Stereo HCJDA 38.

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Appeal No.72371-J/2019

Mst. Gulnaz Ajmal **vs** The State

Murder Reference No.297/2019

The State vs Mst. Gulnaz

J U D G M E N T

Date of hearing:	**23.11.2023.**
Appellant by:	M/s Mian Muhammad Ramzan, Qamar Haneef Ramay and Miss Mehreen Akbar Monga, Advocates.
State by:	Mr. Munir Ahmad Sayal, Additional Prosecutor General.
Complainant by:	Mr. Anwaar Umer, Advocate.

FAROOQ HAIDER, J.:- This single judgment will dispose of **Crl. Appeal No.72371-J/2019** filed by Mst. Gulnaz Ajmal (appellant) against her "conviction & sentence" and **Murder Reference No.297/2019** sent by trial court, as both the matters have arisen out of one and the same judgment dated: 17.09.2019 passed by learned Addl. Sessions Judge, Khushab/trial court.

2. Mst. Gulnaz (appellant) was tried in case arising out of F.I.R. No.276/2018 dated: 11.07.2018 registered under Section: 302 PPC at Police Station: City Jauharabad, District: Khushab whereas trial court after conclusion of the trial, *vide* impugned judgment dated: 17.09.2019 has convicted and sentenced the appellant as under: -

Conviction	**Sentence**
Under Section: 302 (b) PPC	"***Death***" as *Taz'ir* on five counts for commission of *Qatl-e-Amd* of Muhammad Ajmal, Muhammad Fahad, Abdullah, Ghulam Aiysha and Aasma Bibi along with payment of compensation of Rs.5,00,000/- for each count to the legal heirs of the deceased under Section: 544-A Cr.P.C. and in default of payment of compensation amount to further undergo S.I. for six months for each count and the compensation amount recoverable as arrears of land revenue.

3. Brief facts, as per statement/فرد بیان (Ex.PEE) got recorded by Muhammad Akram (complainant/PW-7) before Arshad Mehmood S.I. (PW-13) on 11.07.2018 at 05:45 a.m., on the basis of which above mentioned F.I.R. (Ex.PEE/1) was registered, are that complainant/PW-7 is resident of Zaman Colony, Jauharabad and a labourer; marriage of his brother namely Muhammad Ajmal solemnized with Mst. Gulnaz in the year 2007, who have four children (1) Muhammad Fahad aged about 13-years (2) Abdullah 1½ (3) Ghulam Ayesha aged about 10-years (4) Aasma Bibi aged about 6-years, who along with his wife and children is living in his own house at Riaz Town, Jauharabad; close relative of the complainant died in Chauha (چوہا) and for his *Fateha Khawani* "فاتحہ خوانی", they have to go along with brother Muhammad Ajmal in the early morning and for this purpose, complainant along with Shaukat Ali and Muhammad Irfan (brother) came from Zaman Colony, Jauharabad to Riaz Town, Jauharabad at the house of his brother Muhammad Ajmal at about 03:30 a.m.; gate of the Haveli of the house was open; when they all three entered into Haveli, they saw Mst. Gul Naz Bibi ("بھابھی"/sister-in-law of the complainant) was holding a knife (چھری) in her hand and Muhammad Ajmal (brother), Fahad, Abdullah (paternal nephews of the complainant), Ghulam Ayesha, Aasma Bibi (paternal niece of the complainant) were lying smeared with blood; Gul Naz Bibi ("بھابھی"/sister-in-law of the complainant) said that her husband Muhammad Ajmal used to torture her daily and due to this grudge, she has committed murder of her husband and children with knife (چھری) and hatchet; blood stained hatchet was also lying along with dead body; Mst. Gul Naz Bibi ("بھابھی"/sister-in-law of the complainant) has committed murder of Muhammad Ajmal (brother), Fahad, Abdullah, Ghulam Ayesha and Aasma with knife (چھری) and blows of hatchet; after leaving Muhammad Irfan (brother) and Shaukat Ali to guard the dead body, complainant was coming to report, however met with Arshad Mehmood S.I.

After completion of investigation, challan report under Section: 173 Cr.P.C. was submitted in the Court; appellant was formally charge sheeted but she pleaded not guilty and claimed trial whereupon prosecution evidence was summoned; after recording of prosecution evidence, appellant was examined under Section: 342 Cr.P.C. but she refuted the allegations levelled against her; she neither opted to appear as her own witness under Section: 340(2) Cr.P.C. nor produced any evidence in her defence.

Trial Court after conclusion of trial has convicted and sentenced the appellant as mentioned above through the impugned judgment dated: 17.09.2019.

4. Learned counsel for the appellant has submitted that conviction recorded and sentence awarded to the appellant through impugned judgment are against the 'law and facts' of the case; ocular account is neither trustworthy nor corroborated/supported by any other independent evidence; prosecution has remained unable to prove its case. Learned counsel for the appellant finally prayed for acquittal of the appellant.

5. Learned Additional Prosecutor General and learned counsel for the complainant have supported the impugned judgment and prayed for dismissal of the appeal.

6. **Arguments heard. Record perused.**

7. It has been noticed that occurrence allegedly took place during the night of 11.07.2018 in the house of Muhammad Ajmal (deceased) situated at Riaz Town, Jauharabad, which according to Column No.4 of the F.I.R. (Ex.PEE/1) is at a distance of about 2-kilometers from the concerned police station i.e. City Jauharabad, District: Khushab, however, as per case of prosecution, Muhammad Akram (complainant/PW-7) along with Shaukat Ali (given-up PW) and Muhammad Irfan (PW-8) came at the place of occurrence at 03:30 a.m. when occurrence was already over, complainant went for reporting the occurrence, met Arshad Mehmood S.I. (PW-13), got recorded his statement to him at 05:45 a.m. which was sent to police station and F.I.R. (Ex.PEE/1) was chalked out at 06:05 a.m.; it is relevant to mention here that complainant (PW-7) was also having motorcycle and relevant portions of his statement in this regard are as under: -

> "In the night of occurrence, I and my brother Irfan left our home at about 3.00 a.m. on **motorcycle**. We went to the house of Shaukat and took him with us. We reached at the house of Shaukat at about 3.20 a.m. night."
>
> (**emphasis added**)

> "I left the place of occurrence at about 5.30 a.m. to report the matter to police. The police met me near the main tower in Burhan Town. The police was on patrol duty on official vehicle at that time."

Therefore, it cannot be termed as promptly registered case and this state of affairs suggests that possibility of deliberation, consultation and concoction cannot be ruled out. It is well settled that when there is delay in reporting the incident to the police, then prosecution is under obligation to explain such

delay and failure to do that will badly reflect upon the credibility of prosecution version. In this regard, guidance has been sought from the case of "**Mst. Asia Bibi versus The STATE and others**" (**PLD 2019 Supreme Court 64**); relevant portion from paragraph No.29 of said case law is hereby reproduced: -

> *"There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has always considered the delay in lodging of FIR to be fatal and castes a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused…"*

By now it is well settled that First Information Report lays foundation of the criminal case and when it has not been promptly recorded and no reasonable explanation regarding its delayed recording has come on the record, then it is fatal for the case of prosecution; in this regard, guidance has been sought from the case of "**MUHAMMAD RAFIQUE *alias* FEEQA versus The STATE**" **(2019 SCMR 1068)**, **MUHAMMAD ADNAN and another versus The STATE and others" (2021 SCMR 16)** and **"GHULAM MUSTAFA versus The STATE" (2021 SCMR 542).**

Admittedly, prosecution did not produce any eyewitness of the occurrence during trial of the case; complainant (PW-7), Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) reached at the spot after the occurrence; in this regard, relevant portion of statement of complainant (PW-7) is reproduced: -

> "When we reached at the place of occurrence, all the deceased had been died."

As per own case of the prosecution mentioned in *Fard Bayan* (فرد بیان/ (Ex.PEE) and F.I.R. (Ex.PEE/1), when Muhammad Akram (complainant/ PW-7), Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) at about 03:30 a.m. (night) came into the house of occurrence, they saw that Mst. Gulnaz Bibi (now appellant) was having knife (چھری) in her hand who said that Muhammad Ajmal used to torture her daily, for said grudge, she has murdered her husband and children while slaughtering (زبح کر کے) them with knife (چھری) and hatchet (کلہاڑی); so, complainant (PW-7), Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) are witnesses of extra-judicial

confession of the appellant; they were neither residents of the house of the occurrence nor of said vicinity i.e. Riaz Town, Jauharabad rather complainant (PW-7) and Muhammad Irfan (PW-8) were residents of Zaman Colony, Jauharabad whereas Shaukat Ali (given-up PW) was resident of Qazi Colony, Jauharabad; it is relevant to mention here that as per statement of the complainant/PW-7, distance between Zaman Colony and Riaz Town is about five/six kilometers; in this regard, relevant portion of his statement is reproduced as under: -

> "The distance between Zaman Colony and Riaz Town is about five/six kilometers."

Whereas, according to Muhammad Irfan (eyewitness/PW-8), Zaman Colony is at a distance of three and half kilometers from Riaz town; in this regard, relevant portion of his statement is mentioned as under: -

> "Zaman Colony is at a distance of three and half kilometers from Riaz Town."

So, both these witnesses produced in this case by the prosecution were chance witnesses and thus they were required to explain and establish plausible as well as valid reason regarding their stated arrival and presence at the place of occurrence. Though as per statement/فرد بیان (Ex.PEE) got recorded by Muhammad Akram (complainant/PW-7), their close relative died in Chauha (چوہا) and for his *Fateha Khawani* (فاتحہ خوانی), they had to go along with Muhammad Ajmal (now deceased) in the early morning and for this purpose, he (complainant) along with Shaukat Ali and Muhammad Irfan (PW-8) came to the house of his brother Muhammad Ajmal at about 03:30 a.m.; meaning thereby that the sole cause of arrival of witnesses including complainant at place of occurrence and seeing appellant holding knife (چھری) in her hand was that they had to go in *Fateha Khawani* (فاتحہ خوانی) of their close relative. Though complainant/PW-7 during his cross-examination before the Court stated that their relative namely Muhammad Imran was hit by fire shot on 09.07.2018 at about Asar Prayer time and he died due to said firearm injury at about 11:00/12:00 p.m. (night); in this regard, relevant portion of his statement is mentioned as under: -

> "Our relative Muhammad Imran was **hit by fire shot** on 09.07.2018 at about Asar prayer time but he died due to said firearm injury at about 11.00/12.00 p.m (night)"
>
> (**emphasis added**)

yet prosecution neither produced copy of any F.I.R. or *Rupt* (رپٹ) regarding infliction of firearm injuries to Muhammad Imran (aforementioned relative of

the complainant) or copy of his Death Registration Certificate showing date of his death, during investigation of the case nor got exhibited the same during trial of the case; though it was claim of said witnesses that for going to *Fateha Khawani* (فاتحہ خوانی), they came to the house of occurrence yet for said purpose why they came at 03:30 a.m. (night), is the question which raises eyebrows; their further claim was that door of house of the occurrence was open when they came and entered into the house and relevant portion of statement of complainant/PW-7 is reproduced below: -

> "When we reached at the house of Ajmal, the small door of main gate was open."

Similarly, relevant portion of statement of Muhammad Irfan (PW-8) is mentioned as under:

> "When we reached at the place of occurrence, the main gate of the house was narrowly open."

It is also a mystery and raises question that why during night at said stated time i.e. 03:30 a.m., door of the house was open? Prosecution remained unable to offer any valid explanation regarding these claims and said most relevant questions remained unanswered on part of prosecution. Therefore, above-claimed "cause" regarding arrival of complainant and other witnesses at the place of occurrence at odd hours of night could not be proved. So, evidence of both aforementioned cited witnesses, who could not explain/ establish any valid reason/cause regarding their stated arrival at the stated time, at the place of occurrence, is "**suspect**" evidence and cannot be accepted without pinch of salt; guidance in this regard has been sought from the case of "**Mst. SUGHRA BEGUM and another vs. QAISER PERVEZ and others**" (**2015 SCMR 1142**) and relevant portion from paragraph No.14 of said case law is hereby reproduced: -

> *"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."*

Further guidance on the subject has been sought from the case of "**MUHAMMAD ASHRAF *alias* ACCHU versus The STATE**" (**2019 SCMR 652**), "**Mst. MIR and another versus The STATE**" (**2020 SCMR 1850**) and "**SARFRAZ and another versus The STATE"** (**2023 SCMR 670**).

Muhammad Akram (PW-7) and Muhammad Irfan (PW-8) are real brothers of Muhammad Ajmal (one of deceased of the case) and paternal uncles of remaining four deceased whereas Shaukat Ali (given-up PW) is uncle of complainant but after seeing appellant holding knife (چھری) in her hand and further after her stated confession regarding the occurrence before them, they did not apprehend her; in this regard, relevant portion of statement of complainant/PW-7 is reproduced below: -

> "We did not try to apprehend Mst. Gulnaz."

As per statement of Muhammad Irfan (PW-8), there was blood on the hands, knife (چھری) and clothes of Mst. Gulnaz Bibi at that time and she sat down in the room; relevant portion of his statement in this regard is mentioned as under: -

> "There was blood on the hands, churri and the clothes of Mst. Gulnaz at that time. Mst. Gulnaz sat down in her room."

However, at the time of arrest of appellant by Kazim Hussain S.I. (PW-12), her hands, feet and clothes were not blood stained; relevant portion of statement of Kazim Hussain S.I. (PW-12) is reproduced below: -

> "Her hands, feet and wearing clothes were not stained with blood at the time of her arrest."

As per prosecution's version, Muhammad Akram (complainant/PW-7) while leaving Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) at the spot, proceeded to police station; in this regard, relevant portion of statement of complainant/PW-7 is mentioned as under: -

> "I left Muhammad Irfan, my brother and Shaukat Ali my uncle at the guard of dead bodies and proceeded to the police station."

Similarly, relevant portion of statement of Muhammad Irfan (PW-8) is reproduced below: -

> "Leaving us near the dead bodies, Akram went to the police at 6/6.30 a.m. We remained sitting in the courtyard of the house till the arrival of the police."

When they (witnesses) were there, then why they let appellant to place knife (چھری) near the dead body and go from the place of occurrence to the street

because she was arrested from the street; in this regard, relevant portion of statement of Kazim Hussain S.I. (PW-12) is reproduced as under: -

> "I arrested Gulnaz accused in the street near the place of occurrence. She was seen by us at a distance of 20/25 feet. She did not try to run away."

If hands, clothes of the appellant and knife (چھری) held by her were stained with blood, then why they (witnesses) let her to wash the hands and change the clothes? This entire conduct of aforementioned witnesses does not appeal to common prudent man rather shows that none of them was present there at the stated time and version stated by them is tailored/concocted.

Before discussing extra-judicial confession statedly made by the appellant before Muhammad Akram (PW-7), Muhammad Irfan (PW-8) and Shoukat Ali (given up witness), it is appropriate to examine the motivating factors for making extra judicial confession and in this regard, guidance has been sought from the case of "**SAJID MUMTAZ and others versus BASHARAT and others**" (**2006 SCMR 231**), relevant portions of said case law are being reproduced: -

> *"19. It is but a natural curiosity to ask as to why a person of sane mind should at all confess. No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it had to be visualized, appreciated and consequented upon purely in the background of a human conduct.*
> *20. Why a person guilty of offence entailing capital punishment should at all confess. There could be a few motivating factors like: (i) to boast off, (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation……."*
>
> *"22. As observed by the Federal Court, we would reiterate especially referring to this part of the country, that extra-judicial confessions have almost become a norm when the prosecution cannot otherwise succeed. Rather, it may be observed with concern as well as with regret that when the Investigating Officer fails to properly investigate the case, he resorts to padding and concoctions like extra-judicial confessions……."*

Now when extra judicial confession allegedly made by the appellant in the case is examined on the touchstone of aforementioned factors, then it is not understandable that what compelled the appellant and why she allegedly confessed the crime, particularly before the persons, who being closely related to the deceased were expected to cause her more harm than good and they immediately became witness against her, this aspect also raises doubt about genuineness of this piece of evidence; in this regard, guidance has also been sought from the case of "**AZEEM KHAN and another versus MUJAHID**

KHAN and others" (**2016 SCMR 274**); relevant portion from the same is being reproduced below: -

> *"This, in our considered opinion, appears to be a concocted story. He being the relative of the complainant and also running the business in the same market, where the complainant do the same business, the appellant Mujahid Khan would have never opted for disclosing such a gruesome crime to him, when by then the complainant party and the Investigating Agency, both were clueless about the crime of murder of the deceased and also about the actual culprits. This part of the evidence is nothing but a tailored story, which was arranged with, the help of the Investigating Agency thus, it is of no legal worth and being absolutely unreliable is excluded from consideration."*

Furthermore, case of "**NASIR JAVAID and another versus The STATE**" (**2016 SCMR 1144**) can also be safely referred and relevant portion from Page No. 1150 is being reproduced: -

> *"**Next is the evidence of extra-judicial confessions. Evidence of this type because of its being concocted easily is always looked at with doubt and suspicion. It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable character. If the other evidence lacks such attribute, it has to be excluded from consideration**. Extra-judicial confessions of the appellants when examined in this light neither ring true nor agree with truth nor fit in with the surrounding circumstances of the case. The circumstances disclosed therein that the complainant made their lives miserable, implicates them in criminal cases and insulted their mother are not supported by the prosecution evidence. According to the statement of PW-13, the appellants were driven by their immense sense of guilt to make extra-judicial confessions. **But why should they make extra-judicial confessions before PW-13, who being closely related to the complainant was expected to do them more harm than good**"*
>
> ***(emphasis added)***

Aforementioned state of affairs clearly suggests that said piece of evidence is neither believable nor reliable rather same has been just introduced after finding no other evidence in the case; even otherwise "**extra-judicial Confession"** is the weakest type of evidence and it can only be taken into consideration if firstly it rings true and then finds support from other strong and tangible evidence of unimpeachable character; in this regard, case of "**Imran *alias* Dully and another versus The State and others" (2015 SCMR 155**) can be safely referred: relevant portion is being reproduced: -

> *" (d) Needless to remark that extra judicial confession has never been considered sufficient for recording conviction on a capital charge unless it is strongly corroborated by tangible evidence coming from unimpeachable source therefore, in our view, this piece of evidence is entirely insufficient to carry conviction on such a charge, more so, when it is badly tainted one and appears to be the job of the investigating officers who normally indulge in such like police chicanery."*

According to case of prosecution mentioned in *Fard Bayan* (فرد بیان/Ex.PEE) and F.I.R. (Ex.PEE/1), complainant (PW-7) along with aforementioned witnesses (mentioned in the F.I.R.) reached in the house of occurrence, saw that Mst. Gulnaz Bibi (now appellant) was having knife (چھری) in her hand but glowing/litting of any light at that time is not mentioned in the F.I.R. (Ex.PEE/1) and even during investigation, neither any electric light/bulb was shown in the site plan (Ex.PHH) of the place of occurrence nor taken into possession by the Investigating Officer; in this regard, relevant portion of statement of Kazim Hussain S.I. (Investigating Officer/PW-12) is mentioned as under: -

> "It is correct that I did not mention the presence of electric lights in my site plan Ex.PHH."

which fact further goes against the prosecution; in this regard, guidance has been sought from the case of **"HAROON SHAFIQUE versus The STATE and others" (2018 SCMR 2118), "MIAN SOHAIL AHMED and others versus The STATE and others" (2019 SCMR 956)** and **"SAFDAR MEHMOOD and others versus TANVIR HUSSAIN and others" (2019 SCMR 1978).**

Now coming to the arrest of the appellant because as per complainant's version mentioned in the F.I.R. (Ex.PEE/1), he (PW-7) along with Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) came and found Mst. Gulnaz (now appellant) at the place of occurrence with knife (چھری), he (PW-7) left Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) at the place of occurrence and himself went to inform police and then came back with police, during this period, Muhammad Irfan and Shaukat Ali (witnesses) remained in the house of occurrence; he (PW-8) did not state in his statement before the Court that during this period, Mst. Gulnaz Ajmal (now appellant) changed her blood stained wearing clothes and then went outside from said house to the street. But it is own case of the prosecution that appellant was not arrested from the house of occurrence rather when complainant came back with police, appellant was found in street and arrested from there. Now question does arise that how and when she left the house of occurrence and reached in the street after changing her blood stained wearing clothes when Muhammad Irfan and Shaukat Ali (witnesses) throughout this period remained there. Prosecution is silent on this vital aspect of the case and this silence is fatal and vitiates the truthfulness of prosecution version.

When all aforementioned factors are taken into consideration in totality, then ocular account furnished by Muhammad Akram (complainant/ PW-7) and Muhammad Irfan (PW-8) regarding their coming into the house of occurrence at 03:30 a.m. (night), seeing Mst. Gulnaz Bibi (now appellant) carrying knife (**چھری**) in her hand and confessing the occurrence before them, is neither confidence inspiring nor truthful; hence, same cannot be relied and is hereby discarded.

As far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury; therefore, same is also of no help to the prosecution in peculiar facts and circumstances of the case, in this regard, case of *"***SAJJAN SOLANGI versus The STATE***"* **(2019 SCMR 872)** can be safely referred.

Now coming to recovery of knife (چھری), hatchet (کلہاڑی) and blood stained clothes of the appellant; as per case of prosecution, appellant got recovered blood stained knife (چھری/P-14) and blood stained hatchet (کلہاڑی/ P-15) lying near dead bodies at the place of occurrence; she also got recovered blood stained clothes (P-12, P-13) which she was wearing at the time of occurrence. Though prosecution claims that blood stained knife (چھری) and blood stained clothes of the appellant were recovered yet in *Fard Bayan* (فرد بیان/Ex.PEE) as well as in the F.I.R. (Ex.PEE/1), it is not mentioned that knife (چھری) held by appellant as well as clothes of the appellant were "**blood stained**"; as per statement of Muhammad Irfan (PW-8), hands and clothes of the appellant were also blood stained (as reproduced above) whereas Kazim Hussain S.I. (PW-12), who arrested the appellant at 07:45 a.m. on the same day, stated in his statement that her hands, feet and wearing clothes were not stained with blood (relevant portion of his statement has been also already reproduced), meaning thereby that she washed her hands and also changed her clothes but then why she did not wash knife (چھری) and hatchet (کلہاڑی)? When Muhammad Irfan (PW-8) and Shaukat Ali (given-up PW) were at the place of occurrence, then why they let the appellant to place knife (چھری) with dead bodies as well as change her blood stained clothes and to leave the house/place of occurrence? Inquest reports (Ex.PB, Ex.PF, Ex.PK, Ex.PO and Ex.PS) were prepared at the place of occurrence but availability/presence of blood stained knife (چھری) and blood stained hatchet there is not mentioned

in any Inquest Report and Column No.22 as well as Column No.23 of the Inquest Reports (mentioned above) are blank; in this regard, relevant portion of statement of Kazim Hussain (PW-12) is reproduced below: -

> "It is correct that the columns No.22 & 23 of all inquest reports are blank."

This state of affairs creates reasonable doubt about the recovery of knife (چھری) and hatchet (کلہاڑی) and in this regard, guidance has been sought from the case of **"MST. RUKHSANA BEGUM and others versus SAJJAD and others"** ***(2017 SCMR 596),*** relevant portion whereof is being reproduced: -

> *"**In column No. 23, no crime empty has been shown present there, albeit in the recovery memo and in the site plan, these empties had been shown recovered lying very close to both dead bodies. This deliberate omission, creates reasonable doubts about the recovery**."*
>
> (**emphasis added**)

Though blood stained earth, blood stained clothes of the deceased persons, blood stained knife (چھری), blood stained hatchet and blood stained clothes of the appellant were sent to the Punjab Forensic Science Agency, Lahore yet any report regarding matching of blood group of blood available at knife (چھری), hatchet and clothes of the appellant with blood group of blood available on blood stained soil and blood stained clothes of any of the deceased has not been produced by the prosecution; so, in this regard, case of **"MUHAMMAD ASIF versus The STATE" (2017 SCMR 486)** can be safely referred; relevant portion from said case law is hereby reproduced below: -

> *"18. Before parting with this judgment, we deem it essential to point out that, mere sending the crime weapons, blood stained to the chemical examiner and serologist would not serve the purpose of the prosecution nor it will provide any evidence to inter link different articles.*
>
> *19. We have noticed that the Punjab Police invariably indulge in such a practice which is highly improper because unless the blood stained earth or cotton and blood stained clothes of the victim are not sent with the same for opinion of serologist to the effect that it was human blood on the crime weapons and was of the same group which was available on the clothes of the victim and the blood stained earth/cotton, such inconclusive opinion cannot be used as a piece of corroboratory evidence."*

Any report regarding availability of finger prints of the appellant on the handle of knife (چھری) as well as handle of hatchet (کلہاڑی) has also not been produced.

So much so Kazim Hussain S.I. (PW-12) admitted that he did not get any D.N.A. comparison test of knife (چھری), hatchet, blood stained clothes

of the accused and last worn clothes of deceased persons as well as blood stained soil, etc.; in this regard, relevant portion of his statement is reproduced as under: -

> "It is correct that I did not get DNA comparison test of recovered churri, hatchet, bloodstained clothes of the accused Gulnaz, and last worn clothes of the deceased persons as well as blood stained soil etc."

In view of afore-mentioned discussed factors, recovery (mentioned above) is of no evidentiary value. Furthermore, aforementioned articles were secured through recovery memo (Ex.PFF) and Ex.PGG), attested by Muhammad Akram (PW-7) and Shaukat Ali (given-up PW). Though recovery is a corroborative piece of evidence and it has to corroborate the ocular account yet it is trite law that recovery witness cannot corroborate himself and corroboration must come from independent source i.e. evidence of other witness; in this regard case of **"Mst. ZAHIDA SALEEM versus MUHAMMAD NASEEM and others" (PLD 2006 Supreme Court 427), "Mst. SUGHRA BEGUM and another Vs. QAISER PERVEZ and others." (2015 SCMR 1142) and "Mst. RUKHSANA BEGUM and others Vs SAJJAD and others." (2017 SCMR 596),** can be referred; relevant portion from **"Mst. ZAHIDA SALEEM's** case (*supra*) is reproduced as under: -

> ***"In the present case the prosecution had produced P.W.6 and P.W.7 to prove the motive, ocular account and recovery. In the instant case the eye-witnesses and the recovery witnesses being the same, as mentioned above, the question of corroboration would be a mere farce. Whenever any corroboration is required, it emplies that it should be an independent one. If the corroboration is also through the same witness whose statement is required to be corroborated it will be no corroboration in the eye of law in these circumstances, we are of the opinion that both the Court below were justified to ignore the recoveries.***

This is not a case wherein one accused by making indiscriminate firing with the help of sophisticated firearm/automatic weapon killed more than one person rather slaughtering five (5) persons by a single female accused with knife (چھری)/hatchet (کلہاڑی) is alleged in this case which aspect itself necessitates close scrutiny of the facts/circumstances as well as available material. Perusal of report of Punjab Forensic Science Agency, Lahore bearing Sr. No.0000650042 (available at Page No.38 of the Paperbook) shows that four (4) specimens i.e. item No.1 to 4 comprising of suspected fluid, flour and food taken from pots (utensils) available at the place of occurrence were sent to laboratory; Dethyltoluamide[sic] was detected in item No.01 and item

No.04 whereas Drugs/poisons were not detected in specimens in item No.02 and item No.03; relevant portion of the report is scanned below: -

Item No.	Description of Evidence:
01	One sealed parcel containing one sealed jar of specimen (suspected fluid) taken from cup of tea, Exhibit # 03, CS # CS-SGD-750, dated # 11/07/18.
02	One sealed parcel containing one sealed jar of specimen (suspected tea type fluid) taken from pan at crime scene, Exhibit # 04, CS # CS-SGD-750, dated # 11/07/18.
03	One sealed parcel containing one sealed jar of specimen (suspected flour) taken from plate under bed, Exhibit # 05, CS # CS-SGD-750, dated # 11/07/18.
04	One sealed parcel containing one sealed jar of specimen (suspected food) taken from plates and cooking pan present in room near bed, Exhibit # 06, CS # CS-SGD-750, dated # 11/07/18.

Test(s) Performed:

a) Qualitative identification test for drugs and pesticides was performed on specimens in item # 01, 02, 03 and 04 using gas chromatography-mass spectrometry technique.

Results and Conclusion:

- **Dethyltoluamide was detected in specimens in item # 01 and item # 04.**
- **Drugs/poisons were not detected in specimens in item # 02 and 03.**

It is relevant to mention here that Dethyltoluamide mentioned in aforementioned report is actually "Diethyltoluamide", which is N, N Diethyl-meta-toluamide, also called as "DEET" and oldest/most effective as well as common active ingredient in commercial insect repellants having chemical formula as C_{12} H_{17} NO. As per aforementioned report, it was found in the suspected fluid taken from cup of tea and in the suspected food taken from plates and cooking pan but its toxic effects were not mentioned in the report.

As per report of Punjab Forensic Science Agency, Lahore (Ex.PMM, available at Page No.44 of the paperbook), specimens of stomachs with contents of all the five deceased were received by said laboratory as item No.01 to 05, however, Drugs/poisons were not detected in said stomach contents; relevant portion of said report is hereby scanned below: -

Item No.	Description of Evidence:
01	One sealed parcel containing one sealed jar of specimen (stomach with contents) of Aasma D/O Muhammad Ajmal, PMR # 7/2018, dated: 11/07/18.
02	One sealed parcel containing one sealed jar of specimen (stomach with contents) of Ayesha D/O Muhammad Ajmal, PMR # 8/18, dated: 11/07/18.
03	One sealed parcel containing one sealed jar of specimen (stomach with contents) of Muhammad Fahad S/O Muhammah Ajmal, PMR # 9/18, dated: 11/07/18.
04	One sealed parcel containing one sealed jar of specimen (stomach with contents) of Muhammad Abdullah S/O Muhammad Ajmal, PMR # 10/2018, dated: 11/07/18.
05	One sealed parcel containing one sealed jar of specimen (stomach with contents) of Muhammad Ajmal S/O Muhammad Sher, PMR # 11/18, dated:11/07/18.

Test(s) Performed:

a) Screening tests for cyanide and phosphine were performed on stomach contents in item # 01, 02, 03, 04 and 05 using colorimetric technique.

b) Screening tests for drugs of abuse (benzodiazepines and opiates) were performed on stomach contents in item # 01, 02, 03, 04 and 05 using ELISA technique.

c) Qualitative identification test for basic drugs (lidocaine, doxylamine, amitriptyline, nortriptyline, levorphanol, promethazine, diphenhydramine, imipramine, oxycodone, methamphetamine, brompheniramine, doxepin, clomipramine, tramadol, mirtazapine, clozapine, venlafaxine, cyclobenzaprine, sertraline, diazepam, midazolam, zolpidem and alprazolam) was performed on stomach contents in item # 01, 02, 03, 04 and 05 using gas chromatography-mass spectrometry technique.

Results and Conclusion:

- **Drugs/poisons were not detected in stomach contents in item # 01, 02, 03, 04 and 05.**

Dr. Fozia Ameer (PW-1), who conducted postmortem examination over dead bodies of Ayesha (deceased) and Aasma (deceased) stated before the Court as under:-

> "There is nothing significant in the reports received from PFSA (Punjab Forensic Science Agency)."
>
> "It is correct that according to PFSA reports no poison etc. was found in samples sent to Forensic/Chemical analysis."

Similarly, Dr. Zia-ur Rehman (PW-2) who conducted post-mortem examination of dead bodies of Muhammad Ajmal, Muhammad Abdullah and Muhammad Fahad stated before the Court as under: -

> "There is nothing significant in the reports received from PFSA (Punjab Forensic Science Agency)."

> "It is correct that no poison etc. was detected in samples sent to PFSA, Lahore for Forensic/Chemical analysis. There was no sign of injury caused by resistance of deceased was noted by me during my examination."

In the above circumstances, slaughtering five (5) persons by a single woman is also a question mark.

As far as motive is concerned, as per claim of the complainant mentioned in the statement/فرد بیان (Ex.PEE), Muhammad Ajmal (husband of the appellant) used to torture her daily and due to this grudge, she has committed murder of her husband and children with knife (چھری) and hatchet; however, any document or independent witness was not produced by the prosecution during investigation or trial of the case to prove/establish that there was any dispute or quarrel between the spouses prior to the occurrence even complainant/PW-7 during his cross-examination has categorically admitted that any quarrel never took place between Gulnaz Bibi (appellant) and her husband Muhammad Ajmal (one of the deceased) prior to the occurrence; in this regard, relevant portion of his statement is reproduced as under: -

> "Never any quarrel took place between Gulnaz bibi and Muhammad Ajmal deceased prior to the occurrence."

Even any reason/justification whatsoever for commission of murder of four minor children of the deceased by their mother i.e. appellant has not come on the record. Furthermore, aforementioned motive has also not been believed by the trial court. So, motive could not be proved by the prosecution.

8. It is well established principle of law that single dent/circumstance in case of prosecution is sufficient for acquittal; in this regard, case of "**ABDUL GHAFOOR versus The STATE**" **(2022 S C M R 1527)** can be safely referred.

9. Nutshell of the above discussion is that prosecution has been totally/ completely failed to prove its case against the appellant; though occurrence took place in the house of appellant yet mere for the said reason, she cannot be held guilty and in this regard, case of **"NASRULLAH *alias* NASRO versus The STATE" (2017 S C M R 724)**, "**ASAD KHAN versus The STATE" (PLD 2017 Supreme Court 681)** and "**MUHAMMAD PERVAIZ versus THE**

STATE and other" (PLD 2019 Supreme Court 592) can be safely referred and relevant portion from latter case law is reproduced as under: -

> "Homicidal death is not in dispute; appellant's plea that dacoits intruded the household and strangulate the deceased has not found favour with the Courts below. The appellant has also not denied his presence, however these factors by themselves cannot hypothesize presumption of appellant's guilt in the absence of positive proof. Silence or implausible explanation cannot equate with failure within the contemplation of Article 121 of Qanun-e-Shahadat Order, 1984, thus does not absolve the prosecution to drive home the charge by itself on the strength of positive proof. It would be grievously unsafe to convict suspects on presumptions or upon failure to establish their innocence. Possibilities are infinite and do not necessarily include the guilt alone."

10. In view of, what has been discussed above, **Criminal Appeal No.72371-J/2019,** filed by Mst. Gulnaz Ajmal (appellant), is allowed; conviction recorded and sentence awarded to the appellant through impugned judgment dated: 17.09.2019 is hereby set aside. Appellant is acquitted of the charge, she shall be released from the jail forthwith, if not required in any other case.

11. Resultantly, death sentence awarded to Mst. Gulnaz (appellant) is **NOT CONFIRMED** and Murder Reference (**M. R. No.297 of 2019**) is answered in **NEGATIVE**.

12. It goes without saying that if blood group of the deceased is mentioned in the post-mortem examination report, it would be helpful for ascertaining blood group of the blood available on (i) blood stained soil/earth or cotton secured from the place of occurrence, (ii) blood stained clothes of the deceased and (iii) blood stained weapon/article recovered in the case as well as for D.N.A. test. Therefore, Registrar of this Court will send a copy of this judgment to Secretary Health, Govt. of the Punjab, Inspector General of Police, Punjab, Prosecutor General, Punjab and Director General of Punjab Forensic Science Agency, Lahore for doing needful in this regard.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

This judgment has been dictated and pronounced on 23.11.2023 whereas after preparation/ completion, signed on 28.11.2023.

Kashif