

**2022 P Cr. L J 1427**

**[Balochistan]**

**Before Muhammad Hashim Khan Kakar and Abdullah Baloch, JJ**

**JUMA KHAN and another ---Appellants**

**Versus**

**The STATE and others ---Respondents**

**Criminal Jail Appeal No. 16 and Criminal Revision Petition No. 15 of 2018, decided on 26th**

**JUDGMENT**

ABDULLAH BALOCH, J. ---This common judgment disposes of Criminal Jail

Appeal No.16 of 2018 and Criminal Revision Petition No.15 of 2018.

The appellant Juma Khan son of Lal Muhammad filed the criminal jail appeal through

Superintendent Central Jail Mach, against the judgment dated 10th March 2018 ("the impugned judgment") passed by learned Additional Sessions Judge -VI, Quetta ("the trial Court"), whereby the appellant was convicted under section 302(b), P.P.C. and sentenced to suffer life imprisonment as Tazir for committing the murder of deceased Akhtar Bibi and also to pay Rs.200,000/- as compensation to the legal heirs of deceased, as provided under

section 544 -A, Cr.P.C. and in default thereof the appellant shall further suffer six months'

S.I. with the benefit of section 382- B, Cr.P.C. Needless to mention here that the appellant

was also convicted and sentenced in connected FIRs Nos.38 and 40/2013, thus the sentences awarded in this case as well as in the connected cases were directed to run concurrently.

2. Facts of the case are that on 17th May 2013, the complainant Niaz Muhammad,

lodged FIR No.39 of 2013 at Police Station New Kuchlak, under section 302, P.P.C., with the averments that he resides at Killi Meerian Abad, his sister Akhtar Bibi's marriage was solemnized with appellant Juma Khan, out of wedlock, a baby was born, today at about 08.15 a.m. when he was present at home, he received phone call that his sister was killed by her husband i.e. the appellant, as such, he reached at her home at about 08.20 a.m. and found dead body of his sister in her room.

3. Pursuant to the above FIR, the appellant was arrested, who was subjected to

investigation and on completion thereof, he was remanded to judicial custody. At the trial the prosecution produced Seven (07) witnesses, whereafter the appellant was examined under

section 342, Cr.P.C. The appellant did not record his statement on oath under section 340(2), Cr.P.C., however, produced two witnesses in his defence. On conclusion of trial and after hearing arguments, the learned trial Court, convicted and sentenced the appellant as mentioned above, vide impugned judgment dated 10th March 2018. Whereafter, instant appeal has been filed.

4. Heard the learned counsel for parties and perused the available record minutely.

Adverting to the merits of the case, suffice to observe here that so far as the unnatural death of deceased Akhtar Bibi is concerned, the same is not disputing by the defence, but pleaded his false implication. It is observed that soon after the crime, the deceased Akhtar Bibi was shifted to Civil Hospital Quetta, where her postmortem was conducted by PW -4 Dr. Ayesha Faiz, Medico Lady Police Surgeon, who after examination issued postmortem report as Ex.P/4- A, perusal of which transpires that the deceased had received multiple bullet injuries on her person and her cause of death was due to damage of her vital parts of body caused by means of fire arms. Besides, the inquest report prepared by the I.O. under section 174, Cr.P.C. also confirms the receipt of multiple bullet injuries on his person.

5. Adverting to ocular evidence, suffice to observe here that the prosecution in order to establish the charge, has produced the evidence of seven witnesses, out of which PW -1 is the complainant of the case, while PW- 2 and PW -3 are claiming to be present at the place, when the occurrence had taken place, while the circumstantial evidence has come on record through PW -5 and PW -6. The complainant of the case namely Niaz Muhammad appeared as PW-1, who mostly reiterated the contents of his fard- e-bayan Ex.P/1 -A. According to this witness he was present in his house, when heard about the occurrence, thus went to the house of his sister Akhtar Bibi and found her dead body in her residential room. Though, this witness has brought the criminal law into motion, but the fact remains that this witness has not witnessed the crime directly, thus the case of prosecution rests upon the testimony of PW-2 Naik Muhammad and PW -3 Umar Khan. Both the witnesses have unanimously stated before the Court that PW -2 have a butcher shop at Balelii Custom Quetta, while PW -3 Umar Khan works with him and on the day of occurrence they came to cattle market to buy cattle situated nearby the house of appellant, thus they also went to the house of deceased Akhtar Bibi, who was their niece. Where, Akhtar Bibi offered them tea

and they sat in the drawing room and taking tea, when in the meantime the appellant Juma Khan came over there and called his wife Akhtar Bibi in his room and in the short while they heard firing shots and came out from the drawing room towards adjacent room of Akhtar Bibi and found that the appellant was escaping from the place of occurrence having pistol in his hand, thus they entered into the room of Akhtar Bibi, where found her dead body lying in the pool of blood.

The PW- 2 Naik Muhammad informed the PW -1/complainant and brother of deceased about the occurrence and this fact was asked to PW- 1 in a suggestion of learned counsel of appellant in reply of the same PW -1 disclosed the name of PW -2 as informer. Thus corroborated each other in line.

6. We at our utmost care, caution and by applying judicious minds analyzed the statements of both the PWs minutely and found the same reliable and trustworthy, because occurrence had taken place in the house of their niece, where they were already present. Both the witnesses rightly mentioned the time, date, the place of occurrence and the manner in which the occurrence had taken place. Besides, the occurrence had taken place during the day light, thus there was no occasion for mistaken identity of the appellant being their son-in-law. Both the witnesses correctly identified the appellant in the trial court. The defence has cross -examined all the witnesses at sufficient length, but has failed to give any slightest dent or damage to their testimonies, rather from the cross -examination the commission of crime has been confirmed and new facts were also emerged. Even otherwise, the appellant Juma Khan did not dispute his presence at the relevant time and at the place of occurrence.

7. The case of prosecution has further been strengthened from the confessional as well as extra judicial confession of the appellant. PW -6 Rozi Khan Kakar, Judicial Magistrate, Ziarat recorded the confessional statement of the appellant under section 164, Cr.P.C., perusal of which transpires that all the necessary precautions were taken by the Magistrate prior to recording the confessional statement of appellant. The appellant was given sufficient time to reconsider his consent for recording his confessional statement and he has specifically been asked whether he was pressurized, tortured or compelled for recording such confession, but he replied in negative and recorded his confession, whereafter PW -6 started recording the statement of appellant. The confession of the

appellant disclosed the motive behind the occurrence i.e. illicit relations of his wife with her paramour Abdul Qayum and according to appellant prior to committing the murder of deceased Abdul Qayyum, he was warned to restrain from his wife, but he started calling him with bad names. In our view it has been made voluntarily without duress or inducement. The confessional statement of the appellant is free from all taints, thus the same is admissible under the law. Reliance in this regard is placed on the case of "State v. Waqar Ahmed" 1992 SCMR 950, the Hon'ble Supreme has held that:

"18. The learned High Court has discarded the confession of the appellant on the ground that "though the retracted confession of the appellant remained uncorroborated by any independent evidence as a rule of prudence there should have been some independent evidence in support of the retracted confession which we notice is not available in this case". When an accused has given an account of the incident and its truth is not doubted and such statement is proved to be correct in all its parts, such solitary piece of evidence can be used against the accused without any further corroboration. There is no basic difference between a confession or a retracted confession, if the element of truth is not missing. It is always a question of fact which is to be adjudged by the Courts on the attending circumstances of a particular case. In this case, we have come to the irresistible conclusion that the confessional statement of the accused is true and voluntary and conviction could be recorded on such statement."

8. The confessional statement of appellant has fully been corroborated by the disclosure of appellant recorded in presence of PW- 5 Aminullah, ASI. The appellant in his disclosure brought on record the illicit relations of his wife with her paramour i.e. deceased Abdul Qayum, which established the motive behind the occurrence. Furthermore, such disclosure was supported by the recovery of crime weapon in the connected case FIR No.38/2013 from his house situated at Station Killi Bypass Road. Admittedly, not only the motive behind occurrence was emerged from the disclosure of appellant, but also followed by the recovery of crime weapon on his pointation in the aforementioned connected case, whereby in the connected case the paramour of appellant's wife namely Abdul Qayyum was also murdered by the appellant on the same day and he was convicted in the said case and has filed the connected Criminal Jail Appeal No.15/2018, thus the said disclosure is an admissible piece of evidence. It is well settled principle of law that an extra judicial confession can be made

on sole basis for conviction of an accused, if the Court believes that it was true and voluntary and was not obtained by torture or coercion or inducement. The perusal of disclosure of appellant not only relates to discovery of new facts, but also it relates to recovery of crime weapon, therefore, the same is an admissible piece of evidence and without looking for any other piece of evidence, the sole disclosure of appellant is enough to make basis for his conviction. Reliance in this regard is placed on the case of "Nasreen Akhtar v. The State, 2000 SCMR 1634" wherein the Hon'ble Supreme Court has held as under:

"In the instant case, the appellant was jointly tried for the same offence and co -

accused Mst. Shakooran Bibi made extra-judicial confession in presence of P.W.13,

Wali Muhammad and P.W.14, Muhammad Shafi, which evidence is also fully corroborated in material particulars by recovery evidence of crime weapons, viz. Tassy and Sandawa which were recovered at the pointation of co -accused Mst.

Shakooran Bibi and Maqbool Ahmed who have not filed any appeal against their conviction maintained by the High Court, and further the said recovery evidence of crime weapons has been proved by P.W.20, Investigating Officer Inamullah Khan, whose evidence is also reliable and confidence -inspiring. The mere fact that Mst.

Shakooran Bibi has retracted the extra-judicial confession would not in itself lessen

its evidentiary value when the said retracted extra judicial confession has been fully corroborated in material particulars by recovery evidence of crime weapons, the medical evidence and the testimony of P.W. 16, Mrs. Pervaiz Iqbal --the handwriting expert, about the letters written by the appellant to co accused Maqbool Ahmad."

9. The case of prosecution has further been strengthened from the recovery of crime

weapon used in the case in hand as well as in the connected case of murder of Abdul Qayyum. The Investigating Officer collected three empties of 9 mm bore pistol from the place of occurrence and the recovered pistol along with collected empties were sent to FSL for analysis, from where the report was received in affirmative, confirming that the empties were fired from the said recovered pistol.

10. The motive behind the occurrence has been established by the prosecution i.e. the

illicit relations of deceased Abdul Qayum with the wife of appellant namely Akhtar Bibi. It

has come on record that soon after committing the murder of deceased Abdul Qayum, the appellant came inside of his house and through the said pistol committed the murder of his wife Akhtar Bibi, hence besides registering the instant FIR for committing

the murder of his wife, a separate FIR No.38 of 2013 for committing the murder of deceased Abdul Qayyum was also lodged at the said Police Station. Hence, he was tried separately and the said case was also culminated into conviction of appellant. Thus, nominating of the appellant in the connected case of murder and being found guilty of the charge is enough to interlink both the cases with each other and also establish the motive behind the occurrence.

11. The conduct of the appellant has also strengthened the case of prosecution, who despite murder of his wife kept mum and has not lodged report against any one and even has not held responsible to any third person for such murder, when otherwise it has been established through record that at the time of said murder he was present in his house. Besides, he has also not disputed the unnatural death of the deceased. All these facts suggest that actually it was the appellant, who has committed the murder of his wife as well as her alleged paramour Abdul Qayyum. Hence, the circumstantial evidence is fully connected with each other with regard to murder of Akhtar Bibi. Reliance in regard is placed on the case of Wali Muhammad v. Ellahi Bakhsh, 2005 SCMR 1526, wherein it has been held that,

"We have heard the learned counsel for the petitioner and perused the evidence produced by the complainant. It may be noted that dead body of deceased was recovered from the house of the petitioner where Mst. Safia was living with him as his wife. Therefore, it is not possible to disbelieve the story of the prosecution."

Similar view has also been taken in the case of Saeed Ahmed v. the State, 2015

SCMR 710, wherein it has been held that:

14. That with regard to vulnerable members of society, such as children, women and the infirm, who were living with the accused or were last in his company the accused ought to offer some explanation of what happened to them. If instead he remains silent or offers a false explanation he casts a shadow upon himself. This does not mean that the burden of proof has shifted onto the accused as it is for the prosecution to prove its case, however, in respect of the helpless or the weak that require protection or care it would not be sufficient for the accused to stay silent in circumstances which tend to incriminate him, and if he elects to do so he lightens the burden of the prosecution. Article 122 of the Qanun- e-Shahadat Order too stipulates that if a particular fact is especially within the knowledge of any person the burden of proving that fact is upon him. In the present case the prosecution had established its case against the appellant; two eye- witnesses had deposed against him and the medical evidence confirmed strangulation of the deceased. The

appellant did not attend to the last rites of his wife who had died whilst residing with him, he also did not inform the police nor took his wife to a hospital and disappeared for two months, such circumstances corroborate the prosecution case in the absence of the appellant

offering a reasonable explanation for his unnatural conduct.

12. The reappraisal of entire prosecution evidence establishes the fact that the prosecution

has succeeded in proving the charge against the appellant through concrete and solid

evidence. The crime was taken place in presence of PW- 2 and PW -3, who recorded their

statements in line with each other in the trial Court and not only correctly stated the date, time and place of occurrence and the manner in which the appellant committed the murder of deceased, but they also remained consistent in their view. The confessional statement as well as his extra judicial confession of appellant followed by the recovery of crime weapon and matching of collected empties have given solid strength to the case of prosecution. The

motive behind the occurrence as alleged was the illicit relations of his wife with deceased

Abdul Qayyum. The appellant after committing the murder of Abdul Qayyum went inside of

his house and committed the murder of his wife Akhtar Bibi. The dual murders at the same time and place itself are enough to believe that the occurrence was the result of Siya Kari, thus both the incidents occasioned within the short span of time are interlinked with each other and the motive in both the cases are the same. It has further been observed that the appellant throughout the case did not take any specific plea with regard to his false implication and simply denied the prosecution case, while to the contrary the prosecution has

succeeded in establishing the charge of murder against the appellant through concrete and

solid evidence. Thus mere denial of the appellant is not enough to brush aside the entire prosecution evidence, when more particularly the motive behind the occurrence has been established and not denied by the appellant, thus the prosecution has succeeded in establishing the charge against the appellant beyond the shadow of any reasonable doubt and the impugned judgment is not open for interference by this Court.

13. So far as the Criminal Revision Petition filed by the brother of deceased Akhtar Bibi

is concerned, suffice to observe here that the wife of appellant was involved in illicit relations with her paramour Abdul Qayyum and the appellant also restrained said Abdul Qayyum as well as his wife to restrain from their illegal acts. Besides, the

contents of FIR in the connected case of murder of Abdul Qayyum divulges the fact that the occurrence was not taken place all of sudden, rather hue and cries were heard and quarreling was started and subsequently firing was made by the appellant upon the deceased Abdul Qayyum. The said contents of FIR are suggestive of the fact that might be the appellant was convincing the deceased Abdul Qayyum to keep away from his wife and during such altercation the occurrence had taken place. Sufficient mitigating circumstances are available in the case of prosecution, due to which the trial Court did not award Capital punishment of death to the appellant. For the reasons discussed hereinabove, the appeal and the revision petition, being devoid of merits are dismissed. JK/101/Bal. Revision dismissed.