAHIR SHAH and others---Appellants

Versus

The STATE and others---Respondents

Criminal Appeal No. 375 and Criminal Revision No. 41 of 2016, decided on 30th June, 2017.

(a) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Circumstantial evidence---Prosecution case was that the accused committed murder of his wife by strangulation with the help of his brother/co-accused and they by concealing the murder had hanged her dead body---Prosecution examined six witnesses including complainant and real sons and sister of the deceased to prove its case---Complainant had deposed that he was informed by a lady that dead body of his sister was hanging in a hut---On receiving such information, complainant rushed to the house of his sister and found her dead body lying on the ground---Complainant stated that accused and his deceased wife had no good relation with each other---Complainant had submitted that on the day of incident, his sister had phoned him that the co-accused had threatened her to leave the house otherwise she would be killed---Record showed that complainant was cross-examined and he remained firm on all material counts---Prosecution witness corroborated the statement of complainant with regard to the occurrence and his presence at the place of occurrence---Witness/son of accused and the deceased stated in his statement that the beginning the relation of his parents were not good and his father/accused often used to torture his deceased mother and even beaten her many times---Said witness further stated that his deceased mother had explained to his uncle as to how she was living with her husband despite physical torture---Witness denied that due to his drug addiction his mother was under depression, so she committed suicide---Last seen independent witness of the case deposed that on the day of incident at about 10.00 a.m. he had seen the accused coming out of his house---Statement of said witness had established the presence of accused at the place of occurrence at 10.00 a.m.---Defence had failed to put any question with regard to false implication of the accused persons---Another son of accused and deceased appeared as witness, corroborated the statement of his brother on all material counts regarding the ill-treatment of the accused with his mother---Witness further stated that he handed over the memory card to the Investigating Officer, in which the conversation of her mother was recorded wherein, she was telling his paternal uncle about the torture and problems being faced by her---Prosecution witness/sister of deceased corroborated the statements of complainant and two sons of deceased regarding the ill-treatment suffered by her sister from her husband due to which her sister remained ill and was under depression---Witness further stated that due to ailment, deceased was admitted in hospital but her husband neither visited her nor asked for her welfare---Said witness had given bath to the dead body of the deceased and found two inches inside wound on her left neck and also observed certain injuries on her person---Record revealed that despite lengthy cross-examination, defence had failed to jolt her statement---Statements recorded by the blood relatives of the accused were

natural witnesses and entirely well aware with the overall situation of their family affairs from childhood till the incident---Depositions of said witnesses with regard to family affairs and relationship of accused and deceased would be mostly natural and reliable on all counts--Such evidence could not be thrown out merely on the basis of their having not seen the occurrence---Site-plan showed that no signs were noticed getting support of hanging the lady herself and no items using for hanging were found in the hut where the offence had allegedly been committed---Without availability of such instrument near the dead body, she could not manage to hang herself with the roof of the hut---Circumstances and facts of the case connected the accused with the commission of offence, however, no direct or indirect evidence was available on record against the co-accused that he in furtherance of common intention and with the help of accused, had committed the murder of deceased---Appeal against conviction and sentence of accused was dismissed while co-accused was acquitted by setting aside conviction and sentence recorded by the Trial Court in circumstances.

Saeed Ahmed v. The State 2015 SCMR 710 rel.

(b) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Medical evidence---Scope---Medical Officer, who examined the dead body of the deceased and issued death certificate stated that death was caused due to suffocation and homicide---Prosecution witness, who carried out the bath of dead body of the deceased found two inches wound on the left side of neck of the deceased---Medical report of the deceased showed that said wound was caused by means of sharp weapon---Circumstances suggested that the murder of the deceased was camouflaged by hanging her body by means of electric wires and Narrah to conceal the real cause of death---Pieces of wire and Narrah could not cut the neck inside two inches, so it could be said that deceased in-fact was tortured by means of sharp edge weapon and killed prior to hanging her dead body---Dust of earth was also observed from her hairs, which showed that the body was dragged to the place of hanging point---Medical evidence was in line with the circumstantial evidence---Appeal against conviction and sentence was dismissed in circumstances.

(c) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Criminal Procedure Code (V of 1898), S. 342---Qatl-i-amd, common intention---Appreciation of evidence---Specific plea taken by accused in his statement---Effect---Accused had taken the plea that his wife had committed suicide due to depression on account of drug addiction of his son---Defence had failed to prove the said version through any evidence---Said version of defence was negated by the medical evidence whereby it was found that the cause of death of deceased was suffocation and homicide instead of suicide.

(d) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Death of deceased on account of suffocation as mentioned in the Medical Report---Accused (husband) had alleged that deceased lady had committed suicide---Unnatural conduct of accused (husband of deceased)---Effect---Arrival of accused at the place of occurrence after taking place of incident was not disputed by the prosecution---Accused when arrived at his house and found the dead body of the deceased and people were gathered there, he did not inquire about the cause of death of his wife from the people---Accused did not inquire from the three

ladies who had seen the occurrence and informed the prosecution witnesses---No explanation was offered by the accused as to how the dead body was lying in the hut---Accused had not given any explanation as to who informed him that his wife had died---Accused did not associate the complainant/brother of deceased by taking the dead body of deceased to the hospital---Accused had not tried to lodge the report to the police and did not make arrangements of funeral of his wife and taking Fateha at his house---Such attitude of accused, prima facie, established his unnatural conduct---Cruelty reported by the deceased prior to the incident could not be demolished in circumstances---Record showed that the claim by the prosecution witnesses regarding cruelty meted by the deceased was not challenged---Said circumstances connected the accused with the commission of offence because symptoms and signs of case indicated that the death of deceased was not suicide, but was due to suffocation.

Muhammad Akhram v. The State 2003 SCMR 855 rel.

Ali Ahmed Lehri and Nisar Ahmed Alizai for Appellants (in Criminal Appeal No. 375 of 2016).

Ali Ahmed Lehri and Nisar Ahmed Alizai for Respondents (in Criminal Revision Petition No. 41 of 2016).

Habibullah Gul, A.P.-G. for the State.

Talat Waheed for the Complainant.

Date of hearing: 5th June, 2017.

JUDGMENT

ABDULLAH BALOCH, J.---This common judgment disposes of Crl. Appeal No. 375 of 2016 filed by the appellants Syed Tahir Shah and Syed Abdul Karim Shah, both sons of Abdul Rehman Shah, against the judgment dated 29th November, 2016 (hereinafter referred as, "the impugned judgment") passed by learned Sessions Judge, Noshki in Murder case No. 22/2015 (hereinafter as, "the trial Court"), whereby the appellants were convicted under section 302(b) and sentenced to suffer life imprisonment each and to pay fine of Rs.500,000/- (Rupees Five Lacs) each as contemplated under section 544-A, Cr.P.C. the benefit of section 382-B, Cr.P.C. is extended in favour of accused/appellants. The Criminal Revision Petition No.41/2016 has been filed by the complainant Syed Abdul Ghaffar Shah, for enhancement of sentences awarded to the accused/respondents.

2. Brief facts of the case are that the complainant namely Syed Abdul Ghaffar Shah son of Syed Aurangzaib Shah registered FIR No.56/2015 under section 302 Qisas and Diyat read with section 34, P.P.C. at Police Station, Noshki stating therein that on 18th September, 2015 he was present in his house, meanwhile a lady came and informed him that the dead body of his sister namely Bibi Saleema is hanged in a hut. On receipt of such information, he along with his son namely Abdul Basit went to the house of his sister, where Qazi Abdul Salam, Zafar Ahmed and Dr. Shadi Khan were already present, while the dead body of his sister was lying down. They informed him that his sister has committed suicide by strangulating and her dead body was taken down earlier. He along with his son took the dead body of his sister to Civil Hospital, Noshki for medical examination, where the medical Officer conducted examination. Since no facility of postmortem was available at the hospital, therefore, he took

the dead body back and buried her. After burial, he remained busy in Fateha Khuwani, however, earlier there were disputes between her sister and her husband Tahir Shah, due to which he tried to kill her, but has failed to do so. His sister along with her two sons and her husband were living in the house of his son namely Zahoor Ahmed Shah despite the same the behavior of her husband was not good with her. On 17th September, 2015 her sister informed him that accused Karim Shah has threatened her to leave the house failing which she will be killed. Complainant asked Karim Shah regarding the threats advanced to her sister, whereupon he apologized and said that he was joking with her. His sister telephonically satisfied him that the matter has been resolved and afterwards Tahir Shah and Karim Shah have committed the murder of her sister Bibi Saleema and they by concealing the murder had hanged her dead body. According to medical report death was occurred due to suffocation and there is nothing on record about committing suicide.

3. In pursuance of the above FIR, investigation was conducted by PW-11, Ghulam Qadir, SI/Ist IO, who during investigation visited the place of occurrence and prepared site sketch through Patwari; recorded the statements of witnesses under section 161, Cr.P.C., took into possession the copies of proceedings carried out under section 174, Cr.P.C. by SHO; arrested the appellants on 23rd September, 2015; obtained medical certificates from the hospital. The PW-14 Naseebullah, SI is the second I.O. of the case, who during investigation recorded the statements of witnesses Qazi Abdul Salam and Dr. Shadi Khan under section 161, Cr.P.C.; obtained CDR of mobile of the appellant; took into possession 2-GB memory Card and on completion of investigation submitted the challan in the trial Court. PW-15 is the SHO of Police Station Noushki, who on receipt of information went to hospital and carried out proceedings under section 174, Cr.P.C.; handed over the dead body to the brother of deceased through receipt; took into possession one number Shalwar belt, a piece of wire; took into possession the blood stained clothes of deceased; recorded the statements of witnesses under section 161, Cr.P.C.; prepared site map and entered all the proceedings in the Roz Namcha of Police Station.

4. At the trial the prosecution produced three (15) witnesses, whereafter the appellants were examined under section 342, Cr.P.C. They did not record their statements on oath under section 340(2), Cr.P.C., but produced a witness in their defence. On conclusion of trial and hearing arguments, the trial Court awarded conviction to the appellants as mentioned above. Whereafter the appellant has filed the instant appeal, while Criminal Revision Petition has been filed by the complainant for enhancement of sentence awarded to the appellants.

5. The learned counsel for the appellants contended that the impugned judgment passed by the learned trial Court suffers from mis-reading, non-reading and mis-appreciation of evidence; that there is no direct evidence available on record to connect the appellants with the commission of offence; that the case of prosecution is totally based on circumstantial evidence, which is not corroborated by any other independent piece of evidence; that the medical reports do not support the prosecution version; that there are glaring contradictions in the statements of PWs, which creates serious doubts in the case of prosecution; that the learned trial court failed to extend benefit of doubts in favour of the appellants; that the defense version was discredited by the learned trial Court without discussion; that the prosecution has failed to prove its case against the appellants beyond the shadow of doubt, as such, the impugned judgment is liable to be set aside.

6. On the other hand, the learned DPG assisted by the learned counsel for the complainant/petitioner strongly opposed the arguments so advanced by the learned counsel

for the appellants and contended that the prosecution has successfully proved its case against the appellants beyond the shadow of any doubt; that there are sufficient evidence available on record to connect the appellants with the commission of offence; that the evidence as well as recovery of articles so produced by the prosecution connect the appellants with the commission of offence; that the defence has failed to prove its innocence through reliable confidence inspiring evidence; that the trial Court after proper appraisal of evidence had rightly convicted the appellants for commission of offence, however taken leniency and awarded lesser punishment to the appellants; they further requested for enhancement of sentences awarded to the appellants.

7. Heard the learned counsel for the parties and perused the record minutely, to substantiate its case the prosecution produced PW-1 Abdul Ghaffar Shah, complainant, who is the brother of deceased, saying that the accused Tahir Shah and his wife had no good relationship with each other, they used to quarrel. PW-2 Shadi Khan on the day of incident was present in the vicinity and one lady wife of Zahoor Ahmed Badini told him that mother of Naveed Ahmed Shah has committed suicide, whereupon he along with Abdul Salaam rushed to the said hut and saw the dead body of deceased hanging over there, he cut the belt of Shalwar with a scissors and the dead body of the deceased fell down on ground. PW-3 Naveed Ahmed son of Tahir Shah appellant and the deceased deposed that his father was having bad relationship with his mother (deceased). PW-4 Nasir Sattar, on the day of incident at about 10:00 a.m. was going to Azad Foundation School on motorcycle to submit school fee of his sons while on his way he saw the accused Tahir Shah coming out from his house and boarded on his motorcycle. PW-5 Waheed Shah son of deceased and accused Tahir Shah deposed the same facts as stated by his brother Naveed Shah. PW-5 Waheed Shah is also witness of Ex.P/5-A memory card, wherein recorded the conversation of his mother deceased with his maternal uncle Abdul Karim Shah and the same was handed over to the Investigating Officer. PW-6 Dr. Fareed Ahmed Sahibzada examined the dead body of the deceased and issued death certificate wherein stated that the death caused due to suffocation and homicide. PW-7 Abdul Salam deposed the same facts as stated by the PW-2 Shadi Khan. PW-8 Nabi Bakhsh, Patwari prepared map of occurrence. PW-9 Muhammad Ali deposed that in the year 2015 he took his cheque and proceeded to National Bank to get his salary and was going on foot and during such time he saw appellant Tahir Shah having sitting in a hotel and taking tea. PW-10 Manzoor Ahmed, who on the day of alleged incident found appellant Tahir Shah at Masjid Road, met with him with regard to resolve dispute in between accused and his sons. PW-11 Waheed Ahmed Constable, recovery witness of recovery memo Ex.P/11-A, CDR copies in respect of mobile numbers relating to accused and Abdul Karim Shah. PW-12 Mst. Nehal Khatoon alias Tabraiz sister of deceased deposed the same facts as narrated by the Naveed Shah and Waheed Shah. She also carried out the bath of dead body and observed certain injuries on the neck of the deceased. PW-13 Ghulam Qadir Rind, SI, who investigated the matter, later on it was further investigated by PW-14 Naseebullah SI and then PW-15 Ghulam Mohi-ud-Din SHO he is also Investigating Officer of the case.

8. It has been observed that the learned trial Court while awarding the impugned judgment has formulated two points for determination of the case, which reads as under:

1. Whether on 18th November, 2015 the deceased Bibi Saleema committed suicide or incident was a homicide?
2. What offense, if any, is made out?

To resolve the above points the learned trial Court based its judgment on the following evidence;

Circumstantial witnesses.

Documentary evidence (MLC).

Recovery of belt of Shalwar/Narrah and electricity wire.

Other circumstantial witnesses who made their deposition with regard to having bad relation of Tahir Shah accused with deceased.

10. We have also gone through the findings of the learned trial court towards the point of determination in light of aforesaid evidence, but however applied our own judicial mind towards moot question of the case that the death of the deceased infact was not disputed, but, however, manner of death is disputed by both the parties. The prosecution version is that the death of deceased was unnatural and homicide, while on the other hand defense version is that the death was caused due to suicide. Be that as it may, we are supposed to "Sift the grain from Chaff". Admittedly, the occurrence is unseen and no ocular direct evidence is available on record to prove the case on ocular account. However, entire case of the prosecution rests upon the circumstantial as well as medical evidence and recovery of articles.

11. To resolve the moot question of cause of death we have to adjudge the conduct of the parties PW-1 Abdul Ghaffar Shah is the real brother of deceased, who stated in his Fard-e-Bayan Ex.P/1-A that on 18th September 2015, he was present in his house. Meanwhile a lady came and informed him that the dead body of his sister namely Bibi Saleema is hanging in a hut. On receipt of such information he along with his son namely Abdul Basit rushed to the house of his sister, where Qazi Abdul Salam, Zafar Ahmed and Shadi Khan were already present, while the dead body of his sister was lying on the ground and people present there informed the complainant that his sister has committed suicide. He further deposed that thereafter he took the dead body to Civil Hospital Noshki for medical checkup, where the Medical Officer conducted the examination. Since no facility of postmortem was available at the hospital, therefore, he took the dead body back and buried her and after burial, he remained busy in taking "Fateha". He also submitted in his Fard-e-Bayan that prior to the incident his sister had phoned him that the accused/appellant Abdul Karim has threatened her to left the house otherwise she will be killed. However, later on his sister told him that the matter has been resolved. He further explained the reasons for delaying in lodging FIR against the appellants and stated that after receiving the medical reports wherein it was held that the cause of death of his sister was not suicide but homicide and suffocation. On confirmation by the report of doctor he lodged FIR against the appellants on 23rd September, 2015. The record reveals that he was subjected to lengthy cross-examination, but the complainant remained firm on all material counts.

12. PW-2 Shadi Khan corroborated the statement of PW-1 with regard to the occurrence and his presence at the place of occurrence on 18th September, 2015 at 10.00 O'clock. He further stated that at about 10 a.m. three ladies came out from the house of appellant Tahir Shah and one lady i.e. wife of Zahoor Ahmed told them that the mother of Naveed Shah has committed suicide. On such information, he along with PW-7 Abdul Salaam rushed to the house of the appellant Tahir Shah and found the dead body of the deceased was hanging in the hut, and he by means of scissors cut the Narrah due to which dead body of the deceased fell on the ground. He further deposed that he then informed Naveed Shah son of deceased

and Tahir Shah and Qazi Abdul Salam PW-7 informed the Tahir Shah on phone. Despite lengthy cross-examination defense has failed to shake his statements.

13. PW-3 Naveed Ahmed son of appellant Tahir Shah and deceased stated in his statement that from the beginning the relation of his parents were not good and his father often used to torture his mother and even beaten her every time. He further deposed that prior to the incident he and his mother (deceased) were present in the house when his uncle Abdul Karim Shah came there and his mother explained how she lived with her husband physical torture attitude. PW-3 also recorded the story confidentially and thereafter he has given the same audio to his maternal uncle. He further deposed that on the day of incident he was sitting in the hotel of one Ghulam Nabi at Masjid road, when he came out of hotel, he was called by Shadi Khan at about 10:07 a.m. to come home as his mother is not feeling well, upon which he and Manzoor Ahmed on his motorcycle reached to the house and found her mother was dead. He witnessed the recovery of one piece of wire tied with small piece of Narrah which was taken by the police and sealed in parcel No.1. He is also witness of the clothes i.e. one Dopatta and Qameez of her mother taken into possession by the SHO and sealed in parcel No.2. He also witness of inquest report Ex-P/3-B, memo of a piece of site inspection Ex.P/3-D, memo of a piece of electricity wire and string Ex.P/3-E, all the aforesaid articles were also produced before the trial Court in his presence. He also admitted in his cross-examination that his statement was recorded by the police on 29th September, 2015. He denied that due to his drug addiction his mother under depression committed suicide. He also admitted in his cross-examination that he was arrested by the police in the instant case and he remained in police custody for 7 to 8 days. He denied that appellant was implicated falsely.

14. PW-4 Nasir Sattar is the only last seen independent witness of the case. He deposed in his statement that on 18th September, 2015 at about 10.00 a.m. he was going to Azad Foundation School to deposit fee of his children, and when he reached near the house of appellant Tahir Shah, the appellant came out from his house and boarded on his motorcycle. The statement of this independent witness established the presence of appellant at the place of occurrence at 10.00 a.m. i.e. in his house. He denied all the questions put to him during cross-examination. However, the defense has failed to put any question with regard to false implication of the appellants.

15. Next important witness is PW-5 Waheed Shah who is also son of appellant Tahir Shah and the deceased, corroborated the statement of his brother PW-3 Naveed Shah on all material counts regarding the ill-treatment by the appellant. He further deposed that he was at Quetta when his father called him and forbade not to come home on Eid as there would be no Eid in the house. He further deposed that on 1st October, 2015, he along with his maternal uncle Abdul Ghaffar Shah and his son Abdul Basit went to police Station where they have given one micro SDB memory Card to the Investigating Officer, in which the conversation of her mother was recorded wherein she was telling his paternal uncle about the torture and problems being faced by her and the same memory card is taken into possession by the Investigating Officer and produced before the Court as Article Ex.P/9. He denied the question put to him that due to addiction of his brother Naveed Shah his mother has committed suicide.

16. The main important witness is PW-12 Mst. Nehal Khatoon she is the sister of deceased Bibi Saleema. She in her statement corroborated the statements of PW-1, PW-3 and PW-5 regarding the ill-treatment meted by her sister on the part of her husband due to which her sister remained ill and was under depression and due to such ailment once she was

admitted to Hospital in Quetta and her husband neither visited her nor asked for her welfare. She further deposed that she carried out the bath of dead body of deceased and found two inches inside wound on her left neck side and also observed certain injuries on her person.

17. Learned counsel for the appellants tried to discredit her statement firstly by saying that the name of Mst. Nehal Khatoon was not mentioned in the list of witnesses submitted along with challan by the Investigating Officer before the trial court and secondly the name of one Tabreez Khatoon is mentioned instead of Nehal Khatoon and they are two different ladies. We have perused the record as well as cross-examination, wherein Nehal Khatoon categorically stated that name of Tabreez Khatoon is her name of childhood. In reply to another question put to Mst. Nehal Khatoon that why they have not lodged any complaint against Tahir Shah Appellant in respect of torture meted by her sister. She voluntarily replied that they are respectable people and they kept the matter to remain up to their home. Record reveals that despite long cross-examination defence has failed to jolt her statement.

18. Now adverting to statement of defense, the appellants have not recorded their statement under section 340(2), Cr.P.C. and Syed Abdul Karim Shah in his statement in reply of question No.13 stated that "I am innocent, I live faraway separately from the co-accused Tahir Shah, I seek justice from this Court. The appellant Tahir Shah while recording statement under section 342, Cr.P.C. replied to question No. 13 stated that he is stenographer in PHE Department at Noshki and performing his duties for the last 23 years and was married with the deceased about 25 years ago; having two sons and further stated his wife often remain sick and was under treatment. On the day of occurrence he was on duty at morning 08:30 a.m., where his attendance was marked in the register, on the said date his wife committed suicide and in this regard he received information at his office at about 10.00 a.m. thereafter he reached to his house. He further deposed that he is falsely implicated in the instant case.

19. He also produced DW-1 Abdul Mannan as defence witness who deposed in his statement that Tahir Shah is working as stenographer in their office, on 18 September, 2015 he was present in the office and the appellant Tahir Shah also came in the office at about 08:45 a.m. and mark his attendance on register and at 10.00 a.m. he went out from the office and said that he was going to his home as he received a phone call. Thereafter, he came to know about the murder of wife of appellant Tahir Shah. He produced copy of attendance registered as Ex.D/1-A. He denied that any cutting was marked in the attendance registered and attendance of Tahir Shah was made in the same. He admitted in his cross-examination at question No.12 that it is correct to suggest that attendance register is prepared from September 2015, while there is no entry in the register from January to August. He denied that the register so produced was purchased and prepared in one day prior.

20. After thorough evaluation of evidence produced by the parties the conduct of the appellant Tahir Shah could be easily adjudged, the statements recorded by the blood relatives of the appellants i.e. real sons of the appellant's Tahir Shah and deceased Bibi Saleema both the sons are natural witnesses and entirely well aware with the overall situation of their home affairs from childhood to till the incident, as such, their depositions with regard to home affairs and relationship of their parents would be mostly natural and reliable on all counts, and could not be thrown out from the consideration merely on the basis of unseen occurrence. Even otherwise, their testimonies were further corroborated by the statement of another blood relative i.e. PW-1 Abdul Ghaffar Shah who also deposed in line and specifically stated that her sister (deceased) told him the excess and tortures of the accused appellant. Moreover,

PW-8 Mst. Nehal Khatoon being elder sister of the deceased has also corroborated the statements of PWs-1, 3 and 5 with regard to the ill-treatment of the appellant Tahir Shah towards deceased Bibi Saleema.

21. The defence during cross-examination mostly put the question to the witnesses that Naveed Shah was addict of drugs and due to such reason the deceased suffers from depression and committed suicide.

22. Now the next question arises that when the incident was took place the occurrence was unseen, but the same was occurred in the house of appellant's Tahir Shah where the deceased lastly residing with him and as per appellant's Tahir Shah explanation under section 342, Cr.P.C. he had left his house for his office and arrived at 08:30 a.m. to his office and marked his attendance in register and deposed that his wife has committed suicide and at 10.00 a.m. after receiving information he reached to his house. In reply to question 12 he specifically stated that his wife committed suicide, but nothing mentioned by the appellant Tahir Shah that for what reason his wife has committed suicide as compared to the plea of the appellant the question asked from entire prosecution witness that his wife has committed suicide due to depression on account of drug addict of his son Naveed Shah, but the defense has failed to prove its version through any sort of evidence, while such version of the defense was negated by the medical evidence whereby it was found that the cause of death of deceased was suffocation and homicide instead of suicide.

23. The arrival of appellant Tahir Shah at the place of occurrence after taking place of incident was also not disputed by the prosecution. However, unnatural conduct of appellant Tahir Shah can be ascertained from his acts. When he arrived at his home and found the dead body of his wife and the people were gathered there, but he did not bother to inquire about the death of his wife from the people who were present there and also didn't bother to inquire from that three ladies who were initially seen the occurrence and informed the PW-2 Shadi Khan and PW-7 Qazi Abdul Salaam. Even Otherwise he didn't inquire from one lady i.e. wife of Zahoor Ahmed Badini. There is no explanation offered by the appellant as to how the dead body was found in the hut. The appellant has not given any explanation as to who informed him that his wife has met with the incident. Furthermore, the appellant did not bother to associate PW-1 Syed Ghaffar Shah the bother of deceased by taking the dead body of deceased to the hospital and even didn't come forward to lodge the report to the police station and thereafter made arrangement of funeral of his wife and taking Fateha of his wife in his house. All such actions of appellant Tahir Shah Prima-facie established his unnatural conduct which could not be done in our traditional society. Unnatural conduct of the appellant coupled with evidence so brought on record by the prosecution witnesses that prior to incident the deceased had reported cruelty could not be demolished. The claim made by PWs regarding cruelty meted by the deceased was not challenged all these circumstances mentioned above prima-facie connect the appellant Tahir Shah with the commission of offence because symptom and signs of case indicates that the death of deceased was not suicide, but was due to suffocation and to homicide in the manner in which occurrence was taken place shows that as per PW-8 Nabi Bakhsh Patwari who prepared the sitemap of occurrence and there was no single tool around the deceased to get support for hanging herself, but such kinds of items were not found in the hut where the offence allegedly taken place. It is also did not appealing to the prudent mind that without availability of such instruments near the dead body, she managed to hang herself with the roof of the hut. Reliance in this regard is place on the case of "Saeed Ahmed v. The State" reported in 2015 SCMR 710. Relevant portion whereof is reproduced as under:-

"In view of the aforesaid it could be safely concluded that the deceased was strangled to death, which rules out the possibility of a natural death or of suicide."

--- The Appellant also elected not to give evidence on oath under section 340(2) of the Code. In his statement under section 342 of the Code he simply declared his innocence and stated that PWs. 6 and 7 had testified against him due to the fact that they were not happy with the marriage of the deceased with him and that they were not present in the house on the fateful night."

"8. In criminal cases it is for the prosecution to establish its case against an accused. It is a fundamental principle of law that the burden of proof is on the prosecution (Article 117 of the Qanun-e-Shahadat Order, 1984). However, in this case the young wife of the appellant, who was living with him, was murdered. The appellant did not participate in her last rites and disappeared for a period of two months. The question that needs consideration is whether such unreasonable conduct of the appellant is of any consequence and also whether certain matters exclusively within his knowledge were not explained by him, that is not informing the police about his wife's murder, not taking her to the hospital, not participating in her last rites and disappearing for a long period of two months. In this regard it would be appropriate to reproduce Article 122 of the Qanun-e-Shahadat Order, 1984, which is identical to the hitherto before section 106 of the Evidence Act, 1872:-

"122. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person the burden of proving that fact is upon him."

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

24. Prima facie it appears that in the light of medical report and circumstances of the case, further corroborated by the statements of PW-8 Nehal Khatoon that there was two inch inside wound was found on the left side of neck of deceased, while as per medical report same was caused by means of sharp weapon, as such, it is suggestive that the murder of deceased was camouflaged by hanging her body by means of electric wires and Narrah to conceal the real cause of death, otherwise the pieces of wire and Narrah could not cut the neck inside two inches inside and it can safely be said in fact the deceased was tortured by means of sharp edged weapon and killed prior to hanging her dead body with roof of hut, because dust of earth was also observed from her hairs, it means that the body was dragged to the place of hanging point.

25. Since admittedly the deceased lady was lastly residing with the appellant Tahir Shah and even otherwise the appellant Tahir Shah did not dispute the presence of his deceased wife in his house till the time of incident and nothing was brought by the appellant on record that even at the last night or early morning any untoward situation was arisen between the parties which caused the death of deceased. Under the such circumstances the appellant Tahir Shah

could not be held innocent being the life partner and inmate of the deceased. Reliance in this regard is placed on the case of "Muhammad Akhram v. The State" reported in 2003 SCMR 855 relevant portion whereof is reproduced as under:-

"Accused had neither denied his presence in his house on the day of occurrence nor offered any explanation as to how and under what circumstances his deceased wife while sleeping with him in a room of his house had sustained injuries with the sharp-edged weapon on the sensitive part of her body---Bare denial of accused of knowledge of occurrence and not offering the required explanation had provided a strong corroboration to the eye-witness account to prove his guilt---Ocular testimony was further corroborated by medical evidence and the recovery of Chhuri at the instance of accused which was found stained with human blood---No direct or circumstantial evidence was available on record to suggest that the accused had acted under sudden provocation---Possibility of exchange of words between the deceased and accused as husband and wife on family affairs would not permit the accused to take such a cruel step of killing his wife---Accused has not even taken any such plea in his defense---No leniency could be given to accused in matter of sentence who on a very petty dispute had committed the murder of an innocent and helpless woman---Leave to appeal was declined to accused in circumstances.---

26. In the overall episode we despite of the thorough examination of record did not find any specific direct or indirect evidence against the co-accused appellant Abdul Karim Shah, that he with furtherance of common intention and with the help of appellant Tahir Shah has committed the murder of deceased Bibi Saleema. Though some of the PWs allegedly deposed that the appellant Abdul Karim was advancing threats to the deceased in her lifetime, but nothing was brought on record to connect the appellant Abdul Karim with the commission of offence, as such, we are of the firm view that the prosecution has failed to prove its case against the appellant Abdul Karim Shah by means of confidence inspiring evidence.

For the above reasons, the appeal is allowed to the extent of appellant Abdul Karim Shah son of Abdul Rehman Shah and he is acquitted of the charge and the impugned judgment dated 29th November 2016 is set-aside to his extent. However, the appeal is dismissed to the extent of appellant Tahir Shah.

As far as Crl. Revision Petition No.41 of 2016 filed by the complainant for enhancement of sentence of the appellants is concerned, the learned counsel for the complainant while half heartedly arguing the matter stated that CDR so brought on record were not discussed in detail by the learned trial Court, as such, he requests for remand of the case. Such contention of the learned counsel for the complainant not only surprising, but also shocking for the reason that the mobile so taken bearing the numbers being used by the appellant and the same numbers were not in the name of he appellant. Even otherwise, the call data brought on record were not suggestive to the commission of crime, as such, contention of learned counsel for the complainant is of no substance, no ground was available to the learned counsel for the complainant for remand of the case, since admittedly mitigating circumstances have already existed between the parties, as such, learned trial Court after proper appreciation of evidence has awarded sufficient sentence to the appellants in accordance with law, as such, the Criminal Revision Petition No 41 of 2016 is dismissed.

JK/109/Bal.

Order accordingly.