

2. Murder Reference No.74/2021 sent up by the trial Court for confirmation or otherwise of death sentence of appellant Ibrar is decided through this common judgment.

3. The prosecution story unfolded in the crime report (Ex.PC) registered on the complaint (Ex.PB) of Asghar Ali (PW-2) was that on 17.01.2020 at about 08:45 a.m. he alongwith his brother Muhammad Ishaq, wives Mst.Rukhsana Bibi and Mst. Bilqees, daughter Mst.Zeenat was present in his house, situated at Kot-Ishaq. Suddenly, his son-in-law/*Damad* namely, Ibrar (appellant) armed with pistol 30-bore came there and raised lalkara that today he would teach them lesson for not sending his wife Mst.Zeenat Bibi to his home and fired with his weapon which hit on the head of Mst. Zeenat Bibi, who after receiving injuries fell down on the ground. He step forward to rescue his daughter, upon which the appellant made a fire shot which hit at the right shoulder after touching his right ear. Accused fled away from the spot. Complainant's brother and people of the vicinity shifted the injured persons to civil hospital through rescue 1122. He secured his MLC No.36/2020 whereas injured Mst.Zeenat Bibi was referred to the General Hospital, Lahore.

Motive behind the occurrence was strained relations between complainant's daughter and the appellant.

On 24.02.2020 Mst.Zeenat Bibi succumbed to the injuries and subsequently offence U/S 302 PPC was added.

4. Imtiaz Shaheen, ASI (PW-11) visited the hospital for recording the statement of injured Mst.Zeenat Bibi but the doctor did not grant him permission in this regard. On 18.01.2020, he inspected the place of occurrence, prepared rough site plan (Ex.PG), collected four empty cartridges of pistol 30-bore vide memo (Ex.PF) and recorded the statements of PWs U/S 161 Cr.P.C. On 29.01.2020, he arrested accused Ibrar, who during investigation led to the recovery of pistol 30-bore with two live bullets P-4/2 vide memo (Ex.PH). On 24.02.2020 Mst.Zeenat Bibi died and he added offence U/S 302 PPC. Upon his transfer, the investigation was entrusted to Tahir Mehmood, S.I. (PW-16), who visited the hospital, inspected dead body of deceased Mst.Zeenat Bibi, prepared injury statement, inquest report and escorted the dead body to mortuary for autopsy. He again made arrest of accused in the case as offence U/S 302 PPC has been added. During investigation, the accused was found involved in this occurrence and he got prepared report under Section 173 Cr.P.C.

5. Dr. Shama Ashfaq (PW-14) conducted medico-legal examination of Mst.Zeenat Asghar and observed a lacerated wound with active bleeding 1.5 cm x 0.5 cm going deep over the right temporal region of scalp. Probable duration of injury was within one hour.
6. Dr. Asma Ashfaq (PW-08) held autopsy on the dead body of deceased Mst.Zeenat Asghar on 25.02.2020 at 11:00 a.m. and observed an incision of 2cm x 2cm on the neck made by surgeons for tracheotomy. Cause of death was due to damage of most vital organ brain and blood loss leading to cardiopulmonary arrest. Probable duration between injury and death was seven days and two hours whereas between death and postmortem examination 11.5 hours.
7. Dr. Adnan Yousaf (PW-15) examined injured Asghar Ali and observed two injuries on his person with no possibility of fabrication. Probable duration of injury was fresh.
8. At the commencement of the trial, the trial Court framed a charge against the appellant to which he pleaded not guilty and claimed to be tried.
9. The prosecution produced 18-witnesses besides the report of Punjab Forensic Science Agency Ex.PR. The appellant, in his statement under Section 342 Cr.P.C. had denied and controverted all the allegations of fact leveled against him. He neither opted to make statement under Section 340(2) Cr.P.C. on oath nor produced any evidence in his defence.
10. Learned trial Court, upon conclusion of the trial, had convicted and sentenced the appellant as stated above. Hence the aforementioned criminal appeal as well as the connected Murder Reference.
11. We have heard learned counsels for the appellant, learned Addl. Prosecutor General appearing for the State assisted by learned counsels for the complainant and perused the record with their able assistance.
12. Case of the prosecution hinges upon ocular account, medical evidence, recovery and motive part of the occurrence. In order to prove the ocular account, Asghar Ali, (PW-2)/complainant/injured, appeared in the dock in the Court room and deposed that on 17.01.2020, he alongwith his brother Muhammad Ishaque (PW-3), wives Rukhsana and Bilqees and daughter Zeenat was present in his house. All of sudden, the appellant, who happened to be his son in law/husband of Mst. Zeenat, while armed with

pistol 30-bore entered into the house and raised Lalkara to teach them lesson for not sending his wife to his home. Appellant made a fire shot which hit on the head of Mst.Zeenat Bibi, who fell down on the ground. He stepped forward to rescue his daughter, upon which the appellant again made a fire shot which after touching his right ear, landed on the right shoulder. His brother and other people took them to the hospital through rescue 1122, wherefrom, due to precarious condition his daughter was shifted to General Hospital, Lahore. Motive behind the occurrence was that there was family dispute between the appellant and the deceased. Muhammad Ishaque, (PW-3) deposed exactly in line with the complainant and gave minute details of the incident in the manner as narrated in the crime report (Ex.PC). Both the witnesses of ocular account were subjected to cross-examination but they remained firm and consistent on all material aspects of the incident qua the date, time, place, mode and manner of the occurrence, name of the appellant, role played by him for committing murder of the deceased lady and causing injury to the injured PW and the defence could not extract any favourable material from their mouths.

Learned defence counsel laid much emphasis that the incident has taken place on 17.01.2020 at about 8.45 a.m., whereas, the matter was reported to the police on the following day i.e. 18.01.2020 at about 3.40 p.m. i.e. almost with a delay of thirty hours, which shows that the crime report (Ex.PC) was lodged after due deliberation, consultation and maneuvering the prosecution witnesses. No doubt, generally setting the law into motion with delay is seen with doubt but it is difficult to lay down any hard and fast rule in this respect. Each criminal case has its own facts as such the question of delay ought to have been seen keeping in view peculiar circumstances of every case. Here in the instant case, complainant as well as his daughter sustained fire arm injuries and as a natural human psyche the first and foremost reaction was to shift the injured persons to the hospital in order to save their life and exactly the same has been done in the instant case. Medico-legal certificate of deceased Mst. Zeenat Asghar while in injured condition (Ex.PL) shows that she was shifted to the hospital at 10.20 a.m. i.e. within almost 1½ hours of the occurrence through the police docket and according to the history enumerated by the complainant to the Medical Officer,

husband of the deceased made fire shot upon her. After citing the appellant responsible for causing fire arm injury within 1½ hours of the occurrence, there remains no ill will on the part of the complainant to intentionally delay the matter for setting the law into motion. Medico Legal Certificate of the deceased while in injured condition (Ex.PL) shows that at the time of her medical examination, after receiving bullet injury on her head, she was unconscious and due to her precarious condition, she was referred to General Hospital, Lahore. The incident has taken place in Gujranwala and we can understand that when the first Medical Examiner shows his/her inability to cater for the needs of the patient and advised the attendants to shift him/her to some other city due to his/her deteriorating health condition, then the only task for the attendants was to shift their near and dear one to the referral hospital without wastage of any time. In such a situation expecting a father to firstly rush to the police station for lodging of crime report, in order to avoid the legal consequences, was improbable. Besides sustaining injuries on his own person, his daughter after sustaining bullet injury on her vital part of body was fighting for life, in a hospital far away from the police station in whose territorial jurisdiction the unfortunate incident has taken place, therefore, in such situation setting the law into motion with delay can be ignored, in particular, when the name of the culprit was already disclosed by the complainant, on the first available opportunity, to the Medical Examiner within shortest span of time. Even otherwise, the crime report was lodged by the complainant and stamp of injuries on his person is a conclusive proof of his presence at the venue of occurrence, as such delay which was mostly caused for deliberation and maneuvering the eye-witnesses, is out of question in the instant case. Reliance is placed on case reported as “*Sheraz Asghar ..Vs.. The State (1995 SCMR 1365)*” wherein it has been laid down as under:-

“ Besides, delay in lodging F.I.R. is not per se fatal to a case. It neither washes away nor torpedoes trustworthy and reliable ocular or circumstantial evidence. F.I.R. in this case has been lodged with an eye-witness. It contains the names of the eye-witnesses, the names of the assailant with arms carried by them, active role played by each assailant.”

Moreover, delay in setting the law into motion, in cases of previous enmity is mostly considered fatal, but here in the instant case, assailant was the son

in law of the complainant, as such question of enmity or his false implication in substitution of real culprit is out of question. Reliance is placed on case reported as “*Zar Bahadar ..Vs.. The State (1978 SCMR 136)*” wherein it has been laid down as under:-

“But delay is relevant only in cases of enmity. As in the instant case, there is no evidence whatever of enmity, nothing turns on the delay in lodging of the F.I.R.”

11. On failing to point out any inconsistency or flaw in the prosecution evidence, learned defence counsel argued that the incident was not a result of premeditation and was happened at the spur of moment, in the heat of passion and without any undue advantage, as such the case falls within the ambit of Section 302 (c) PPC. We have noticed that the learned defence counsel has introduced this plea for the first time before this Court. Neither it has been taken by the appellant during the investigation, nor in this regard any suggestion was put to the prosecution witnesses nor even the appellant in his statement recorded U/S 342 Cr.P.C. took such kind of plea, rather he totally denied the commission of the offence. However, in the interest of justice, we would like to meet with this submission. In order to determine the fact as to whether it was a case of intentional murder as alleged by the prosecution or incidental death occurred at the spur of moment as argued by the learned defence counsel, it is appropriate to have a quick glance over the provisions of Section 302 PPC, which by itself divides *qatl-i-amd* for the purpose of punishment in three categories i.e.

- a) *qatl-i-amd*, punished with death as *qisas*;
- b) *qatl-i-amd*, punished with death or imprisonment for life as *ta'zir*
- c) *qatl-i-amd*, punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of *qisas* is not applicable.”

In the mischief of Section 302 (c) P.P.C. the legislature has left the quantum of sentence under discretion of the Court keeping in view facts and circumstances of each case. The Apex Court of the country in a celebrated

judgment reported as “*Ali Muhammad versus The State*” (PLD 1996 Supreme Court 274) has held that the provision of Section 302(c) PPC cover those cases within any one of the five listed exceptions of the erstwhile Section 300 PPC. The relevant portion of the esteemed judgment reads as under:-

“As to what are the cases falling under clause (c) of Section 302, the law-maker has left it to the Courts to decide on case to case basis. But keeping in mind the majority view in Gul Hassan case PLD 1989 SC 633, there should be no doubt that the cases covered by Exception to the old Section 300, P.P.C. read with old Section 304 thereof, are cases which were intended to be dealt with under clause (c) of the new section 302 of the P.P.C.”

Exception 4 of old Section 300 P.P.C. reads as under:-

“**Exception 4:-** Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers provocation or commits the first assault.”

12. From the aforementioned angel, we can say that help of Exception-4 can only be invoked if death is caused, *firstly*, without premeditation, *secondly*, in a sudden fight in a heat of passion upon a sudden quarrel and *thirdly*, without the offender’s having taken undue advantage or acted in a cruel or unusual manner. Reference can be made to case report as “*Muhammad Asif ..Vs.. Muhammad Akhtar (2016 SCMR 2035)*” wherein it has been observed as under:-

“In order to attract provisions of Exception 4 to the erstwhile section 300, P.P.C. it had not only to be established that the case was one of a sudden fight taking place without any premeditation in the heat of passion upon a sudden quarrel but it was also required as a necessary ingredient that the offender must not have acted in a cruel or unusual manner.”

On the touchstone of above principles, now we have to see as to whether the case of the appellant falls under Exception 4 of erstwhile Section 300 PPC for the purpose of brining it within the ambit of Section

302 (c) PPC or it was an intentional murder attracting the provisions of Section 302 (b) PPC.

13. From the material available on record it evinces that in this unfortunate incident one innocent lady lost her life while the complainant sustained fire arm injuries. The complainant/injured (PW-2), while appearing in the dock in the court room categorically stated that the appellant while armed with pistol entered into his house, raised *Lalkara*, made a fire shot which hit on the head of deceased lady and then repeated the fire shot which landed on his person. From the statement of this star witness, whose testimony gone unchallenged during the course of cross-examination, it is manifestly clear that on the unfortunate day, appellant while armed with fire arm, came to the house of the complainant, raised *Lalkara* and without further entering into argument with any member of the family opened the fire shot which landed upon his deceased wife and then repeated the same resulting into injuries to the complainant. In such backdrop, shelter of spur of the moment or heat of passion cannot be taken into account. Intention of premeditation of the appellant to kill his wife can be gathered from the fact that he came into the house of the complainant while armed with a conventional weapon and opened the fire shot without entering into any conversation with the deceased or her other family members. Furthermore, repetition of fire upon the complainant is sufficient proof of the intention of the appellant that he came to the house of the complainant well prepared with intention to take the life of his wife and her father. Appellant made fire shots upon the vital parts of two unarmed persons, which in all probability can cause death. This by itself constitutes undue advantage and excludes his case from the purview of the Exception 4. Reliance is placed on case reported as “Javed Akhtar versus The State” (PLD 2020 Supreme Court 419) wherein it has been laid down as under:-

“In the present case there is no evidence of a sudden fight, let alone a *in the heat of passion*. The petitioner armed himself with a shotgun against unarmed persons, this in itself constitutes undue advantage and excludes his case from the purview of the Exception 4.”

In such circumstances there exists no occasion of sudden provocation, spur of the moment and exclusion of pre-meditation at the time of occurrence in order to bring the appellant's case under the ambit of Section 302 (c) PPC.

14. Dr. Shama Ashfaq (PW-14) conducted medico-legal examination of Mst.Zeenat Asghar while in injured condition and observed a lacerated wound with active bleeding 1.5 cm x 0.5 cm going deep over the right temporal region of scalp. Probable duration of injury was within one hour.

15. After remaining in life and death strife for 38 days, the injured Mst. Zeenat Asghar breathed her last, as such Dr. Asma Ashfaq (PW-08) held her autopsy on 25.02.2020 at 11:00 a.m. and observed an incision of 2cm x 2cm on the neck made by surgeons for tracheotomy. Cause of death was due to damage of most vital organ brain and blood loss leads to cardiopulmonary arrest.

16. Dr. Adnan Yousaf (PW-15) examined injured Asghar Ali (PW-2) and observed two injuries on his person with no possibility of fabrication. Probable duration of injury was fresh.

The locale, number and nature of injuries, weapon of offence used for causing these injuries was exactly in line with the ocular account, thus, medical evidence lends full support to the ocular account.

Learned counsel for the appellant while referring to the opinion of the doctor (PW-8) "*The time between injury and death 07 days and 02.00 hours ...*" laid much emphasis that the ocular account is in contradiction with the medical evidence. We are not in agreement with this submission of the learned counsel. It would be erroneous to accord undue importance to the hypothetical assessment of the Medical Officer qua the duration between injury and death to discard the ocular account. After sustaining fire arm injury right from the day one, the deceased while in injured condition remained admitted in the hospital and after one month and seven days of the injury breathed her last in the hospital, as such mistaken assessment qua the duration between injury and death cannot overshadow confidence inspiring ocular account.

13. Appellant was arrested in this case on 29.01.2020, who during investigation led to the recovery of pistol 30-bore (P-3) alongwith two live

bullets (P-4/2), which were sent to the office of Punjab Forensic Science Agency, Lahore (PFSA) for comparison with the crime empties already secured from the spot and the report of the said office (Ex.PR) has been received with positive result. Learned defence counsel laid much emphasis that the crime empties were sent to the office of PFSA on 25.02.2020 i.e. after twenty-seven days of the arrest of the appellant, as such positive report is not beneficial to the prosecution and the sentence of the appellant can be reduced on that basis. We tend not to agree with this submission. No doubt crime empties secured from the spot were sent to the office of PFSA after arrest of the appellant but on that basis no benefit can be extended to the appellant for the reasons that Abu Sufian, 2708/HC, (PW-7)/Moharrar while appearing in the dock in the court room deposed that on 18.01.2020, he received a sealed parcel containing crime empties and kept in safe custody in *Malkhana* and on 25.02.2020 handed over the same to the Investigating Officer for its onward transmission to the office of PFSA. During cross-examination, he explained that “*The parcels could not be sent from 18.01.2020 till 25.02.2020 as the I.O. was busy in other assignments.*” After this clarification delay in sending the crime empties in the office of PFSA has become irrelevant. Even otherwise, as has been discussed supra, the deceased remained on death bed for almost 38 days and apparently in the intervening period the Investigating Officer did not take investigation seriously and interestingly the moment the deceased left for eternal abode on 24.02.2024, on the very next day, the crime empties were submitted in the office of PFSA. In the attending circumstances, sending the crime empties belatedly, at the most can be considered a lapse on the part of the Investigating Officer, whose benefit cannot be extended to the appellant. Even otherwise, if for the sake of arguments positive report of PFSA is ignored even then it cannot be made basis for reduction of sentence of the appellant. It is well settled law that when the ocular account is found to be confidence inspiring and trustworthy, mere fact that recovery is inconsequential by itself could not be a ground for lessor punishment. Reliance is placed on case reported as “*Nasir Ahmed ..Vs.. The State*” (2023 SCMR 478).

14. Motive as set out in the crime report was that due to family discord between the appellant and his wife, appellant committed the murder of his wife and caused fire arm injuries to the complainant. The complainant/injured (PW-2) and eye-witness (PW-3) while appearing in the dock in the court room reiterated the motive part of the occurrence and during the course of cross-examination, the defence could not shatter their credibility on this point. Even otherwise, there can be no other reason for the appellant, who happened to be the husband, to commit the murder of his own wife and caused fire arm injuries to his father in law in such an abhorrent manner. Therefore, we are persuaded to hold that the prosecution has successfully prove the motive part of the occurrence.

15. For what has been discussed above, we have entertained no manner of doubt in our mind that the prosecution has successfully proved the charge against the appellant for committing deliberate and premeditated murder of the appellant through cogent, reliable and confidence inspiring evidence. This unfortunate incident took place in a broad day light, the parties were already known to each other and in such situation, the question of mis-identification does not arise in any eventuality. Recovery of weapon of offence coupled with the positive report of PFSA supports the ocular account. Medical evidence is also in line with the ocular account. Motive as set out by the prosecution has been proved. Appellant has committed the murder of his wife on a trivial issue. The person responsible for committing such brutal, shocking, horrific and panic creating incident in the society deserve no leniency. We are convinced that in this particular case, there is not even a single circumstance, which may be taken as mitigation for awarding lessor punishment to the appellant, who has been found responsible for deliberately extinguishing life of a young lady. In case reported as 'Muhammad Sharif ..Vs.. The State' (1991 SCMR 1622), it has been laid down as under:-

“There can be no controversy that the normal penalty prescribed for the murder by the Divine Law as also the law of the land is death. A murderer is guilty of his action before The Almighty Allah. He is regarded as the murderer of humanity. A Judge is required to do justice on each and every aspect strictly in accordance with law and should not mold the alternatives to favour the guilty. It is the Divine will that we must be firm and resolute to do justice whether it be detrimental to our own interests or the interest of those who are near and dear to us. Mercy is the attribute of God but we are warned not to allow that which is otherwise

unlawful--- moreover, we should now show mercy to those who themselves are proved to have acted mercilessly.”

Similarly, in *Noor Muhammad .Vs. The State* (1999 SCMR 2722), the Apex Court has observed that the Courts while deciding the question of guilt or innocence in murder and other heinous offences owe duty to the legal heirs/relations of the victim and also to the society and should award severer sentences to the act as a deterrent to the commission of offences.

16. In view of what has been discussed above, the appeal in hand being meritless, stand **dismissed**.

17. **Murder Reference No.74 of 2021** is answered in the **AFFIRMATIVE** and the Death Sentence awarded to convict Ibrar is **confirmed**.

(Aalia Neelum)
Chief Justice

(Asjad Javaid Ghural)
Judge

Approved for Reporting

JUDGE