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Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Criminal Appeal No.1162 of 2010
(Mst. Amiran etc.v. The State etc.)

and

Murder Reference No.20 of 2011
(The State v. Muhammad Munir)

JUDGMENT

Date of hearing: 11.04.2017

Appellant by: Syed Badar Raza Gillani, Advocate .
Complainant By: Malik Muhammad Hashim, Advocate.
State by: Mr. Muhammad Ali Shahab, Deputy
Prosecutor General.

Ch. Abdul Aziz, J. This judgment shall dispose of Criminal Appeal No.1162 of 2010 filed by Mst. Amiran Bibi and Mst. Jamila Mai, appellants (against conviction) and Reference sent by the trial court under section 374 of Criminal Procedure Code, 1898, which is numbered as Murder Reference No.20 of 2011 for confirmation or otherwise of sentence of death awarded to Munir Ahmad (convict). The appeal as well as the murder reference are originating from the judgment dated 30.11.2010 passed by the learned Additional Sessions Judge, Dunyapur, arising out of private complaint for the offence under sections 302,34,109 PPC with regard to an occurrence taken place within the territorial jurisdiction of Police Station Saddar Dunyapur. Learned Additional Sessions Judge vide the said judgment convicted and sentenced the appellants and their co-convict namely Muhammad Munir as under:-

1. **Amiran Bibi and Jameela Bibi (appellants)** were convicted under sections 302 (b)/34 PPC and were sentenced to imprisonment for life. They were also directed to pay Rs.100,000/- each as compensation to the legal heirs of the deceased and in default of payment of the amount, they were ordered to further undergo six months SI each. Benefit of section 382-B Cr.P.C. was also extended in their favour.
2. **Muhammad Munir (convict)** was convicted under sections 302 (b)/34 PPC and awarded death sentence. He was also directed to pay Rs.100,000/- as compensation to the legal heirs of the deceased and in default of payment of the said amount, he was ordered to further undergo six months SI.

2. Succinctly, the case of the prosecution as unfolded by Hafiz Karim Bakhsh, real brother of the deceased (PW.2) in private complaint (Exh.PE) is that on the night falling in between 19/20.09.2009 after offering *Isha* and *Tarawih* prayer he along with Muhammad Hanif and Ghulam Shabbir was standing on a water course near their house situated in village Hafizabad, Mouza Qutubpur and were talking with each other. Meanwhile they heard the hue and cry of Muhammad Rafique (deceased), they rushed to the crime scene and saw in the light of torch that Muhammad Rafique (deceased) was made to lay on the cot and he (Muhammad Munir) was piercing Churri on his neck, whereas Mst.Amiran Mai and Mst.Jameela were holding his limbs and were asking Munir Ahmad (convict) to hurry up for commission of his murder. Within the view of complainant and other PWs, Muhammad Rafique was slaughtered and when they tried to catch hold of Munir Ahmad, he threatened that if anyone came near him, he would also be slain and fled away while boarding on a motorcycle with an unknown accused. Muhammad Rafique succumbed to the injuries at the spot. Motive behind the occurrence was stated to be the illicit relations of Munir Ahmed with Mst. Jameela Mai (appellant). It was further alleged in the complaint (Exh.PE) that regarding the same occurrence, a case FIR No.455/2009 dated 20.09.2009 under sections 302,34 PPC was previously

registered at Police Station Saddar Dunyapur on the complaint of Amiran Bibi (appellant) which was based on false and fabricated story. It also evinces from the complaint that eight days before filing of the private complaint, Altaf Khan (co-accused) approached the complainant in the presence of PWs Muhammad Hanif and Ghulam Shabbir and sought pardon stating that he along with Munir Ahmad, Amiran and Jameela were involved in the murder of Muhammad Rafique.

3. Initially the matter was brought to the notice of police through the statement (Exh.CW-7/A) of Mst. Amiran Bibi (appellant), wife of Muhammad Rafique (deceased) which was reduced into writing by Farhat Abbas SI (CW.7). On the basis of this statement, formal FIR (Exh.CW.5/A) was registered. Briefly stated the facts narrated by Mst. Amiran Bibi (appellant) in FIR (Exh.CW.5/A) are to the effect that on the night of 20.09.2009 she along with other family members was present in the house. On hearing the hue and cry of Muhammad Rafique (deceased), she along with her daughters attracted to the courtyard and saw three accused namely Muhammad Younas, Husnain and Farooq standing there and within their view Husnain and Farooq got hold the limbs of the Muhammad Rafique (deceased) and Muhammad Younas cut the throat Muhammad Rafique (deceased) with a Churi who succumbed to the injuries at the spot. On the hue and cry of the witnesses, the three accused decamped from the spot. The motive behind the occurrence statedly was the dispute of land.

4. After the registration of FIR (Exh.CW.5/A) Farhat Abbas SI (CW.7) proceeded to the crime scene and after examining the dead body, prepared the injury statement (Exh.PB) and the inquest report (Exh.PC). He also secured blood stained earth from the crime scene through recovery memo (Exh.CW.4/A). He forwarded the dead body of the deceased to hospital for the purposes of autopsy under the escort of Muhammad Ali 304/C

(CW.8). After preparing the rough site plan (Exh.CW-7/B), he recorded the statements of the witnesses including Tahira Bibi, Muhammad Shabbir and Abdul Hameed etc. Initially, in order to arrest the accused nominated in the FIR, he conducted raid but remained unsuccessful. However, later on, these accused persons joined the investigation proceedings and were found innocent and instead arrived at a conclusion that the occurrence was committed by Amiran Bibi, Jameela Bibi and Munir Ahmad. On 22.10.2009, he arrested the appellants. Jameela Bibi (appellant), who during the course of investigation led to the recovery of Bughda (Exh.CW-2/1) which was taken into possession through memo (Exh.CW-2/A). Munir Ahmad (convict) was also arrested on 23.10.2009. During the course of investigation, Investigating Officer arrived at a conclusion that Jameela Bibi (appellant) committed the murder of her father at the behest of Amiran Bibi and Munir Ahmed. On the conclusion of investigation, he submitted report under section 173 Cr.P.C.

Karim Bakhsh (PW.2) feeling dissatisfied from the conclusion drawn by the police, proceeded to file the private complaint (Exh.PE) on which the trial commenced.

5. The prosecution, in order to prove its case against the appellants and Munir Ahmad (co-convict/absconder) produced three persons as prosecution witnesses i.e. Hafiz Karim Bakhsh (PW.2) and Ghulam Shabbir (PW.3), the eye-witnesses of the occurrence and Dr.Akhtar Shahzad (PW.1) who conducted the post-mortem examination of Muhammad Rafique (deceased). Trial court also examined ten persons as Court Witnesses which include Muhammad Arshad 330/C (CW.2) the witness of recovery of Bughda, Mst. Tahira Bibi (CW.6) an eye-witness, Farhat Abbas SI (CW.7), investigating officer of the case and Muhammad Nawaz (CW.9), the draftsman.

6. Dr. Akhtar Shahzad (PW.1) on 20.09.2009 at 8:00 a.m., conducted autopsy on the dead body of Muhammad Rafique and observed the following injuries:-

Injury No.1

An incised wound 3 cm x 0.5 cm present on chin. Bone was exposed. Periostium of bone was cut.

Injury No.2

An incised wound 1.3 cm x 1.05 cm on front of neck. Cutting skin, muscles. Vessels of right side of neck cartilage was deep.

Injury No.3

An incised wound 3 cm x 1 cm on right side of neck. Cutting skin muscles, vessels of right side of neck (internal carotid artery and jugular vein 1 cm below injury No.2.

Injury No.4

An incised wound 2 cm x 1 cm in front of neck 1 cm below the injury No.3. Cutting of muscles, cartilage deep 6 cm above the clavicles.

According to the opinion of the doctor, the death occurred due to injuries No.2 & 3 which damaged the right side of vessels, internal carotid artery and jugular vein. These injuries further caused haemorrhage and shock and ultimately resulted into the cardio pulmonary arrest. The injuries were described sufficient to be enough to cause the death in ordinary course of life. All injuries were ante mortem in nature and were caused by sharp edged weapon. The probable time between injury and death described by the doctor was within ten minutes and between death and post-mortem was between two to twenty four hours.

7. The learned trial court examined the appellants and their co-convict/absconder Muhammad Munir under section 342 Cr.P.C. Mst. Amiran Bibi (appellant) in response to question No.3 replied as under:-

“It is incorrect on 19/20-09-2009 at night co-accused Munir visited the house of deceased Mohammad Rafique. It is also incorrect that Munir co-accused with the help of myself and Mst. Jameela Bibi murdered the deceased Mohammad Rafique with the weapon of offence churri and occurrence was witnessed by the PWs. I am the complainant of FIR as well as private complaint titled: Mst.: Amiran Bibi v. Mohammad Younas, etc. pending in this Hon’ble Court. Murder of my husband Mohammad

Rafique was committed by the accused Mohammad Younas, etc of the said complaint and FIR. The witnesses namely Hafiz Karim Bakhsh, Tahira, Hanif and Ghulam Shabbir joined the investigation of my FIR case dated: 20.09.2009 in which they stated before the I.O individually and collectively that they were not present at the time of occurrence and they had not seen the occurrence. The complaint filed by complainant Hafiz Karim Bakhsh is based on false facts and with ulterior motive. Accused Mohammad Younas, etc are his real nephew who saved them who filed this private complaint against us. After postmortem examination the dead body of my husband Mohammad Rafique deceased was handed over by the police. All the funeral ceremony expenses were afforded by me. Hafiz Karim Bakhsh involved me and my minor daughter Mst: Jameela Bibi in this case with the concocted story of illicit relations with Munir.”

In response to the question “why this case against you and why the PWs have deposed against you”, Mst. Amiran Bibi (appellant) gave the reply which reads as under:-

“Hafiz Karim Bakhsh’s real nephews Mohammad Younas, Husnain and Farooq are real culprits of the FIR case as well as my complaint case titled: Mst. Amiran Bibi Vs. Mohammad Younas etc which is still pending adjudication in this Hon’ble Court. To save the real culprits Hafiz Karim Bakhsh as complainant lodged this false complaint against me and my co-accused and all the evidence produced by the prosecution is fake, false and against the facts with ulterior motive”.

Similarly, Mst. Jameela Bibi in response to question “why this case against you and why the PWs have deposed against you”, she made the following reply:-

“Real culprits of case FIR are Mohammad Younas, Husnain and Farooq. The complainant Hafiz Karim Baksh is real uncle of the said Younas, etc. so to save them instant private complaint is filed against us.”

Munir Ahmad, during his examination under section 342 Cr.P.C., in reply to the question “why this case against you and why the PWs deposed against you”, stated as under:-

“Real culprits of FIR case are Mohammad Younas, Husnain and Farooq. The complainant is real uncle of said accused persons. To save the real culprits, the instant private complaint was lodged and all the evidence produced by the prosecution is false and against facts. There is land dispute in between Mohammad Younas accused and Muhammad Rafique deceased. Due to this reason Mohammad Younas murdered Mohammad Rafique

deceased. I am ready to give oath on Holy Quran about my innocence.”

All the three accused (appellants and Munir Ahmad) neither opted to appear as witnesses under section 340(2) of Cr.P.C. nor produced any evidence in their defence.

8. After the completion of trial, the learned trial court convicted and sentenced the appellants and their co-convict Munir Ahmad, as stated above, hence, the instant appeal and Murder Reference.

9. Learned counsel for the appellants contended that the impugned judgment was passed in a trial, arising out of a private complaint which was filed with an unexplained delay of about 3-1/2 months; that initially the occurrence was brought to the notice of the local police through an FIR registered at the instance of Amiran Bibi (appellant); that in the said FIR, Jameela Bibi (appellant) was the witness of the occurrence and after about 3-1/2 months, the instant complaint was filed; that the complaint was comprising upon the set of the witnesses who admittedly joined the process of investigation on the first day of occurrence but uttered not a single word against the appellants; that after about one month of the occurrence, Karim Bakhsh (complainant) moved an application against the appellants for the registration of FIR without offering any explanation for this delay; that in the instant case, the ocular account was furnished by the witnesses who admittedly were not in best of terms with the accused persons and they miserably failed to justify their presence at the crime scene; that even during the course of investigation, Amiran Bibi (appellant) was found not to have participated in the commission of crime and that despite the fact a reasonable doubt arose out of discrepancies and contradictions from the prosecution evidence but the learned trial court gave no benefit to the appellants.

10. On the other hand, learned DPG assisted by learned counsel for the complainant strongly controverted the arguments of learned counsel for the appellants and submitted that though there is a delay of 3-1/2 months in filing the complaint but the same stands reasonably explained; that the complainant who is the real brother of the deceased had no reason to falsely implicate the appellants in the commission of crime; that the guilt of the appellants and Munir Ahmad (convict) stands proved on the basis of the statement of Mst.Tahira Bibi who is the real daughter of Mst.Amiran Bibi and sister of Jameela Bibi; that the ocular account furnished by the eye-witnesses is supported by the medical evidence as well as by the recovery of Bughda affected at the instance of Jameela Bibi (appellant); that though initially the FIR was registered at the instance of Amiran Bibi, however, during the course of investigation, both the appellants were found involved in the commission of offence and that both the appellants are fully connected with the commission of crime, from the facts and circumstances brought on record during the course of trial.

11. Arguments heard and record perused with the able assistance of learned counsel for the respective parties.

12. The case of the prosecution, primarily hinges upon the ocular account furnished by Hafiz Karim Bakhsh (PW.2), Ghulam Shabbir (PW.3) and Mst. Tahira Bibi (CW.6), the medical evidence brought on record by Dr. Akhtar Shehzad (PW.1), the recovery of Bughda (CW-2/1) witnessed by Muhammad Arshad 330/C (CW.2). The prosecution sought corroboration from the motive which was described as illicit relations of Jameela Bibi (appellant) with Munir (absconder).

13. It divulges from the perusal of the record that the occurrence which became the foundation stone of the instant case took place on the night of 20.09.2009 at about 12:30 a.m. within the jurisdiction of P.S. Saddar Dunyapur district

Lodhran. The detail of the occurrence was brought to the notice of local police by Mst. Amiran Bibi (appellant) through her statement which was converted into a complaint/Fard Bian (Exh.CW-7/A). On the basis of this complaint, subsequently formal FIR (Exh.CW-5/A) was registered. Amiran Bibi, through her above statement saddled Muhammad Younas, Hasnain and Farooq, with the responsibility of committing the murder of Muhammad Rafique, her husband (deceased). However, later on Hafiz Karim Bakhsh (PW.2), the real brother of the deceased, approached the local police on 15.10.2009 with an application (Exh.PD) for the registration of FIR, alleging therein that Muhammad Rafique (deceased) was done to death by Amiran Bibi, Jameela Bibi and Munir Ahmad. He claimed that the occurrence was witnessed by him and his brothers namely Ghulam Shabbir (PW.3) and Muhammad Hanif (given up PW). Admittedly, the application (Exh.PD) was moved after about 25 days of the occurrence. We have meticulously examined the contents of the application (Exh.PD) moved by Karim Bakhsh (PW.2) as well as the prosecution evidence and have failed to come across any explanation, justifying this inordinate delay of 25-days in reporting the matter to the police. Such inordinate delay warrants more cautious approach by this Court, while appraising the version of the complainant.

14. The complainant Karim Bakhsh (PW.2) at the time of moving of application (Exh.PD) as well as in the private complaint (Exh.PE) took up a specific motive and described it as illicit relations between Jameela Bibi (appellant) and Muhammad Munir (co-convict/absconder). It evinces from the prosecution evidence that except an oral assertion by Karim Baksh (PW.2), no other evidence was brought on record in support of the alleged motive. Neither he made reference to any specific incident nor produced any other witness in support of his claim of illicit relations of Jameela Bibi with Muhammad

Munir. So much so, that even Ghulam Shabbir (PW.3) his real brother uttered not a single word regarding the alleged motive. The motive has its own importance in every murder case and can safely be termed as backbone of the prosecution case. Keeping in view the peculiar facts and circumstances of the instant case which is in the nature of complainant turned accused, the motive gains more importance. The motive is to be proved on the basis of some evidence and not through presumption. In this regard, we are of the view that the prosecution failed to satisfactorily prove the motive. It is settled that the failure to establish motive as set out in FIR is a factor, which goes against the prosecution. The prosecution though is not obliged to prove the motive in each and every case, however, once the motive is setup then it must be established. The guidance in this respect can be sought from the judgment reported as Noor Muhammad v. The State and another (2010 SCMR 97) wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“Prosecution though not called upon to establish motive in every case, yet once it has set up a motive and fails to prove the same, then prosecution must suffer the consequence and not the defence.”

15. According to the contents of the private complaint (Exh.PE), the occurrence was witnessed by Karim Bakhsh and his two brothers namely Ghulam Shabbir and Muhammad Hanif. During the course of trial, Karim Bakhsh and Ghulam Shabbir appeared as PW.2 & PW.3 respectively, whereas Muhammad Hanif was given up. It divulges from the record that the two eye-witnesses were not in best of terms with Muhammad Rafique (deceased) as well as with Amiran Bibi (appellant). In this respect, relevant extract from the cross-examination of Karim Bakhsh (PW.2) is being reproduced below:-

“I have limited talking terms with deceased Muhammad Rafique at the time of occurrence. It is correct that I was not at talking terms with Jamila and Ameeran Bibi.”

Such aspect of the matter puts this Court at guard, while making the appraisal of the prosecution evidence. As a necessary corollary, the primary question which is required to be determined is the fact that whether the prosecution witnesses reasonably justified their presence at the crime scene or not. According to the record, Muhammad Hanif (given up PW) was residing in Qutubpur, situated approximately at a distance of one kilometer from the house of Karim Bakhsh (PW.2), whereas Ghulam Shabbir was residing at a distance of one mile from his house. Similarly Karim Bakhsh was residing at a distance of 2 acres from the house of the deceased, adjacent to a mosque. According to the record, they offered their Isha and Tarawih prayer individually and not in the mosque. None of the eye-witnesses advanced any reasoning for their presence outside the house of the deceased and that too at the odd hours of the night. Such aspect coupled with the fact that the PWs were not in good terms with the deceased, makes their presence outside the house of the deceased dubious in nature.

It divulges from the record that by the time, the police arrived at the crime scene, all the three eye-witnesses were in attendance. This feature is even admitted by the eye-witnesses. In this regard, it would be appropriate to make reference to the relevant extract from the statement of Hafiz Karim Bakhsh (PW.2), which is as under:-

“Ameeran Mai have got recorded police statement Under Section 154 Cr.P.C. in my presence which is Ex.D-B. Voluntarily stated that police had not heard our version. The police had prepared site plan in my presence. I cannot recollect the time of recording of said statement of Ameeran Bibi. The site plan was prepared by the police in day light.”

In addition to above, he further admitted that Amiran Bibi had nominated two accused in his presence. It is important to mention here that Amiran Bibi (appellant) placed the blame of the commission of crime on the shoulders of Younas, Husnain and Farooq. Younas and Husnain are the real nephews of Karim Bakhsh, whereas Farooq is his maternal nephew. In this background, the question arises that if at all they had witnessed the appellants while slaughtering the deceased then why they remained silent before the police at the time of their visit to the crime scene on the first night. Admittedly, this question remained unexplained throughout the trial.

The perusal of the statement of Ghulam Shabbir (PW.3) conveys somewhat the same picture. According to him, the police arrived at the crime scene within 30/60 minutes of the occurrence and the statement of Amiran Bibi (appellant) was recorded by the police in the presence of PWs. Similarly, he admitted that even the spot inspection was conducted on the pointation of Amiran Bibi (appellant) and that too in the presence of Hafiz Karim Bakhsh. At that particular time, neither any application was submitted by Hafiz Karim Bakhsh nor he raised any objection. He admitted in unequivocal terms that at the relevant time he along with Tahira Bibi (CW.6), Mian Muhammad Shabbir, Abdul Hameed, Hafiz Karim Bakhsh (PW.2), Haji Muhammad Hanif (given up PW), Abdul Ghafoor, Khursheed, Muhammad Farooq and many other persons was present.

The learned counsel for the complainant as well as learned DPG laid much emphasis on the statement of Tahira Bibi (CW.6) and portrayed it as a solitary circumstance, sufficient to uphold the conviction of the appellants. In order to evaluate such argument, we have made an in-depth analysis of the prosecution case. Though Tahira Bibi, tried to supplement the ocular account furnished by Karim Bakhsh (PW.2) and

Ghulam Shabbir (PW.3) but the perusal of the record reveals that the actual position is altogether different. Tahira Bibi admittedly is the inmate of the house where the occurrence took place. While appearing as CW.7, she stated that though she witnessed the occurrence but at the arrival of the police, she was locked in a room and was not permitted to interact either with the police or with the PWs. However, such stance of CW.7 is strongly belied by the prosecution evidence itself. In this respect, we have already discussed the evidence of Ghulam Shabbir (PW.3), who admitted in clear terms regarding her presence at the time of the visit of the police. Even Farhat Abbas SI (CW.7), the Investigating Officer of the case stated that he recorded the statement of Tahira Bibi on the very first day of the occurrence. Not only this, he also deposed about the remaining PWs that they joined the investigation process and stated nothing about the involvement of the appellants in the commission of crime. It would be advantageous to make reference to the relevant portion of evidence of Farhat Abbas (CW.7), which is as under:-

“I inquired and recorded the statement of Mst. Tahira Bibi at the spot. This is the same statement Ex.D-E which I recorded there. Para No.4 of case diary No.1 is before me. It is correct that I inquired Mst. Tahira Bibi, Muhammad Shabir s/o Mian Allah Baksh, Abdul Hameed s/o Shah Ali, Hafiz Karim Baksh s/o Qadir Baksh caste Arain r/o Basti Hafiz Aba, Haji Muhammad Haneef s/o Qadir Baksh, Abdul Ghafoor s/o Muhammad Ramzan caste Chohan, Khursheed s/o Muhammad Ramzan caste Chohan, Muhammad Farooq s/o Muhammad Nawaz Caste Chohan, Haji Muhammad Aslam s/o Sarwar caste Mochi r/o Qutubpur, Master Muhammad Ramzan s/o Muhammad Hussain caste Jatt r/o Basti Hafiz Abad, Muhammad Habib s/o Muhammad Ramzan Caste Jatt. They have recorded their statement in general interrogation that this is an alarming incident and that justice be done. I did not recollect whether I have inquired from them as to their witnessing the occurrence themselves. At request of learned counsel for complainant, CW is allowed to fresh memory and then answer the same. Again replied that they have recorded their statements that they have not seen the occurrence themselves and demanded the justice, as they were present at the place of occurrence.”

In this backdrop, the prosecution story appears to be nothing but a jumble of lie. This is not understandable as to how this is possible that the eye-witnesses despite being present at the crime scene and that too in the company of numerous other relatives remained silent and uttered not a single word against the appellants. More so, the occurrence took place in an area comprising upon orthodox society and the appellants hailed from lower middle class families but surprisingly no eyebrow about the story put forth in the crime report was raised. According to the record, Amiran Bibi (appellant) received the dead body of the deceased after the autopsy and even the funeral of the deceased was also managed by her. We have failed to get any reasonable justification as to why the PWs and their family members opted to remain mum for 25-days. If at all, the prosecution story is having some shred of truth, then the eye-witnesses should have protested for the false implication of the set of accused persons nominated by Amiran Bibi (appellant) and on the other hand, should have implicated the appellants on the very first day of the occurrence. In this backdrop, we are of the view that the ocular account furnished by the three eye-witnesses is not of the quality, whereupon the conviction can be awarded or upheld.

16. We have also noted another feature of the prosecution case which pertains to the source of light in which the occurrence was witnessed by the PWs. According to the claim of the PWs, they saw this gruesome act in the light of a torch but admittedly no such torch light was taken into possession by the police. Even otherwise, it is settled that the source of identification of accused through the light of the torch is a weak type of source and unsafe to be relied upon. Reliance in this regard can be placed to the latest judgment of the Hon'ble Division Bench of the Sindh High Court (Larkana Bench) in the

case of Abdul Rahim v. Ali Bux and 4 others (2017 P Cr. L J 228).

17. The prosecution portrayed the recovery of Bughda (Exh.CW-2/1) as a corroboratory piece of evidence. Such an argument is frail in nature as we have already arrived at the conclusion that the ocular account is falling much short of the required standard to award or to uphold the conviction.

18. There is another question which is essentially required to be decided by this Court and it pertains to the fate of Munir Ahmed who has been sentenced to death by the trial court. According to the record, Munir Ahmed, who was on bail at the time of pronouncement of the judgment, skipped from the court and has yet not surrendered. The question arises as to how he is to be dealt with while deciding the appeals of the appellants namely Amiran Bibi and Jameela Bibi. Though he has not challenged his conviction through an appeal but still a reference has been forwarded by the learned trial court under section 374 Cr.P.C. which is numbered as Murder Reference No.20 of 2011.

Section 374 falls within the Chapter XXVII of the Criminal Procedure Code which is titled as “**OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION**”. In order to see the powers which this Court can exercise while dealing with a reference forwarded to this Court under section 374 Cr.P.C. it would be appropriate to peep through the relevant provisions of the Chapter. The provisions of section 374 & 376 Cr.P.C. which are relevant on the subject are being reproduced below:-

374. Sentence of death to be submitted by Court of Session. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

376.Power of High Court to confirm sentences or annul conviction. In any case submitted under section 374, [] the High Court:

(a) may confirm the sentence or pass any other sentence warranted by law or

(b) may annul the conviction and convict the accused of any offence of which the Sessions Court might have convicted him or order a new trial on the same or an amended charge, or

(c) may acquit the accused person.

Provided that no order for confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.”

From the perusal of the foregoing provisions, it evinces that while dealing with a reference under section 374 Cr.P.C. this Court has ample powers to confirm the sentence or to pass any other appropriate sentence or to annul the conviction or even to order a new trial on the same or an amended charge and lastly to acquit an accused. It further divulges from the above two sections that in order to decide a reference under section 374 Cr.P.C. the personal presence of the convict is not made mandatory by the legislatures. A reference under section 374 Cr.P.C., even in the absence of the convict is to be decided, keeping in view the merits of the case. The convict is not be penalized for his abscondment alone and is entitled to complete justice. It needs no mention that the justice is the dictate of Almighty Allah and is to be administered without any bias. The Court has to make a fair and impartial assessment of the case of such a convict and it must not be retaliatory, vindictive, capricious or arbitrary to the unlawful conduct of the absconding convict, rather it must be best judgment assessment. If we peep through the corridors of legal channels of our judicial history, one can easily come across many precedents, in support of our above-mentioned view. In this regard, reference can be made to the case of Khanan Khan and others v. The State reported as **PLD 1966 (W.P.) Peshawar 232** wherein it was held as under:-

“The provisions of section 374, 375, 376 and 379 of the Criminal Procedure Code, 1898 make it clear that for the completion of the process of confirmation of the death sentence or making any incidental or other order in that behalf, the presence of the convicted person is not necessary, unless it is directed by the High Court for any further inquiry under section 375 and that there are no limitations whatsoever on the High Court to finalize the matter of confirmation except that it has to wait till the time provided for appeal has expired or if an appeal has been filed till it is disposed of.”

The above-mentioned finding of the High Court of West Pakistan came up for hearing before the Hon’ble Supreme Court of Pakistan in its appellate jurisdiction through the case reported as *Gul Hassan and another v. The State* (PLD 1969 SC 89) and was upheld.

Similarly, while dealing with almost similar question of law, the Larger Bench of the Hon’ble Supreme Court of Pakistan in a case reported as *Hayat Bakhsh and others v. The State* (PLD 1981 SC 265) while keeping in view the merits of the case held that a reference under section 374 Cr.P.C. can be decided and death sentence of a convict who decamps after the pronouncement of the judgment, can be confirmed even in his absence. The similar proposition also came up for hearing in the case of *Mushtaq and 3 others v. The State* (1989 P Cr. L J 2336) and while acquitting the convicts who had filed their appeals against their convictions this Court also proceeded to acquit a convict, who had neither surrendered before the appropriate authority nor had filed appeal against his conviction, with the following observation:-

“The appellants are, therefore, granted the benefit of doubt and acquitted. Though Noor Hussain did not file an appeal against his conviction and is still absconding, but his case is also before us under section 374, Cr.P.C. for confirmation of death sentence. For the reasons discussed above, we are not inclined to confirm the death sentence recorded against him, and while exercising powers under section 376, Cr.P.C. set aside his conviction and sentence.”

Similar view was expressed by a Division Bench of this Court in a case reported as Master Muhammad Younas and others v. The State (2006 MLD 378).

In the above-backdrop, we have noticed that the case of Munir Ahmad (convict) is also on the same footing as that of the appellants. Due to this reason, and in the light of above-mentioned judicial pronouncements, we are of the view that Munir Ahmad (convict) is also entitled to get benefit of the discrepancies arising out of the prosecution evidence. However, we deem it appropriate to observe that we have decided the case of Munir Ahmad only on account of sections 374 & 376 Cr.P.C.

19. The facts and circumstances discussed above, lead this Court to the conclusion that the story narrated by the PWs have no scintilla of truth in it. The eye-witnesses miserably failed to substantiate their claim of having witnessed the occurrence. Similarly, they could not bring on record any explanation whatsoever as to why they remained completely silent on the day of occurrence when the crime scene was visited by the police and even for 24-days thereafter. Similarly, the evidence of Tahira Bibi, runs contrary to her earlier statement, recorded on the first day of occurrence. Apparently the stance of two appellants which they took during their examination under section 342 Cr.P.C. whereby they pleaded their implication in the case as part of design to save the skin of actual culprits namely Muhammad Younas, Husnain and Farooq have some force. The prosecution miserably failed to substantiate the motive, taken up at the time of filing of the private complaint. The medical evidence in such circumstances is of no significance as it can only tell as to how a person was done to death but it gives no clue as to who committed the murder. Such circumstances collectively give rise to a reasonable doubt, the benefit of which is to be extended in favour of the

appellants and their co-convict (Munir Ahmad). Consequently, we set aside the conviction and sentence of the appellants Amiran Bibi, Jameela Bibi and their co-convict (Munir Ahmed) and acquit them of the charge. Amiran Bibi and Jameela Bibi shall be released forthwith if not required to be detail in any other criminal case. Consequently, **Criminal Appeal No.1162 of 2010** is accepted. **Murder Reference No.20 of 2011** is answered in the **NEGATIVE** and death sentence awarded to Munir Ahmed (convict) is **NOT CONFIRMED**.

(Abdul Sami Khan)
Judge

(Ch. Abdul Aziz)
Judge

*Najum**

APPROVED FOR REPORTING

JUDGE