

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar  
Justice Ishtiaq Ibrahim

**Criminal Petition No. 231/2021**

(Against the order/judgment dated 27.01.2021  
passed by the Islamabad High Court in  
Crl. A. No. 83/2017)

Muhammad Ehsan Shah

Petitioner(s)

Versus

The State through A.G., Islamabad and another

Respondent(s)

For the Petitioner(s):

Mr. Fakhar Hayat, ASC

For the State:

Ms. Chand Bibi, DPG  
a/w Mr. Sarfraz Ahmed, S.I.

Date of Hearing:

26.02.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** The facts of this case as well as the evidence produced before the Trial Court find an elaborate mention in the judgments passed by the courts below, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

2. After hearing the learned counsel for the parties and going through the record, we have observed that though seemingly with no axe to grind, the complainant has not himself witnessed the occurrence; the crime report is structured upon his strong belief that no one else other than the petitioner could be the assassin. The petitioner plea of the suicide, if rejected out rightly, by itself would not absolve the prosecution to drive home the charge on its own strength. The petitioner silence to satisfactorily explain as to what happened upon his better half under the same roof, though somewhat intriguing, however cannot be equated to qualify as evidentiary certainty essentially required in order to saddle him with formidable corporal consequences; his failure would not give rise to an adverse presumption within the contemplation of Article 121 of

the Qanun-e-Shahadat Order, 1984 and, thus, it would be grievously unsafe to maintain the conviction without potential risk of error.

3. Admittedly, there is no eyewitness of the occurrence and the case of the prosecution solely rests upon the medical evidence furnished by Dr. Saima Najeeb, Medical Officer, Federal Government Services Hospital, Islamabad (PW-2). The said witness while answering to a question during the course of cross-examination stated that it is correct that if the ligature mark is not round the neck, eyes are closed, ribs are not fractured and hands are not clenched then the case will be one of suicide. The report is raising a very high probability of asphyxia death and killing by hanging, which under all probabilities is deemed to be a suicide unnatural death and not homicide at all and there was no sign and symptom of killing by strangulation and throttling. The report Ex-PB indicates that the eyes of Mst. Javaria were closed and ribs were also not fractured.

4. It is also by now a settled law that medical evidence is just a corroborative piece of evidence which does not identify the assailant. At the most medical evidence is a supporting piece of evidence because it may confirm the ocular evidence with regard to the receipt of the injury, its locale, kind of weapon used for causing the injury, duration between the injury and the death but it would not tell the name of the assailant. In this respect reference can be made to the cases of *Zakir Hussain v State* (2008 SCMR 222) and *Ata Muhammad v State* (1995 SCMR 599). Even otherwise, it is relevant only if the primary evidence i.e. ocular account inspires confidence, which is not the situation in this case. It is also astonishing that in suchlike cases, motive always plays a decisive role to arrive at any just conclusion, whereas, in the present case, motive has not been directly attributed to the petitioner rather to those co-accused who had been stated to be having dispute with the deceased and who have already been discharged by the competent court of law at the very outset and such discharge order has not been challenged by the complainant.

5. It is also worth mentioning that the complainant also produced an affidavit (Ex.PF) claiming to had been executed by the deceased, however, the report of hand writing expert shows that the thumb impression of the



deceased, available on the record of NADRA, did not match with her thumb impression as available on the stamp paper allegedly executed by the deceased regarding apprehension to her life. On account of producing a fake affidavit, crime No. 79 of 2018 was lodged against the complainant, Muhammad Hanif, with Police Station Sihala, thus, he has lost his credibility. Similarly, the alleged recovery of crime weapon from the room of petitioner is also not helpful for the prosecution as the same was not stained with blood and as such no report of Chemical Examiner and Serologist is available on record.

6. It is well established principle of criminal justice that there is no need of so many doubts in the prosecution case rather any reasonable doubt arising out of the prosecution evidence pricking the judicial mind is sufficient for acquittal of the accused. Reliance is placed on the case of *Tariq Pervez v State* (1995 SCMR 1345).

7. For what has been discussed above we have found that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Therefore, this petition is converted into an appeal and allowed, the conviction and sentence of the petitioner recorded and upheld by the courts below are set aside, and he is acquitted of the charges by extending him the benefit of doubt. The petitioner is reportedly in custody, therefore, he is ordered to be released forthwith if not required in any other case.

ISLAMABAD  
26.02.2025  
(Farrukh)

Approved for Reporting