

HCJDA.38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.13978-J of 2020

Mst. Shaukat Bibi Vs. The State & another

Criminal Appeal No.16609 of 2020

Ansar Iqbal Vs. The State & another

&

Criminal Revision No.17261 of 2020

Ansar Iqbal Vs. Mst. Shaukat Bibi etc.

JUDGMENT

Date of hearing:	10.07.2020.
Appellant, as well as, respondent in Crl. Revision No.17261 of 2020 by:	Mr. Irfan Ghaus Ghumman Advocate.
State by:	Ms. Umm-ul-Baneen, Deputy District Public Prosecutor.
Complainant, as well as, appellant in Crl. Appeal No.16609 of 2020 and petitioner in Criminal Revision No.17261 of 2020 by:	Mr. Sadaqat Mehmood Butt Advocate.

Malik Shahzad Ahmad Khan, J:- This judgment shall dispose of **Criminal Appeal No.13978-J of 2020**, filed by Mst. Shaukat Bibi (appellant) against her conviction and sentence, as well as, **Criminal Appeal No.16609 of 2020**, filed by Ansar Iqbal, complainant against acquittal of Mst. Samina Bibi, accused (respondent No.2 of said appeal) and **Criminal Revision No.17261 of 2020**, filed by Ansar Iqbal (complainant) for enhancement of sentence awarded to Mst. Shaukat Bibi (respondent No.1 of said

criminal revision), from imprisonment for life to death, as all these matters have arisen out of the same judgment dated 14.02.2020, passed by learned Additional Sessions Judge, Daska.

2. Mst. Shaukat Bibi (appellant) along with her co-accused, namely, Mst. Samina Bibi was tried in case F.I.R. No.592 dated 24.07.2019, registered at Police Station City Daska, District Sialkot in respect of offences under sections 302/34/201 PPC. After conclusion of the trial, the learned trial Court *vide* its impugned judgment dated 14.02.2020, has convicted and sentenced the appellant as under: -

Under section 302(b) PPC to imprisonment for life.

Benefit of section 382-B Cr.P.C was also extended to the appellant.

Through the same impugned judgment, Mst. Shaukat Bibi, appellant was however, acquitted from the charges under sections 201, 34 PPC whereas, co-accused of the appellant, namely, Mst. Samina Bibi (respondent No.1 of Crl. Appeal No.16609/2020) was acquitted from all the charges under sections 302(b), 34 and 201 of PPC

3. Brief facts of the case as given by Ansar Iqbal (complainant/PW-5) in his complaint Ex.PD, on the basis of which formal FIR Ex.PA was chalked out, are that on 23.07.2019, real brother of the complainant, namely, Muhammad Amjad (deceased) was present in his rented house situated in Village Bharokey alongwith his children, wife (Mst. Shaukat Bibi, appellant), and sister-in-law Mst. Samina Bibi (co-accused since acquitted). At about 2:30 A.M. (night), the complainant received an information about a quarrel between his brother Muhammad Amjad (deceased) and his wife Mst. Shaukat Bibi (appellant). On this information, the complainant alongwith his other brother, namely, Shahzad (PW.6) reached in the house of his brother (Muhammad Amjad deceased). They saw that Muhammad Amjad (deceased) was sitting on a cot and within their view, Mst. Shaukat Bibi (appellant) gave first blow of 'Danda'

(club) on the head of Muhammad Amjad (deceased) which resulted into bleeding. Mst. Shaukat Bibi (appellant) then gave second blow of '*Danda*' (club) on the head of Muhammad Amjad (deceased) whereupon he fell down. Mst. Shaukat Bibi (appellant) and Mst. Samina Bibi (co-accused since acquitted) thereafter gave repeated '*Danda*' (club) blows which landed on the head and different parts of the body of Muhammad Amjad (deceased). Ansar Iqbal (complainant/PW.5) and Shahzad (PW.6) took Muhammad Amjad (deceased) to the Civil Hospital, Daska in injured condition from where he was referred to the Civil Hospital, Gujranwala and then to the General Hospital, Lahore where Muhammad Amjad succumbed to the injuries. It was further alleged in the FIR that the accused persons alongwith children, mobile phone and SIM left the above mentioned house for Chawinda City after washing the place of occurrence for screening themselves off from the offence.

Motive behind the occurrence was that Mst. Shaukat Bibi (appellant) firstly separated her husband Muhammad Amjad (deceased) from his parents and started living separately. She (appellant) thereafter wanted to shift to Chawinda City but Muhammad Amjad (deceased) was not ready for this and due to the said grudge, the appellant and her sister Mst. Samina Bibi (co-accused since acquitted) committed his murder.

4. The appellant was arrested in this case by the police on 27.07.2019 and after completion of investigation, the challan was prepared and submitted before the learned trial Court. The learned trial Court, after observing legal formalities, as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant and her co-accused on 25.10.2019 to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced thirteen witnesses during the trial. The statement of the appellant under section 342, Cr.P.C was recorded, wherein she refuted the allegations levelled against her and professed her innocence. While answering to a question that why

this case against you and why the PWs have deposed against you, the appellant replied as under:-

“The occurrence did not take place as set out by the prosecution. All the PWs are interested closely related and are inimical towards me. PW.5, PW.6 and PW.7 are real brothers, whereas, PW.8 is Mamoon Zad of complainant, whereas, PW.12 is Behnoi of complainant and PW.9 is friend of complainant.

I was married with the deceased since 18/19 years and from our wedlock, 06 daughters and one son were born. During this period, there was no quarrel and difference between us about any aspect. My deceased husband used to work of cooking in marriages and other functions etc., and he had an independent shop/business at Daska. On 15.07.2019, I was admitted in Civil Hospital Daska and 16.07.2019, I gave birth to a daughter there and I was discharged on the same date. My real sister Samina Bibi, co-accused had come there to care me and she was with me in my house.

In fact, on the day of occurrence, my husband (deceased) took my daughter Maryam Bibi, student of 7th Class out of house and at evening time, my daughter Maryam Bibi told me that while coming to the house along with deceased during crossing the road of canal bridge Bharoke, he fell down on the road and a vehicle while passing smashed his head and consequently he received serious head injury, and her uncle Ansar Iqbal (complainant), brother of deceased attracted there and took him to a hospital for treatment, and she also complained serious pain in her abdomen and she was also taken to Sajid Hospital Daska and during ultrasound, it was found that she was pregnant. Upon her reaching at home, I inquired about the matter and she deposed that my deceased husband used to commit sexual intercourse with her by extending threats of dire consequences on gun point. Thereafter due to that injury, the deceased expired. The complainant while joining hands with the PWs and local police while converting an accident into murder case, involved me, my real sister co-accused Samina Bibi, my father, my brothers and other relatives in

this case so that we could not be able to pursue the case and to grab the property of my deceased husband. During the course of investigation, my daughter Maryam Bibi appeared before the police and narrated the above said version. No independent witness of locality as well as inmate of the house came forward to support the prosecution version. It is pertinent to mention here that I was unable to move frequently in those days as I had given birth to a daughter. I and my sister Samina Bibi, co-accused, had never committed any offence, rather no offence was committed in my house. I along with my sister have been falsely roped in this false case for ulterior motive. The local police only arrested us and sent to lock up and they did not conduct investigation and recorded our version correctly while joining hands with the complainant party.”

The daughter of the appellant, namely, Maryam Bibi appeared in the defence of the appellant and got recorded her examination-in-chief as DW.1. Her cross-examination was reserved on 15.01.2020 on the request of learned DDPP and learned counsel for the complainant but thereafter, she admittedly died, therefore, she could not be cross-examined. No other witness was produced by the appellant or Mst. Samina Bibi (co-accused since acquitted) in their defence, however, they produced application moved by Ansar Iqbal (complainant) for registration of FIR as Ex.DA and certificate issued by the Senior Registrar, Department of Neurosurgery General Hospital, Lahore as Mark “A” and closed their defence evidence.

5. The learned trial Court *vide* its judgment dated 14.02.2020, found the appellant guilty, convicted and sentenced her as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that the appellant is absolutely innocent and in order grab the property of Muhammad Amjad (deceased), Ansar Iqbal (complainant/PW.5) and Shahzad (PW.6) who are real brothers of the deceased, have

falsely implicated the appellant in this case; that the prosecution eye-witnesses could not give any valid reason for their presence in the house of occurrence at the odd hours of night, therefore, their evidence is not worthy of reliance; that there are material contradictions in the statements of the prosecution eye-witnesses and their evidence has wrongly been believed by the learned trial Court; that the conduct of the prosecution eye-witnesses is highly unnatural because according to their evidence, they alongwith Muhammad Amjad (deceased) were comprising of three male adult members but they did not apprehend the appellant and her sister who were two female members and were not carrying any lethal weapon at the time of occurrence; that the recovery of '*Danda*' (P-3) was planted against the appellant in order to strengthen weak prosecution case and the said recovery has rightly been disbelieved by the learned trial Court in Para No.15(b) of the impugned judgment; that motive of the prosecution case has also not been proved in this case through any reliable evidence and even otherwise, it does not appeal to a prudent mind that only on account of refusal to shift to Chawinda City by the deceased, the appellant alongwith her sister would commit the murder of her husband; that the prosecution witnesses also made dishonest improvements in their statements in respect of the motive part of the occurrence by stating before the learned trial Court that Muhammad Amjad (deceased) restrained the appellant from allowing Shahzaman alias Kala and Kashif alias Kashi to come to his house as they had illicit relationship with Mst. Samina Bibi (co-accused since acquitted) and with daughter of the appellant, namely, Maryam Bibi, whereas no such motive was mentioned in the FIR; that even the motive evidence of the prosecution has been disbelieved by the learned trial Court in Para Nos.14 (a) (e) and 28 of the impugned judgment; that in-fact Muhammad Amjad (deceased) died due to a road accident and this fact has duly been proved through the report of Senior Registrar of Neurosurgery Department of General Hospital Lahore, which was produced in defence evidence as Mark "A"; that

in the said document (Mark "A"), the words R.T.A (Road traffic accident) have been written and if the prosecution witnesses accompanied the deceased to the hospital then why did they give the information to the concerned staff of the hospital that the deceased sustained injuries due to a road accident and the said fact has created further doubt in the prosecution case; that the prosecution miserably failed to prove its case against the appellant beyond the shadow of doubt, therefore, this appeal may be accepted and the appellant may be acquitted from the charge.

7. On the other hand, it is argued by the learned Deputy District Public Prosecutor assisted by learned counsel for the complainant that the prosecution has proved its case against the appellant beyond the shadow of any doubt; that ocular account of the prosecution was produced through Ansar Iqbal (complainant/PW.5) and Shahzad (PW.6) who stood the test of lengthy cross-examination but their evidence could not be shaken; that their evidence is fully supported by the medical evidence produced through Dr. Irfan Ikram (PW.4) and postmortem report of the deceased Ex.PC; that motive of the prosecution story was also proved in this case through reliable and confidence inspiring evidence of Ansar Iqbal (complainant/PW.5) and Shahzad (PW.6); that the prosecution case was further corroborated by the recovery of bloodstained '*Danda*' (P-3) on the pointation of the appellant; that the appellant took a specific plea in her statement recorded under section 342 Cr.P.C. that her husband Muhammad Amjad (deceased) died due to a road accident but she did not produce any evidence in support of her above mentioned plea, therefore, she was rightly convicted and sentenced by the learned trial Court; that the appellant also leveled allegation of rape of her daughter, namely, Mst. Maryam Bibi against her husband Muhammad Amjad (deceased) but even the said allegation was not proved by the appellant, thus, an adverse inference was rightly drawn against the appellant by the learned trial Court. While arguing Criminal Revision No.17261 of 2020 for enhancement of sentence of Mst. Shaukat Bibi (convict) it is argued by learned

counsel for the complainant that there was no mitigating circumstance in this case, therefore, Mst. Shaukat Bibi may be awarded the normal penalty of death. Insofar as, Criminal Appeal No.16609 of 2020, filed against acquittal of Mst. Samina Bibi (co-accused) is concerned, it is contended by learned counsel for the complainant that learned trial Court has wrongly acquitted the above mentioned accused vide the impugned judgment whereas ample evidence was available against her in the shape of ocular account produced by the prosecution through Ansar Iqbal, complainant (PW.5), Shahzad (PW.6) and medical evidence of Dr. Irfan Ikram (PW.4), therefore, said Mst. Samina Bibi, co-accused may also be convicted and sentenced in accordance with the law.

8. Arguments heard and record perused.

9. The detail of the prosecution case as set forth in the FIR (Ex.PA) and in the complaint (Ex.PD), has already been given in paragraph No.3 of this judgment, therefore, there is no need to repeat the same.

10. The ocular account of the prosecution was produced through Ansar Iqbal, complainant (PW.5) and Shahzad (PW.6). It is noteworthy that as per prosecution case, the occurrence in this case took place in the house of Mst. Shaukat Bibi (appellant) and her husband Muhammad Amjad (deceased) at the odd hours of night i.e. on 23.07.2019 at 2:30 A.M. Both the above mentioned eye witnesses are admittedly not residents of the house where the occurrence took place and they were living in a separate house which was situated at a distance of 10-minutes from the house of occurrence, as stated by Shahzad (PW.6). The presence of the above mentioned eye-witnesses at the spot at the relevant time was not natural. It was, therefore, mandatory for the above mentioned eye witnesses to justify their presence in the house of the occurrence at the odd hours of night through some cogent reason. In order to justify their presence at the spot at the relevant time, both the above mentioned eye witnesses stated that on the night of

occurrence, they received information regarding a quarrel which took place between the appellant and her husband Muhammad Amjad (deceased) whereupon they reached in the house of occurrence. Both the above mentioned eye witnesses did not disclose that as to how and through whom they received the information regarding the above mentioned quarrel. Ansar Iqbal (complainant/PW.5) has conceded during his cross-examination that he had not mentioned the name of the person who informed him regarding the quarrel between the appellant and the deceased. He further conceded that he did not mention the contact number of the informer and throughout the investigation, he never disclosed the name and number of said person. He also conceded that he was not informed about the above mentioned quarrel by his deceased brother. The relevant parts of his statement read as under:

“It is correct that I have not mentioned the name of the person, who informed me about the quarrel between my brother and his wife. It is correct that I have also not mentioned the contact number of said informer. Throughout the investigation, I never disclosed the name and number of the person, who informed me about the quarrel.”

“My brother (victim) did not apprise me through telephone about the quarrel. On getting information about quarrel telephonically, I did not reciprocated through telephone to our deceased brother to know the situation.”

Shahzad (PW.6) stated that information regarding the above mentioned quarrel was received by his brother Ansar Iqbal (complainant/PW.5) whereupon, he alongwith the complainant proceeded to the house of Muhammad Amjad (deceased). Relevant part of his statement in this respect is reproduced hereunder:-

“Stated that during the intervening night of 22nd & 23rd of July, 2019, my real brother Muhammad Amjad was present at rented house situated in Bharokay alongwith his children, wife and sister-in-law (سالی) Mst. Samina Bibi. At about 02:30 a.m. my brother Ansar Iqbal got an information that my brother Amjad had quarrel with his wife Mst. Shaukat Bibi (present in the Court), whereupon, I alongwith my brother Ansar Iqbal rushed to the house of my brother Amjad.....”

It is, therefore, evident from the perusal of statements of the above mentioned eye-witnesses that Shahzad (PW.6) received information about the alleged quarrel between the appellant and the deceased through Ansar Iqbal (complainant/PW.5) whereas, Ansar Iqbal, complainant did not disclose throughout the investigation, the name or phone number of the person through whom he received the above referred information. Both the above mentioned eye witnesses, therefore, could not justify the reason given by them for their presence in the house of the occurrence at the odd hours of night. They are therefore, chance witnesses and as such their evidence is not free from doubt. The Hon’ble Supreme Court of Pakistan in the case of “Mst. Sughra Begum and another Vs. Qaiser Pervez and others” (2015 SCMR 1142) at Para No.14, observed regarding the chance witnesses as under:-

“14. A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime

scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.”

Likewise, in the case of “Sufyan Nawaz and another Vs. The State and others” (2020 SCMR 192) at Para No.5, the Apex Court of the country was pleased to observe as under:-

“.....He admitted that in his statement before police, he had not assigned any reason for coming to village on the day of occurrence. In these circumstances, complainant Muhammad Arshad (PW.7) is, by all means, a chance witness and his presence at the spot at the relevant time is not free from doubt.”

Similar view was taken in the case of “Muhammad Irshad Vs. Allah Ditta and others” (2017 SCMR 142). Relevant part of the said judgment at Para No.2 reads as under:-

“.....Muhammad Irshad complainant (PW8) and Rab Nawaz (PW9) were chance witnesses and the stated reason for their presence with the deceased at the relevant time had never been established before the trial court through any independent evidence.....”

As the above mentioned prosecution eye-witnesses are chance witnesses and they could not prove the reason of their presence at the spot at the time of occurrence, therefore, their very presence in the house of occurrence at the relevant time becomes doubtful.

11. It is further noteworthy that conduct of the above mentioned eye-witnesses is highly unnatural. According to the evidence of the said eye-witnesses, the complainant party was comprising of three male adult members (Muhammad Amjad deceased, Ansar Iqbal complainant/PW.5 and Shahzad/PW.6), whereas, the accused party was comprising of only two female members, namely, Mst. Shaukat Bibi (appellant) and her sister Mst. Samina Bibi (co-accused since acquitted). The appellant and Mst. Samina Bibi (co-accused) were carrying '*Dandas*' (clubs) and they were not armed with any lethal weapon like pistol or gun e.t.c, to terrify the prosecution eye-witnesses from saving their brother Muhammad Amjad (deceased), when he was allegedly attacked by the appellant and her sister. Shahzad (PW.6) stated during his cross-examination that at the time of infliction of first blow of '*Danda*' by Mst. Shaukat Bibi (appellant) at the deceased, he and his brother Ansar Iqbal (complainant) were standing at a distance of only seven feet from the appellant. The relevant part of his statement in this respect reads as under:-

“At the time of conducting of first blow by accused Shaukat Bibi, we were standing at the distance of about 7ft.”

Likewise, Ansar Iqbal complainant (PW.5) stated in this respect as under:-

“We were at the distance of about 6/7 ft from the injured,”

It is not understandable that if the above mentioned eye-witnesses, who were real brothers of Muhammad Amjad (deceased), were present at the time of occurrence, then as to why they did not interfere to rescue their brother when they were standing at a distance of only 7-feet from the appellant at the time of infliction of fist '*Danda*' blow to the deceased. They allowed the appellant and her sister Mst. Samina Bibi (co-accused since acquitted) to inflict second blow and then repeated blows on the body of the deceased

and they kept on standing as silent spectators. Even they did not try to apprehend Mst. Shaukat Bibi (appellant) or Mst. Samina Bibi (co-accused since acquitted) after the occurrence.

I may refer here the case of “Liaquat Ali Vs. The State” (2008 SMCR 95), wherein at Para No.5-A of the judgment, the Hon’ble Supreme Court of Pakistan was pleased to observe as under:-

“Having heard learned counsel for the parties and having gone through the evidence on record, we note that although P.W.7 who is first cousin and brother-in-law of Fazil deceased claims to have seen the occurrence from a distance of 30 ft. (as given in cross-examination) and two other witnesses namely Musa and Ranjha were also attracted to the spot but none rescued Fazil deceased and appellant had a free hand to inflict as many as 9 injuries on his person. The explanation given by these witnesses that since Liaquat Ali had threatened them therefore, they could not go near Fazil deceased to rescue him is repellant to common sense as Liaquat Ali was not armed with a fire-arm which could have scared the witnesses away. He was a single alleged assailant and if the witnesses were there at the spot they could have easily overpowered him. This makes their presence at the spot doubtful.”

Similar view was reiterated by the august Supreme Court of Pakistan in the cases of “Pathan Vs. The State” (2015 SCMR 315) and “Zafar Vs. The State and others” (2018 SCMR 326). Under the circumstances, it cannot be safely held that both the above mentioned eye-witnesses were present at the spot at the relevant time and they had witnessed the occurrence.

It is also noteworthy that the evidence of above mentioned eye-witnesses does not appeal to a prudent mind because if the appellant and her sister had made a plan to commit the murder of Muhammad Amjad (deceased) inside their house at the odd hours of night (2:30 A.M.) then they did not have to wait till the arrival of

above mentioned witnesses to start the occurrence, so that the said witness may give evidence against them before the police/Court. In the case of “Irshad Ahmed Vs. The State” (2011 SCMR 1190), at Page No.1193, the august Supreme Court of Pakistan has observed as under:-

“Mukhtar Ahmed complainant (P.W.1) was the father of Shehzad Ahmed deceased whereas Shaukat Ali (P.W.2) was a brother of the complainant and a paternal uncle of the deceased. The occurrence in this case had taken place far away from the houses of the said witnesses and they had statedly seen the occurrence when they were in search of the deceased. **We have found it to be quite strange that if the appellant had to murder the deceased then he did not have to wait for arrival of the said witnesses for starting infliction of injuries upon the deceased.** It is also noticeable that despite their claimed presence at the scene of the crime at the relevant time the said eye-witnesses had not tried to stop the appellant from inflicting injuries upon the deceased especially when the appellant was not armed with any firearm to ward the said eye-witnesses off or to keep them away.”

(Bold and underlining is supplied for emphasis)

I am, therefore, of the considered view that the prosecution story does not appeal to common sense and the same is highly doubtful.

12. I have further noted that there are material contradictions in the statements of the prosecution eye-witnesses. Ansar Iqbal (PW.5) stated that after witnessing the occurrence, he filed a crime report in the police station on the same day whereas the occurrence in this case took place on 23.07.2019 at 2:30 A.M. and the FIR was lodged on 24.07.2019 at 11:40 A.M. On the other hand Shahzad (PW.6) stated during his cross-examination that they (PWs) did not inform the police about the occurrence on the day of occurrence and straightaway escorted the injured to THQ Hospital, Daska. He further stated that the police was not informed even at THQ Hospital, Daska, at Civil Hospital, Gujranwala or even at General

Hospital, Lahore. Furthermore, Ansar Iqbal complainant (PW.5) stated that there was no ‘Chaddar’ (bed sheet) on the cot where Muhammad Amjad (deceased) was lying at the time of occurrence whereas, Shahzad (PW.6) stated during his cross-examination that there was a ‘Chaddar’ (bed sheet) lying on the cot of his brother. It is also noteworthy that no bloodstained ‘Chaddar’ has been recovered in this case by the police. The relevant parts of the contradictory statements of the prosecution eye-witnesses are reproduced hereunder for ready reference:-

Ansar Iqbal, complainant (PW.5)

- (i) **“After witnessing the occurrence, I filed crime report in the Police Station on the same day. The police came to the place of occurrence on the same day.** On that day, police did not accompany us to Hospital for the purpose of medical examination of injured person. Volunteered that we ourselves shifted the injured to THQ, Daska.”

(Bold and underlining is supplied for emphasis)

- (ii) “No bed-sheet or any other cloth was lying on the cot, whereon, my brother was lying at the time of occurrence, however, the cot was blood stained. Police did not seize the said cot, from the place of occurrence.”

Shahzad (PW.6)

- (i) **“We did not inform the police about the occurrence and straightaway escorted the injured to THQ, Daska.** We also did not apprise the police even at THQ, Daska. I was with my injured brother, when he was shifted to Gujranwala. We did not inform the police, even at Gujranwala Hospital. Then we were referred to Lahore. We also did not apprise the police even at Lahore.

(Bold and underlining is supplied for emphasis)

“Death of my brother happened at about 11:30 p.m. on 23.07.2019. Police also came to the place of occurrence on 24.07.2019 and prepared un-scaled site plan on our pointation.”

(ii) “There was Chaddar lying on the cot of my brother.”

The above mentioned contradictory statements of the prosecution eye-witnesses are not worthy of reliance.

13. The mala-fide of the prosecution in this case is also evident from the facts that both the above mentioned prosecution eye-witnesses (PW.5 and PW.6) stated in the first part of their examination-in-chief that after the occurrence, the appellant and her co-accused washed the place of occurrence in order screen themselves off from the offence but even then both the above mentioned eye-witnesses stated in the later part of their examination-in-chief that blood was recovered from the spot which was taken into possession through cotton vide recovery memo Ex.PE. It is further noteworthy that the learned trial Court has acquitted the appellant and her co-accused from the charges under sections 201/34 PPC and the complainant or the State has not challenged the acquittal of the appellant from the above mentioned charges through filing any appeal.

14. I have also noted that as per prosecution case, Mst. Shaukat Bibi (appellant) and Muhammad Amjad (deceased) alongwith their children were living in a rented house of one Mansab Ali where the occurrence took place. The widow of said Mansab Ali namely, Mst. Khalida Bibi, her daughter-in-law namely, Yasmin and her sons were also living in the same house at the time of occurrence and this fact is candidly conceded by Ansar Iqbal (PW.5) during his cross-examination. The relevant part of his statement in this respect reads as under:-

“My deceased brother was living in the house of another person owned by Mansab Ali S/O Muhammad Ali. It is correct that widow of said Mansab namely Khalida, her

daughter in law (Bahoo) Yasmin and her sons were living in the same house, at the relevant time. None from said Khalida Bibi, Yasmin and her sons, attracted to the place of occurrence at that time.”

The afore-mentioned Mst. Khalida Bibi, Mst. Yasmin and sons of the above mentioned Mansab Ali were the natural witnesses of the occurrence being residents of the same house where the occurrence took place but they were not produced as witnesses in this case by the prosecution. Although, the complainant made an excuse that the above mentioned witnesses did not attract to the spot at the time of occurrence but the above mentioned excuse given by the complainant is not convincing because it is not probable that if the occurrence of the murder of a person has taken place in a house which attracted the above mentioned prosecution eye-witnesses to the spot who were living in a house situated at the distance of 10-minutes from the said house then the persons living in the same house would not attract to the spot at the time of occurrence. It is further noteworthy that from the wedlock of the appellant and Muhammad Amjad (deceased) 06-daughters and one son were admittedly born who were also living in the house of occurrence and they were natural eye-witnesses of the occurrence but none from them was produced in the witness box to support the prosecution story, rather daughter of the appellant and Muhammad Amjad (deceased) namely, Maryam Bibi, aged about 14-years appeared in the witness box as (DW.1) and got recorded her examination-in-chief in favour of the version of the appellant. It is true that she later-on died therefore, her statement could not be subjected to cross-examination and as such the same cannot be read in evidence but the fact remains that none from the house of occurrence or children of the deceased was produced in the witness box by the prosecution to support the prosecution story though they were natural eye-witnesses of the occurrence being inmates of the house where the occurrence allegedly took place. I have also noted that as per prosecution case, the above mentioned prosecution eye-

witnesses first took Muhammad Amjad (deceased) to THQ Hospital, Daska wherefrom he was referred to the Civil Hospital, Gujranwala wherefrom he was referred to the General Hospital, Lahore. Muhammad Amjad (deceased) was first medically examined at the above mentioned hospitals but none from the said hospitals was produced in the witness box by the prosecution to establish that Muhammad Amjad (deceased) was taken to the above mentioned hospitals by the aforementioned prosecution eye-witnesses. I have further noted that it was claim of the appellant that in-fact Muhammad Amjad (deceased) died due to a road accident and she (appellant) also produced in her defence evidence the document Mark "A" issued by the Senior Registrar Neurosurgery Department of the General Hospital, Lahore which shows that the words "RTA" (road traffic accident) were written in the said document. Learned counsel for the appellant argued that it is not understandable that if both the above mentioned eye-witnesses accompanied Muhammad Amjad (deceased) to the General Hospital, Lahore then as to why they imparted information to the concerned staff of the said hospital regarding sustaining of injuries by Muhammad Amjad (deceased) due to a road accident. In this respect, it is noteworthy that even the appellant did not move any application before the learned trial Court for summoning of any Medical Officer or staff member of the General Hospital, Lahore to prove the document Mark "A", therefore, the said document is of no avail to the appellant. However, if the document Mark "A" is taken out of consideration even then, the fact remains that it was duty of the prosecution to prove its case and produce the Medical Officers or record of THQ Hospital Daska, Civil Hospital Gujranwala or General Hospital Lahore but no Medical Officer or record from the above mentioned hospitals was produced in the prosecution evidence. The prosecution could have established from the above referred evidence that the deceased was accompanied to the aforementioned hospitals by the above mentioned prosecution eye-witnesses. The said evidence could have also established the

presence of the said witnesses at the spot at the relevant time but the needful was not done by the prosecution. Under the circumstances, the prosecution has not proved beyond the shadow of doubt that the above mentioned witnesses accompanied the deceased to the above mentioned hospitals and as such their very presence at the spot at the relevant time is doubtful. It is also established from the above mentioned facts that the prosecution has withheld the best evidence in this case as it did not produce in the prosecution evidence any member of the family of the above mentioned Mst. Khalida Bibi or any son/daughter of the deceased who were admittedly residing in the same house where the occurrence took place and as such they were natural eye-witnesses of the occurrence. Likewise, neither any Medical Officer nor any record from the above mentioned hospitals was produced in the prosecution evidence, therefore, an adverse inference under Article 129 (g) of the Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that had any inmate of the house of occurrence or any Medical Officer or record from the above referred hospitals been produced in evidence then the same would not have favoured the prosecution case. Reliance in this respect may be placed on the case reported as “Lal Khan Vs. The State” (2006 SCMR 1846). Relevant para No.7 of the said judgment is reproduced hereunder for ready reference:-

Para No.7

“There is no plausible explanation on the record that for what reason Mst. Noor Bibi did not disclose the story of murder of deceased till the registration of case after five days of the occurrence and why no other inmate of the house was examined in confirmation of her statement. The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but **non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for prosecution but also an act of**

suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence.”

(Bold and underlining is supplied for emphasis)

Similar view was taken by the Hon’ble Supreme Court of Pakistan in the judgments reported as “Muhammad Rafique and others Vs. The State and others” (2010 SCMR 385) and “Riaz Ahmed Vs. The State” (2010 SMCR 846).

15. The prosecution has also produced the evidence of recovery of ‘Danda’ (P-3) against the appellant. Sajjad Ahmad (PW.12) appeared in the witness box to prove the said recovery on the pointation of the appellant. As mentioned earlier, the complainant Ansar Iqbal (PW.5) has categorically admitted during his cross-examination that Muhammad Amjad (deceased) was living in the house of one Mansab Ali at the time of occurrence where other family members of said Mansab Ali, namely, Mst. Khalida Bibi, Mst. Yasmin Bibi and sons of Mansab Ali were also living at the relevant time. ‘Danda’ (P-3) was allegedly recovered on the pointation of the appellant from the roof of the above mentioned house. Sajjad Ahmad (PW.12) conceded during his cross-examination that at the time of recovery of ‘Danda’ (P-3), doors of the above mentioned house were unbolted. The above referred ‘Danda’ was recovered from the roof of a house which was jointly possessed by the appellant and the family members of the above mentioned Mansab Ali and as such the place of recovery was not under exclusive possession of the appellant. It is further noteworthy that the occurrence in this case took place on 23.07.2019 but ‘Danda’ (P-3) was deposited in the office of Chemical Examiner on 27.08.2019 i.e. after one month and four days of the occurrence but

even then the report regarding presence of human blood on the said ‘Danda’ is positive. It is by now well settled that blood disintegrates within a period of 3 to 4 weeks from the occurrence but the presence of human blood on ‘Danda’ (P-3) after one month and four days from the occurrence shows the mala-fides of the prosecution in this case. I may refer here the case of “Faisal Mehmood Vs. The State” (2016 SCMR 2138), wherein at Page No.2142 the Apex Court of the country observed as under:-

“Another piece of evidence relied upon by the prosecution was recovery of a blood-stained hatchet at the instance of the appellant during the investigation but even this piece of evidence is not free from serious doubts. **According to the Memorandum of Recovery the alleged recovery had been effected from a cattleshed of the complainant which showed that the same had not been recovered from an exclusive custody of the appellant.** The provisions of section 103, Cr.P.C. had clearly been violated in the matter of the said recovery. The report of the Chemical Examiner showing the recovered hatchet to be stained with blood is dated 20.12.2002 whereas the report of the Serologist showing the origin of the blood available on the recovered hatchet to be human blood is dated 25.05.2004. It was scientifically impossible to detect the origin of the blood after about two years of the occurrence **because human blood disintegrates in a period of about three weeks.**”

(Bold and underlining is supplied for emphasis)

Similar view was taken by the august Supreme Court of Pakistan in the case of “Muhammad Jamil Vs. Muhammad Akram and others” (2009 SCMR 120).

Under the above circumstances, recovery of ‘Danda’ (P-3) on the pointation of the appellant is inconsequential and the same has rightly been disbelieved by the learned trial Court in Para No.15 (b) of the impugned judgment.

16. According to the prosecution case as set forth in the FIR (Ex.PA), motive behind the occurrence was that firstly Mst. Shaukat Bibi (appellant) separated her husband, namely, Muhammad Amjad (deceased) from his parents and they started living separately in a rented house and thereafter she (appellant) intended to shift Muhammad Amjad (deceased) to Chawinda City but the deceased was not ready for the said purpose. Ansar Iqbal (complainant/PW.5) and Shahzad (PW.6) while appearing in the witness box before the learned trial Court also introduced a new motive and made dishonest improvements in their statements in respect of the motive part of the prosecution case by stating that Muhammad Amjad (deceased) restrained Mst. Shaukat Bibi (appellant) from allowing Shah Zaman alias Kala and Kashif alias Kashi to come to his house as they had illicit relationship with Mst. Samina Bibi (co-accused) and Mst. Maryam Bibi (daughter of the appellant and the deceased). The above mentioned motive of illicit relationship was not mentioned in the FIR.

The first motive alleged by the prosecution which was also mentioned in the FIR, does not appeal to a prudent mind because according to the prosecution's own case, Muhammad Amjad (deceased) separated from his parents on the asking of the appellant, therefore, it does not appeal to common sense that he would refuse his wife (Mst. Shaukat Bibi, appellant) to shift to Chawinda City on her asking. If he can leave his parents then he can also leave his village on the asking of the appellant. Even otherwise, it does not appeal to sense that merely on the refusal of the deceased from shifting to Chawinda City, the appellant and her sister would commit his murder. Furthermore, it is not understandable that as to why Mst. Samina Bibi (co-accused since acquitted) would commit the murder of Muhammad Amjad (deceased) for the above mentioned reason. It is also noteworthy that Ansar Iqbal, complainant (PW.5) frankly conceded during his cross-examination that during the subsistence of marriage between the appellant and the deceased for a period of 15/16 years, no

litigation of any sort ever occurred between the spouses. The relevant part of his statement reads as under:-

“My deceased brother and accused Shaukat Bibi were married about 15/16 years ago. During this period, no litigation of any sort ever occurred between the spouses i.e. my deceased brother and his wife Mst. Shaukat Bibi (accused).”

It is, therefore, an admitted fact that there was no litigation between the parties prior to the occurrence and the spouses were living together till the day of occurrence. In the light of above discussion, I have come to this conclusion that the motive alleged by the prosecution could not be proved in this case and the same has rightly been disbelieved by the learned trial Court in Para Nos.14 (a) (e) and 28 of the impugned judgment.

17. Now, coming to the arguments of learned Deputy District Public Prosecutor and learned counsel for the complainant that Mst. Shaukat Bibi (appellant) has taken a specific plea in her statement recorded under section 342 Cr.P.C. that her husband Muhammad Amjad (deceased) died due to a road accident but she did not produce any evidence in support of her above mentioned plea and as such she was rightly convicted and sentenced by the learned trial Court. It is further argued that Mst. Shaukat Bibi (appellant) also took this plea in her above mentioned statement that Muhammad Amjad (deceased) committed rape with his daughter Mst. Maryam Bibi, therefore, an adverse inference was rightly drawn by the learned trial Court against the appellant that on account of above mentioned grudge of rape by the deceased with Mst. Maryam Bibi, the appellant committed his murder.

There is no substance in the above mentioned arguments of learned Law Officer and learned counsel for the complainant because it was duty of the prosecution to prove its case against the appellant beyond the shadow of any doubt and the prosecution cannot take benefit from any weakness in the defence of the

appellant. The prosecution has to stand on its own legs. Moreover, it was never the case of the prosecution that on the grudge of rape by Muhammad Amjad (deceased) with his daughter (Mst. Maryam Bibi), the occurrence was committed by the appellant. None of the prosecution witnesses stated that the appellant committed the murder of her husband due to the above mentioned reason, therefore, the appellant cannot be convicted and sentenced merely on the basis of surmises and conjectures.

Insofar as the statement of Mst. Shaukat Bibi (appellant) recorded under section 342 Cr.P.C. is concerned, the same has already been reproduced in Para No.4 of this judgment. In her said statement, although the appellant stated that her daughter namely, Maryam Bibi told her that she was raped by her father (Muhammad Amjad, deceased) but the appellant did not confess that she committed the murder of her husband due to the above mentioned grudge, rather she stated that her husband died due to a road accident. I have already disbelieved the prosecution evidence due to the reasons mentioned in Paragraph Nos.10 to 14 of this judgment, therefore, statement of the appellant recorded under section 342 Cr.P.C. is to be accepted or rejected in toto. It is by now well settled that after rejection of prosecution evidence, the statement of an accused is to be accepted or rejected as a whole and it is not legally permissible to accept incriminating part of the statement of an accused and disbelieve the exculpatory part of the said statement. Reliance in this respect may be placed upon the judgments reported as “Muhammad Asghar Vs. The State” (PLD 2008 Supreme Court 513), “Sultan Khan Vs. Sher Khan and others” (PLD 1991 Supreme Court 520) and “Ghulam Qadir Vs. Esab Khan and others” (1991 SCMR 61). If the statement of the appellant recorded under section 342 Cr.P.C. is accepted in toto then she cannot be convicted on the basis of said statement.

In the light of above, there is no substance in the above mentioned arguments of learned Deputy District Public Prosecutor and learned counsel for the complainant.

18. I have considered all the aspects of this case and has come to this irresistible conclusion that the prosecution evidence is full of doubts. It is by now well settled that if there is a single circumstance which creates reasonable doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the truthfulness of the prosecution story.

In the case of, 'Tariq Pervez Vs. The State' (1995 SCMR 1345), the Hon'ble Supreme Court of Pakistan, at page 1347, was pleased to observe as under:-

"5.....The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

The Hon'ble Supreme Court of Pakistan reiterated the same principle in the case of "Muhammad Akram Vs. The State" (2009 SCMR 230).

Likewise, in the case of, "Muhammad Mansha Vs. The State" (2018 SCMR 772), the Hon'ble Supreme Court of Pakistan, at page 778, was pleased to observe as under:-

"4.....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates

reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxima, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted."

19. In the light of above discussion, I **accept** **Criminal Appeal No.13978-J of 2020** filed by Mst. Shaukat Bibi (appellant), set aside her conviction and sentence recorded by the learned Additional Sessions Judge, Daska *vide* impugned judgment dated 14.02.2020 and acquit her of the charge under section 302(b) PPC by extending her the benefit of doubt. Mst. Shaukat Bibi (appellant) is in custody, she be released forthwith, if not required in any other case.

20. As I have already disbelieved the prosecution evidence due to the reasons mentioned in Para Nos.10 to 16 of this judgment, therefore, Criminal Appeal No.16609 of 2020, filed by the complainant against acquittal of Mst. Samina Bibi (co-accused) as well as, Crl. Revision No.17261 of 2020, filed by the complainant for enhancement of sentence, awarded by the learned trial Court against Mst. Shaukat Bibi (appellant) from imprisonment for life to death, are also hereby **dismissed**.

(Malik Shahzad Ahmad Khan)
Judge

Approved for reporting

(Malik Shahzad Ahmad Khan)
Judge

Farman Ali