

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Dost Muhammad Khan
Mr. Justice Qazi Faez Isa

Criminal Appeal No. 326 of 2013

(Against the judgment dated 03.06.2013 passed by the Lahore High Court, Lahore in Criminal Appeal No. 76-J of 2009 and Murder Reference No. 41 of 2009)

Asad Khan

...Appellant

versus

The State

...Respondent

For the appellant:

Syeda B. H. Shah, ASC

For the State:

Mr. Muhammad Jaffar, Deputy
Prosecutor-General, Punjab

Date of hearing:

24.05.2017

JUDGMENT

Asif Saeed Khan Khosa, J.: Asad Khan appellant had allegedly murdered his wife namely Mst. Zahida Shamim and their two minor children namely Muhammad Arshad, aged about five years, and Muhammad Arman, aged about 7/8 months, inside the house of the appellant with the use of a hatchet at about 10.30 A.M. on 30.07.2008 in village Tala Baangi Khel in the area of Police Station Baangi Khel, District Mianwali. It was alleged by the prosecution that the said murders had been committed by the appellant in the backdrop of strained relations between the appellant and his wife. With the said allegations the appellant was booked in case FIR No. 27 registered at the above mentioned Police

Station on the same day and after a regular trial the appellant was convicted by the trial court on three counts of the charge under section 302(b), PPC and was sentenced to death on all the counts and to pay compensation which convictions and sentences of the appellant were later on upheld and confirmed by the High Court. Hence, the present appeal by leave of this Court granted on 21.10.2013.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. According to the prosecution the incident in issue had been witnessed by Ghulam Jan complainant (PW9), father of Mst. Zahida Shamim deceased and a grand father of Muhammad Arshad and Muhammad Arman deceased, Khizar Hayat and Jan Muhammad but during the trial Khizar Hayat and Jan Muhammad PWs had been given up by the prosecution as having been won over as they had refused to support the prosecution's case against the appellant. The solitary eyewitness deposing before the trial court was Ghulam Jan complainant who was not only the father of one of the deceased but was also admittedly a chance witness who had come to the place of occurrence from District Faisalabad situated more than 200 miles away from the scene of the crime. The stated reason for visit of the complainant to the spot had never been substantiated or established before the trial court through any independent evidence whatsoever. Muhammad Tariq Mehmood (DW1) had produced a register of attendance before the trial court establishing that on 29.07.2008 as well as on 30.07.2008 Ghulam Jan complainant was very much in attendance at his place of work in Faisalabad and there was no earthly reason to attribute any motive to the said witness to falsely depose before the trial court in order to save the appellant's skin. It is important to mention here that the very first sentence of the FIR lodged by the complainant showed that he admitted working as a regular employee at Faisalabad and he had never claimed that on the day of occurrence

he was on leave. The said solitary eyewitness produced by the prosecution had failed to receive any independent corroboration or support inasmuch as the motive set up by the prosecution was never established through any independent evidence, the alleged recovery of a hatchet from the appellant's possession during the investigation was unbelievable as the said hatchet had statedly been recovered from an open field belonging to somebody else and the investigating officer had conceded before the trial court that at the time of its recovery the hatchet was not stained with blood. The medical evidence did not support the case of the prosecution for the simple reason that post-mortem examination of the deadbodies had been conducted after more than 17/18 hours of the alleged occurrence. The said delay in conducting post-mortem examination of the deadbodies indicated that time had been consumed by the complainant party and the local police in procuring and planting eyewitnesses and in cooking up a story for the prosecution. All these factors have gone a long way in convincing us that the prosecution had not been able to prove its case against the appellant beyond reasonable doubt.

4. It had been held by this Court in the case of Arshad Mehmood v. The State (2005 SCMR 1524) that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the later case of Saeed Ahmed v. The State (2015 SCMR 710) the said legal position had been elaborated and it had been held that an accused person is under some kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the confines of his house. It had, however, been held in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the entire case of the prosecution stands demolished or is found to be utterly unbelievable there an accused person cannot be convicted merely because he did not explain the circumstances in which his wife or some vulnerable dependent had lost his life. In such a case the entire burden of proof cannot be shifted to him in that regard if

the case of the prosecution itself collapses. The present case is a case of the latter category wherein the entire case of the prosecution has been found by us to be utterly unbelievable and the same stands demolished and, thus, we cannot sustain the appellant's conviction and sentence merely on the basis of an inference or a supposition *qua* his involvement.

5. For what has been discussed above this appeal is allowed, the convictions and sentences of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad

24.05.2017

Approved for reporting.

Arif