

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.37-L of 2016

(On appeal from the judgment dated 07.10.2013 passed by the Lahore High Court, Lahore in Criminal Appeal No.1511 of 2009).

Muhammad Pervaiz

...Appellant(s)

VERSUS

The State, etc.

...Respondent(s)

For the Appellant(s)	: Mr. Nawab Ali Mayo, ASC
For the Respondent	: Mr. Mehmud ul Islam, AoR (with caveat)
For the Complainant	: Nemo
For the State	: Mr. Mazhar Sher Awan, Additional Prosecutor General
Date of Hearing	: 06.05.2019

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Muhammad

Pervaiz, appellant is in receipt of a guilty verdict; he was indicted for committing *qatl-e-amd* of Kausar Bibi, no other than his better half; it is affirmed by the learned High Court *vide* impugned judgment dated 7.10.2013 *vires* whereof are being challenged through leave of the Court.

2. Prosecution case is structured on the statement of deceased's brother, Muhammad Arshad, PW; according to him, the marriage was on the rocks as the bride failed to bring dowry to the expectation of her in laws. Upon a message by the deceased, Muhammad Arshad, PW along with Mehmood, PW visited the former to take her back, however, upon threats by the appellant they preferred to stay overnight when in midst thereof they were attracted by the hue and cry to see the deceased being strangulated by the appellant with the assistance of Khalid co-

accused; they attempted to rescue the deceased without success. Upon indictment, the accused claimed trial to confront prosecution evidence; they blamed dacoits to have murdered the deceased during the fateful night. While acquitting the co-accused, the learned trial Judge convicted the appellant under clause (b) of Section 302 of Pakistan Penal Code, 1860 and sentenced him to death with a direction to pay Rs.100,000/- as compensation or to undergo six month S.I. in the event of default, a view affirmed by the learned High Court albeit with alteration of death penalty into imprisonment for life with benefit of Section 382-B of the Code of Criminal Procedure.

3. Learned counsel for the appellant contends that the appellant could not have been convicted merely upon his failure to satisfactorily explain as to what befell upon his life during the fateful night. He adds that presence of witnesses is extremely doubtful and even otherwise cannot sustain the charge after they had been disbelieved *qua* identically placed co-accused; the bottom line is that it would be unsafe to maintain conviction. Contrarily, the learned Law Officer vehemently defends appellant's conviction on the ground that plea advanced by him being preposterous was rightly rejected which in retrospect established his presence at the spot, thus there was no space to entertain any hypothesis of his innocence.

4. Homicidal death is not in dispute; appellant's plea that dacoits intruded the household and strangled 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 Qanoon-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.

A criminal case is to be essentially decided on the basis of evidence adduced by the prosecution. Once the witnesses had visited the deceased to take her back, apparently there was no occasion for them to hold in abeyance the purpose of their detour and in case they were present and in the next room, there was no compulsion for the appellant to do away with the deceased at the risk of retaliation or a certain prosecution. The script is far from being plausible and it is so viewed by the learned High Court itself in the following words "*Presence of PWs may be suspicious at the time of occurrence*". It is astonishing that despite above observation, the High Court preferred to maintain the conviction. Suspicions are after all suspicions and cannot substitute the legal proof nor a suspect can be condemned on the basis of moral satisfaction in the absence of evidentiary certainty. Yet another circumstance to cast away the conviction is rejection of prosecution evidence *qua* Khalid co-accused. Role assigned to the acquitted co-accused is inexorably intertwined with appellant's alleged participation in the crime and thus even strongest corroboration, otherwise hopelessly lacking cannot rescue the charge. It would be unsafe to maintain the conviction, therefore by extending the benefit of doubt, Criminal Appeal No.37-L/2016 is allowed, impugned judgment is set aside. The appellant shall be released forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

Lahore, the
06th of May, 2019
Ghulam Raza/*