

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

35/25

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Criminal Appeal No. 345/2020

(Against the judgment/order dated 10.03.2016
passed by the Lahore High Court, Lahore
Crl. A. No. 231-J/2012 and M. R. No. 280/2012)

Muhammad Ijaz @ Jajj

Appellant(s)

Versus

The State

Respondent(s)

For the Appellant(s): Ms. Aisha Tasneem, ASC

For the State: Mr. Tariq Siddique, APG

For the Respondent: Nemo

Date of Hearing: 07.05.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. The appellant, Muhammad Ijaz @ Jajj, was convicted under section 302(b) PPC by the Trial Court for the murder of his wife, Mst. Safia Bibi, and sentenced to death. Against his conviction and sentence, he preferred an appeal before the Lahore High Court, Lahore which was dismissed vide impugned judgment dated 10.03.2016, however, his sentence of death was converted into imprisonment for life. Being aggrieved, the appellant has approached this Court by filing the instant appeal with the leave of the Court.

2. The facts of the case, as enumerated in the impugned judgment of the High Court, are that:

“Per prosecution case the facts, as disclosed by Zulfiqar Ali, complainant (PW-1) in his statement (Exh.PA) on the basis of which formal crime report (Exh.PF) was registered, are that the appellant Muhammad Ijaz alias Jajj on 08.07.2010 at 1:00 a.m. along with

co-accused Shahzad Ahmad and Mst. Fazeelat Bibi, committed the murder of Mst. Safia Bibi, sister of the complainant by throttling and torturing her when the prosecution witnesses were present in the courtyard of her house. The complainant (PW.1) and Muhammad Aslam (PW.2) saw the appellant Ijaz alias Jajj, armed with churee along with his co-accused Shehazd Ahmad and Mst. Fazeelat Bibi who emerged from the room of Mst. Safia Bibi (deceased) and ran away."

3. The medical evidence was furnished by lady Dr. Fareeha Akram (PW-7) who, on 08.07.2010 at 3:30 p.m., conducted post-mortem examination on the dead body of Mst. Safia Bibi (deceased) and noted six injuries. In her opinion, the cause of death was cardiopulmonary arrest ultimately due to injury No. 1 to 4 collectively which caused asphyxia. Probable duration between injuries and death was ten minutes, whereas between death and post mortem examination within 12 to 15 minutes.

4. The statement of the appellant under section 342 Cr.P.C. was recorded wherein he refuted the allegations levelled against him, professed his innocence and deposed that he had been falsely involved in this case due to suspicion in an un-witness occurrence. He neither opted to appear as his own witnesses on oath, as provided under section 340(2) Cr.P.C., nor did he produce evidence in his defence.

5. The crime report of this fateful occurrence that took place at 1 a.m. was registered at the instance of complainant, Zulfiqar Ali, who happened to be the real brother of the deceased at 3 a.m. Keeping in view the relationship of the appellant with the deceased and the complainant coupled with the time of incident, we are of the view that the matter was reported to the police without any conscious and deliberate delay. The ocular account has been furnished by complainant, Zulfiqar Ali (PW-1), and Muhammad Aslam (PW-2). Complainant Zulfiqar Ali is real brother of the deceased, Mst. Safia Bibi, whereas Muhammad Aslam is brother-in-law of the complainant, as such, their presence in the house of deceased and the appellant at the time of occurrence cannot be doubted nor their evidence could be discredited due to their relationship with the deceased being cogent and confidence inspiring. The ocular account also finds corroboration from the medical evidence as ante-mortem injuries on the person of deceased attributed to the appellant by the eyewitnesses is

reflected in the post-mortem examination report (Exh.PE) which became the cause of her unnatural death as opined by Dr. Fareeha Akram Malik (PW-7).

6. The appellant absconded and was arrested on 15.08.2010, i.e. after a period about 37 days of his wife's death. It is very strange and astonishing that neither the appellant reported the matter to the police authorities nor participated in the last rites of the deceased. He also failed to give any plausible explanation regarding the murder of his wife in his house. We are conscious of the fact that in criminal cases it is for the prosecution to establish its case against an accused, however, in the instant case deceased was a vulnerable dependent of the appellant, as such, some part of the onus had shifted to the appellant to explain the circumstances in which his wife had died an unnatural death in his house during the fateful night which part of the onus had not been discharged by the appellant. Undoubtedly, the accused is not required to take a special plea, but where the only alternative theory to his guilt is a remote possibility which, if correct, he is in a position to explain, the absence of any explanation must be considered in determining whether the possibility should be disregarded or taken into account. In this regard reference can be made to the cases of *Saeed Ahmed v State* (2015 SCMR 710) and *Arshad Mehmood v State* (2005 SCMR 1524)

7. This Court in the cases of *Nasrullah v State* (2017 SCMR 724) and *Asad Khan v State* (PLD 2017 SC 681) has clarified that the above mentioned shifting of some part of the onus to the accused may not be relevant in a case where the entire case of the prosecution itself is not reliable and where the prosecution fails to produce any believable evidence. If the prosecution fails to adduce reliable evidence in support of its own case, then the accused person cannot be convicted merely on the basis of lack of discharge of some part of the onus on him, whereas in the instant case, the prosecution has succeeded to produce ocular account through reliable witnesses, who remained firm and the defence could not derive anything beneficial to the appellant from their statements.

8. For what has been discussed above, we cannot take any exception to the impugned judgement of the High Court which is accordingly upheld and, consequently, this appeal is dismissed.

ISLAMABAD
07.05.2025
(Farrukh)

Approved for Reporting