

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.13-P/2015

(On appeal from the judgment dated 13.02.2013 passed by the Peshawar High Court, Mingor Bench in Criminal Appeal No.97 of 2010).

Wajahat

...Appellant(s)

VERSUS

Gul Daraz & another

...Respondent(s)

For the Appellant(s)	: Mr. Ansar Nawaz Mirza, ASC
For the Respondent No.1	: Mr. Abdul Munir Khan, ASC
For the State	: Mr. Mujahid Ali Khan, Additional Advocate General, Khyber Pakhtunkhwa
Date of Hearing	: 30.04.2019

ORDER

Qazi Muhammad Amin Ahmed, J.- Touheed Begum met homicidal death in her home; Wajahat, appellant herein, was blamed for the crime by Gul Daraz, PW, no other than his father-in-law; domestic differences were cited as motive for the crime. The learned trial Court returned guilty verdict to the appellant; he was convicted under clause (b) of Section 302 of Pakistan Penal Code and sentenced to imprisonment for life along side direction for payment of *diyat* to the tune of rupees six lacs to the legal heirs with benefit of Section 382-B of the Code of Criminal Procedure, 1898 *vide* impugned judgment dated 28.1.2010 affirmed by the learned Peshawar High Court *vide* judgment dated 13.2.2013, albeit with conversion of *diyat* into compensation.

2. Learned counsel for the appellant contends that judgments of the Courts below are erroneously premised on misconception of law inasmuch as in the absence of positive proof, the appellant could not have been convicted on the basis of presumptions or his failure to satisfactorily explain circumstances leading towards his wife's death. Similarly, appellant's absence from law cannot be equated with his guilt, complained the learned counsel, positions vehemently contested by the learned Law Officer.

3. The complainant, though seemingly with no axe to grind, nonetheless has not himself witnessed the occurrence; crime report, is structured upon his strong belief that no one else other than the appellant could be the possible assassin, a conviction based upon hearsay queries, most important being one furnished by his second daughter Nazakat PW married in the same household; she appeared as PW-5 and in the witness box pleaded ignorance about the culprit, responsible for her sister's death. She merely deposed about crime without reference to the assailant. Her evidence is not of much benefit to the prosecution leaving in the field suspicion alone to sustain the charge. Appellant's belated plea of the suicide even if rejected outrightly by itself would not absolve the prosecution to drive home the charge, on its own strength and same goes for appellant's absconson; people avoid to face process of law or their adversaries for a variety of reasons, not necessarily inclusive of their guilt; Appellant's reticence to satisfactorily explain as to what befell 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 Qanoon-e-Shahadat Order, 1984 and thus it would be grievously unsafe to maintain the conviction, without potential risk of error as well as diametrical departure from adversarial nature of criminal trial. The appeal is allowed, the impugned

judgment is set aside and the appellant shall be set at liberty forthwith, if not required in any other case.

JUDGE

JUDGE

JUDGE

Peshawar, the
30th of April, 2019
Ghulam Raza/*