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JUDGMENT SHEET

IN THE LAHORE HIGH COURT,

JUDICIAL DEPARTMENT

Criminal Appeal No.271-J of 2010

Mst. Aziz Mai v. The State etc.

JUDGMENT

Date of hearing	14.6.2021
Appellant by:	**Mr. Muhammad Akbar Khan, Advocate with the appellant.**
State by:	**Ms. Noshi Malik, Deputy Prosecutor General.**
Complainant by:	**Rana Nadeem Ahmad, Advocate.**

Muhammad Amjad Rafiq, J:- Appellant Mst. Aziz Mai was tried by the learned Additional Sessions Judge, Ahmad Pur Sial in case FIR No. 315/2009 dated 22.7.2009 registered at Police Station Garh Maharaja, District Jhang for an offence under Section 302 P.P.C. She was convicted and sentenced through impugned judgment dated 21.07.2010 as under:

> Imprisonment for life under Section 302 (b) PPC with payment of compensation of Rs.100,000/- to the legal heirs of the deceased under section 544-A Cr.P.C. and in default thereof to undergo simple imprisonment for a further period of six months. The benefit of section 382-B Cr.P.C. was also extended to her.

2. In the ties of blood being real brother and sister out of a family feud due to a land dispute fueled the fire early in the morning on 22.07.2009 when control over turn of water was disputed; both resorted to a distant wrestling. Grudges on such fight turned fumes into fury and appellant on the same day at about 7:30 am entered the house of complainant and in a state of frenzy inflicted iron blow pipe on the head of seven months' daughter of complainant sitting on a cot, who later succumbed though was taken to hospital.

3. During the investigation, the appellant was found guilty and report under section 173 Cr.P.C. was submitted before the learned trial court. The learned trial court after observing all codal formalities indicted the appellant to which she pleaded non-culpabilis. The

prosecution in order to prove its case produced five witnesses. The appellant in her statement under section 342 Cr.P.C. made a stance that she was falsely implicated in this case just to grab her land. After conclusion of the trial, the learned trial court convicted and sentenced the appellant as mentioned above.

4. Heard. Record perused.

5. Prosecution has put two brothers, Ghulam Rasool complainant PW-3 and Ghulam Abass PW-4 as eye witnesses against the appellant being real sister to substantiate the charges; it is brought on record through evidence that the occurrence took place at 7:30 am but the matter was reported to the police with a delay of 7 hours and that too on the arrival of police at their own, such delay has not been explained; had the witnesses been present, they must have reported the matter to police particularly when injured died after 2/3 hours. The delay on the part of prosecution is fatal which suggests concoction and deliberation and also raises question about the presence of witnesses, at the time of occurrence.

6. Spot recovery is missing in this case; it came into the evidence that the cot upon which allegedly the deceased was sitting, was not taken into possession, nor availability of blood at the crime scene or recovery of blood-stained earth therefrom was shown effected. Investigating Officer had not been produced by the prosecution in support of facts emanating from the registration of F.I.R. routing through post mortem examination till finalization of investigation which is a major lacuna in this case that creates gap in complete chain of events.

7. Dr. Bushra Ibrahim (PW-05) on 22.07.2009 at about 07:00 p.m. conducted the autopsy on the dead body of Mst. Saadia aged about seven months and observed infra:

> **Injury**
>
> An abrasion 1.5 cm x 0.5 cm along with swelling 11 cm x 10 cm on the right side of head with clinical fracture of right temporal, frontal and occipital bones about 2cm from the right ear pinnae.

> She opined that the death in this case was injury No.1 which had caused damage to vital organ, brain, which was sufficient to cause death in ordinary course of nature. Injury was anti-mortem and caused by blunt weapon.
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> The probable time between injury and death was within 2 to 3 hours and between death and postmortem was 9 to 10 hours.

8. Time of death was 09:40 a.m. but postmortem was conducted after about 09-hours and there is no plausible explanation of such delay. The doctor during examination of the dead body found only one injury i.e., an abrasion 1.5 cm x 0.5 cm. As per prosecution case, the injury was caused with iron blow pipe but the doctor in her cross-examination deposed that possibility of receiving the injury by falling cannot be ruled out, yet from a considerable height of 10/15 feet, like as roof etc. To understand the concept of abrasion it is important that description of abrasion may be discussed which is as follows;

> "The abrasion, the most superficial type of injury, is often call a scratch or a gaze. It is the most informative of all injuries. All abrasions can be caused either by an object striking the skin (as in a blow from a fist or a bite from a tooth) or from the body hitting a stationary surface (as in a fall or being flung to roadway by a car). When writing a report for non-medical readers such as Police, lawyers or the courts (or when giving oral testimony) it should be called a scratch, using simple everyday language, avoiding medical jargon.
> Abrasions are forensically most important because they retain the pattern of the causing object better than other type of injury."[1]

The pattern of injury in this case is swelling 11 cm x 10 cm on the right side of head with clinical fracture of right temporal, frontal and occipital bones about 2cm from the right ear pinnae; which shows that right, front and back side of skull is involved in the injury which obviously cannot be caused with an iron blow pipe used domestically to flame the fire. Such type of injury is regarded as ***coup or contre coup injury***; to determine what type of injury in this case is detected, it is important to look into the description of such injuries which are as follows;

> **"*Coup Injury"*** *is one which occurs immediately subjacent to the area of impact. The smaller the impact area, the greater is the likely hood of a coup injury. The effects are immediate resulting in contusion and hemorrhage. As for example, if the head is fixed (in a*

1. Simpson's Forensic Medicine; Tenth addition by Bernard Knight.

> *case where a person is lying on the ground) and there is violent impact over the occiput, the fracture and underlying brain damage will be located beneath the side of impact.*
>
> ***"Contre Coup Injury"** is one which is situated on the contralateral side of the area of impact. It is sustained in falls and traffic injuries when a moving head decelerates suddenly by hitting a hard surface. As for example when a person falls upon the back of his head striking the ground with his occiput, he may sustain brain injury at the site of impact, that is, at the occipital lobes (Coup Injury), and a more pronounced injury at the frontal lobe. The later is known as contre coup injury.*
> ***In short, with blows, the brain shows mush larger contusion underlying the area of impact (Coup) than on the site opposite to impact (Contre coup).***[2]

It is noticed that the injury observed by the doctor during Post mortem is subjacent to the area of impact and not perfectly opposite to it; therefore, it can be regarded as coup injury and not a contre coup; but confusion still persists that an injury with iron blow pipe can cause a simultaneous fracture of temporal, frontal and occipital bones; obviously not. Now if it was caused by falling then there must be a contre coup injury which is missing in this case; it was probably due to the reason that bones of child of this age are soft and elastic and injuries usually cause greenstick fractures; therefore, there must be depressed fracture in this case but doctor observed otherwise. C.K. Parikh has met this situation as under by giving opinion about another type of injury; he says as follows;

> *Sometimes, the location of injury is neither beneath nor fully opposite the point of impact. It is situated in a position between coup and contre coup contusions. It is known as **intermediate coup contusions** and is sustained when the moving head strikes a hard surface.*

Thus, it is clear that injury probably was sustained when head struck against a hard surface, i.e., by falling, yet from a considerable height. Investigating officer didn't appear as witness to prove that there was hard surface at the place of occurrence. Hitting of blow pipe with force cannot cause 1.5 cm x 0.5 cm injury, therefore, medical evidence contradicts with ocular which makes the story of prosecution doubtful.

9. The appellant was arrested on the next day of occurrence. Iron blow pipe recovered at the instance of the appellant was not blood

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[2] Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology; Seventh Edition

stained; therefore, there is no report of the Chemical Examiner. In this way, the recovery is inconsequential rather adverse to the prosecution.

10. Doctor has observed that the scalp was injured and hematoma was present but no blood spots were found on any article or place at the crime scene; even no bandage was shown applied on the wound of the deceased. There is nothing to prove the place of occurrence in this case. Muhammad Shaukat/277-C PW.1 who escorted the dead body has only joined the complainant party in the hospital; therefore, link of dispatching the injured from the crime scene to hospital is also missing which is fatal for prosecution particularly when injured remained alive for 2 to 3 hours.

11. Another aspect that has weaken the prosecution case is that mother of the deceased being natural witness was not produced before the trial court though was present when the occurrence took place; whose presence in the hospital with dead body was also not denied by the prosecution witnesses. It seems that the prosecution has withheld the natural witness, therefore, an adverse inference can be drawn in the circumstances.

12. The motive alleged by the complainant/prosecution has not been proved. Admittedly, turn of water was joint between the parties; no witness was produced to prove the early morning altercation which took place prior to the occurrence over turn of water; therefore, prosecution case lacks information of the circumstance which were immediate or remote cause of occurrence. Article 20 of Qanun-e-Shahadat Order, 1984 explains that the facts relating to occasion, cause or effect are most relevant facts for determination of crime. Cause relates to immediate circumstances prompted the offenders to commit the offence; occasion explains the episode of crime while effect shows the consequences ensued. Similarly, Article 21 of Qanun-e-Shahadat Order, 1984 recognizes the inimical conduct or adverse feelings as relevant facts termed as motive ***(usually a remote cause of occurrence),*** which in the present case have not been brought on record through sound and cogent evidence to strengthen the charge against the appellant.

13. From the facts and circumstances narrated above, I am persuaded to hold that prosecution has failed miserably to bring home guilt of the appellant to the hilt and the learned trial court was not justified in convicting her while relying on shaky and scanty evidence. Resultantly, Criminal Appeal filed by the convict/appellant is **allowed**, the conviction and sentence recorded by the learned trial court against the appellant through impugned judgment dated 21.07.2010 are set aside and she is acquitted of the charge. The appellant is on bail; her surety stands discharged from the undertaken liability.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Approved for reporting.

Judge

Arshad