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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Criminal Appeal No.875 of 2015
(Muhammad Abbas v. The State and another)

JUDGMENT

Date of hearing: 27.09.2017

Appellant by: Mr. Muhammad Sharif Zahid, Advocate.
Complainant By: Nemo.
State by: Mr. Haroon ur Rasheed, DDPP.

Ch. Abdul Aziz, J. This judgment shall dispose of the afore-captioned appeal filed by Muhammad Abbas (appellant) which is originating from the judgment dated 30.09.2013 passed by the learned Additional Sessions Judge, Kasur passed in a trial arising out of case FIR No.311/2011 dated 20.06.2011 registered under section 302 PPC at Police Station Khudian, District Kasur. The appellant, on the conclusion of the trial, was convicted and sentenced as under:-

> **Under section 302 (b) PPC** to undergo imprisonment for life as ta'zir. He was also ordered to pay Rs.100,000/- as compensation to the legal heirs of Mst. Khadija Bibi (deceased) under section 544-A Cr.P.C. and in default of the payment of compensation, the appellant was directed to further undergo SI for six months. Benefit of section 382-B Cr.P.C. was also extended in favour of the appellant.

2. Precisely stated the facts of the prosecution case as unfolded by complainant Muhammad Iqbal (PW.3) in F.I.R (Exh.PB/1) are to the effect that he is a cultivator and has eight sisters. His sister namely Mst.Khadija was married with Muhammad Abbas (appellant) about eleven years prior to the instant occurrence and out of the said wedlock, the couple was blessed with three children namely Rizwan aged about 7/8 years, Aalia aged about 5/6 years and Fakhra Bibi aged about 3 ½ years. On 19.06.2011 a quarrel took place between the spouses,

due to which complainant Muhammad Iqbal (PW.3), Muhammad Amin (PW.4), Muhammad Ahmad and Mst. Kausar Parveen went to their house and got the dispute patched up. Since the issue was settled at late night, hence, they slept in the house of Muhammad Abbas (appellant). On the night falling in between 19/20.06.2011 at about 2:00/3:00 a.m. on hearing the noise of the children, they woke up. The children told them that their father (appellant) having a hatchet in his hands had taken their mother Khadija Bibi (deceased) towards the fields forcibly. They became worried and went after them. When they reached at a distance of about 2-3 acres away from the Dhari, they saw in the moon-light that Abbas (appellant) inflicted three successive blows of hatchet on the head of Mst. Khadija Bibi due to which she fell down. Thereafter, the appellant strangulated Khadija Bibi with her Dopatta who succumbed to the injuries at the spot. The occurrence was witnessed by complainant Muhammad Iqbal (PW.3), Muhammad Amin (PW.4), Muhammad Ahmad and Kausar Parveen (given up PWs). After the occurrence Muhammad Abbas (appellant) fled away from the spot.

3. After receiving information of the occurrence, the Azim ud Din SI (PW.9) proceeded to the crime scene and started the process of investigation. After arriving at the place of occurrence, he inspected the dead body of Mst. Khadija Bibi (deceased), prepared injury statement (Exh.PG), inquest report (Exh.PH), application for postmortem examination (Exh.PJ) and dispatched the dead body to the DHQ Hospital, Kasur for autopsy through Muhammad Nawaz 396/C. On 21.06.2011 he arrested Abbas (appellant) who on 25.06.2011 made a disclosure and in pursuance thereof led to the recovery of hatchet (P.4) which was taken into possession vide recovery memo (Exh.PC). He after complying with legal formalities placed the file before the SHO for preparing report under section 173 Cr.P.C.

4. The prosecution, in order to prove its case against the appellant produced nine PWs which include ***Muhammad Iqbal (PW.3)***, ***Muhammad Amin (PW.4)***, *the* eye-witnesses of the occurrence, ***Lady Doctor Shagufta Shahzadi (PW.6)***, who furnished medical evidence and ***Azim ud Din SI (PW.9)*** who conducted the investigation of this case. The remaining witnesses, more or less, were formal in nature.

5. According to Lady Doctor Shagufta Shahzadi (PW.6), on 20.06.2011 at about 3:00 p.m., she conducted the postmortem examination of the dead body of Mst. Khadija Bibi (deceased) and observed the following injuries:-

Neck examination

1) Reddish bruises on front of neck in an area of 11 x 3 cm. On dissection neck muscles were congested. Hyoid bone was intact. There was sublaxation of joint between 2nd and 3rd cervical vertebra.

Other Injuries

2) Lacerated wound 3 x 1 cm on left parietal region 12 cm above pinna of left ear. Bone was exposed.
3) Another lacerated wound 2 x .5 cm on front of head 4 cm inner to hair lining. Bone was not exposed.
4) A lacerated wound 2 x .5 cm on right parietal region 10 cm above and behind pinna ear.

According to the opinion of the doctor, the death in this case occurred due to injury to spinal cord, all the injuries were ante mortem and caused by blunt means. The probable time elapsed between injuries and death was described to be immediate and between death and postmortem within 24 hours approximately.

6. On the conclusion of prosecution evidence, the learned trial court examined the appellant under section 342 Cr.P.C. Muhammad Abbas (appellant) in response to question "Why this case against you and why the PWs have deposed against you", made the following reply:-

> *"The PWs are related to the complainant who are inimical towards me. They have falsely deposed against me. I have no concern with the alleged occurrence. In fact the deceased was murdered by her brother complainant as she was demanding the share of her land of inheritance left by her*

> *father from her brother complainant who refused to give the same to her and due to this they quarreled with each other. She was injured in the house of the complainant and thereafter her dead body was thrown on the alleged place of occurrence. I have been falsely implicated in this case by the complainant just to blackmail me.*"

The appellant did not opt to appear as witness in his own defence under section 340 (2) Cr.P.C., however, he produced his son ***Ali Rizwan*** as ***DW.1*** in his defence.

7. After the completion of trial, the learned trial court convicted and sentenced the appellant as mentioned above, hence, the instant appeal.

8. It is contended by the learned counsel for the appellant that there is unexplained and mysterious delay in reporting the matter to the police; that the ocular account in the instant case is comprising upon chance witnesses who miserably failed to justify their presence at the crime scene; that the detail of the occurrence provided by the eyewitnesses is getting no support from the medical evidence brought on record; that even otherwise, the conduct of the eyewitnesses is found to be contrary to the natural human behaviour as neither they made any effort to save the deceased from the clutches of the appellant nor provided her any medical aid; that though the occurrence had taken place at about 2:00/3:00 a.m. but the dead body even according to the PWs remained lying at the spot till 7:00 a.m. when the police arrived at the place of occurrence; that the motive which was set up at the time of registration of F.I.R remained unproved; that the learned trial court failed to appreciate the evidence in its true perspective and altogether ignored the defence version of the appellant and that despite there being reasonable doubts about innocence of the appellant, the learned trial court proceeded to withhold its benefit.

9. Conversely, learned DPPP strongly controverted the arguments advanced by learned counsel for the appellant and

submits that this is a case of single accused who stands implicated in the statements of the eyewitnesses and that too in reference to the role performed by him; that two eyewitnesses being close relatives had reasonably justified their presence at the crime scene; that the ocular account is duly supported by the medical evidence and that the recovery of hatchet provides due corroboration to the detail of the occurrence provided by the eyewitnesses.

10. Arguments heard. Record perused.

11. The case of the prosecution so to speak, primarily, hinges upon the ocular account furnished by Muhammad Iqbal (PW.3) and Muhammad Amin (PW.4), the medical evidence brought on record through Lady Doctor Shagufta Shehzadi (PW.6), the recovery of hatchet (P.4) witnessed by Muhammad Amin (PW.4) and the motive narrated by Muhammad Iqbal (PW.3). It is important to mention here that the appellant took a specific defence that the deceased was done to death by none other than the complainant himself, in support of which, he produced Ali Rizwan (DW.1) in his defence.

12. It divulges from the record that the occurrence which formed basis of the instant occurrence took place on the intervening night of 19/20.06.2011 at about 2:00/3:00 a.m. within the territorial jurisdiction of Police Station Khudian, District Kasur, which is statedly situated at a distance of 1-1/2 kilometers from the crime scene. It evinces from the record that the matter was reported to the police at about 7:00 a.m. through complaint (Exh.PB) presented by Muhammad Iqbal (PW.3) at Police Station Khudian situated at a distance of 1-1/2 kilometers. From above, it follows that the matter was reported to police with the delay of about 4/5 hours. It is intriguing to observe that whole of the prosecution case is silent as to where these 4/5 hours were consumed. In this backdrop, it is appropriate to make

reference to an extract from the statements of Muhammad Iqbal (PW.3) which is as under:-

> "I returned from PS Khudian to the place of occurrence at about 8:30 a.m. During the said period I remained in PS Khudian. I reached police station at 7:00 a.m. and presented the application before the police. When I left the place of occurrence, it was 4:00 a.m."

From the features of the case mentioned above, this Court has drawn an irresistible conclusion that the matter was reported to the police station with mysterious delay, which is giving rise to many doubts regarding the correctness of the story narrated in the crime report.

13. A wade through the prosecution case reveals that during trial the detail of the occurrence was brought on record through statements of Muhammad Iqbal (PW.3) and Muhammad Amin (PW.4) who claimed to have witnessed the occurrence. As per crime report (Exh.PB), the occurrence was witnessed by four persons namely Muhammad Iqbal, Muhammad Amin (PW.3 & PW.4), Muhammad Ahmad and Kausar Parveen (given up PWs). According to the record, Muhammad Iqbal is the real brother of deceased, whereas Muhammad Amin is his brother in law. Both the witnesses are the residents of a place known as Kot Naseer ud Din situated at a distance of one kilometer from the place of occurrence. It is important to mention here that Khadija Bibi (deceased) and Muhammad Abbas (appellant) entered into matrimonial contract 11/12 years prior to the occurrence and out of this marriage couple was blessed with three children namely Rizwan, Alia and Fakhra who were minors on the eventful day. In the above backdrop, on 19.06.2011, all the PWs went to their house after acquiring knowledge regarding a quarrel between the couple. Though the dispute between the couple was patched up yet PWs decided to stay in the house of ill-fated couple. At mid-night, after hearing the noise of the children, the PWs woke up and saw Mst. Khadija Bibi being dragged to the fields by

Muhammad Abbas (appellant) while armed with hatchet. According to the PWs, they followed the couple and saw Muhammad Abbas (appellant) inflicting three hatchet blows from the distance of 2/3 acres on the body of the deceased. It spells out from the statements of PWs that subsequent thereto the appellant strangulated the deceased through her shawl (Dhopata).

From the above narrated facts, it is observed that despite the fact that the witnesses claimed to have seen the occurrence from a distance of 2/3 acres and that too at the odd hours of the night, yet they gave all the details and even the locale of the injuries. Keeping in view the fact the occurrence took place in the dark hours of the night and more so, when there was no source of light, their testimony does not appeal to prudent mind. It is further observed that the conduct of the witnesses is also found to be contrary to the natural human conduct. Despite the occurrence having been committed in the heart of a populated vicinity, neither they raised any hue and cry nor made any effort to save the deceased from the clutches of the appellant. So much so, they opted not even to beseech the appellant to save the life of the deceased. It is further intriguing to observe here that despite availability of Rural Health Centre at a distance of 8-10 acres from the place of occurrence, none of the witnesses made any effort to provide any medical aid to the deceased. Lastly it is noted with great concern that the police arrived at the crime scene at about 8:30 a.m. and even till then the dead body of the deceased was lying at the same place.

According to the testimony of both the witnesses, they were the residents of the place situated at about one kilometer from the place of occurrence. The only purpose of paying the visit to the house of the appellant and the deceased was to render mediation between the couple in order to settle their dispute. However, it spells out from the record that the matter was patched up between the appellant and the deceased and in such a

situation the night stay of the witnesses in their house was apparently uncalled for. Such aspect of the matter casts a big doubt regarding the presence of the witnesses at the crime scene.

14. In order to adjudge the true intrinsic worth of the ocular account furnished by the eyewitnesses, it would be in fitness of things to have a look of the medical evidence. According to record, the autopsy of the dead body of the deceased was conducted on 20.06.2011 by Lady Doctor Shagufta Shehzadi during which she noted following four injuries:-

(1) Reddish bruises on front of neck in an area of 11 x 3 cm. On dissection neck muscles were congested. Hyoid bone was intact. There was sublaxation of joint between 2nd and 3rd cervical vertebra.
(2) Lacerated wound 3 x 1 cm on left parietal region 12 cm above pinna of left ear. Bone was exposed.
(3) Another lacerated wound 2 x .5 cm on front of head 4 cm inner to hair lining. Bone was not exposed.
(4) A lacerated wound 2 x .5 cm on right parietal region 10 cm above and behind pinna ear.

According to the ocular account furnished by the two eyewitnesses, the deceased was also strangulated by the appellant through her Dhopata (SHAWL) while encircling it around her neck. Apparently, injury No.1 coincides with such part of the testimony of the witnesses yet a close look reveals that the same negates their above mentioned claim. In my considered view, instead of a bruise on the front of the neck, there should have been ligature mark all around it. It is of immense importance to mention here that there is a marked distinction between the **"strangulation"** and **"throttling"**. In the case of strangulation a ligature mark is essentially required to be present all around the neck, whereas in case of throttling, the marks of fingers etc. are found on the front of the neck only. The instant case appears to be of throttling and not of strangulation, keeping in view the fact that the doctor observed reddish bruises on the font of the neck only. In this respect, reference can be made to Chapter-VIII of the book written by **Dr. S. Siddiq**

Husain (A Text Book of Forensic Medicine and Toxicology) wherein it is mentioned as under:-

> "**STRANGULATION**
> This is a violent from of death due to constriction of neck with a ligature without suspending the body. It is called throttling, when constriction is by the pressure of fingers on the throat, or even by compressing the throat with a foot, knee, etc."

It is further observed by Dr. S. Siddiq Husain in the same chapter that in most of the cases of death by strangulation, the hyoid bone is found fractured. However, in the instant case, according to the opinion of the doctor, the hyoid bone is found intact. Such aspects are suggestive of the fact that the above mentioned claim of the witnesses is not correct. Likewise, according to the opinion of the doctor, all the injuries were caused through blunt trauma. Needless to mention here that such an opinion, runs contrary to the stance of Muhammad Iqbal (PW.3) and Muhammad Amin (PW.4). It is further observed that the appellant was all set to take the life of the deceased, there was no occasion for him to use the blunt side of the hatchet and then to have resort to strangulation.

15. At the time of the registration of F.I.R, though it was asserted by the complainant that a quarrel took place between the appellant and the deceased, however, no specific motive was taken up. The perusal of the record reveals that while appearing in the witness box, Muhammad Iqbal (PW.3) gave a detail of this squabble by saying that Abbas (appellant) used to force the deceased to approach him and to get her ancestral share from the land. It further spells out from his testimony that the dispute, if any, was settled there and then. It will be of great advantage to have a look on the relevant extract from his statement which is as under:-

> "It is correct that my deceased sister demanded her share of land from me on the asking of accused Abbas. It is correct that when I conceded to give share of land to my deceased sister the altercation became over."

The above extract gives a strong reflection that since at the eventful time, no dispute was in existence, hence, apparently there was no reason for the appellant to have resort to such an untoward aggression.

16. The prosecution sought corroboration of ocular account from the recovery of hatchet (P.4) which was statedly affected on 25.06.2011 on the disclosure and pointation of the appellant from his house. According to the statements of Muhammad Iqbal (PW.3) and Muhammad Amin (PW.4), after committing the murder of the deceased, the appellant fled away from the spot along with his hatchet. In this backdrop, the recovery of the hatchet from his does not appeal to logic as this is not understandable that the appellant after committing the brutal murder of his wife, will pay a return visit to his house solely and that too for placing the hatchet there. Even otherwise, none from the vicinity was asked to join the recovery proceedings so as to provide its credibility.

17. In the instant case, the appellant came forward with a specific defence which apparently is found incorporated in his examination under section 342 Cr.P.C. According to the appellant, he was falsely implicated in the instant case and as a matter of fact the deceased was murdered by none other than the complainant himself as she was demanding her share of inheritance from the legacy of her father. It further spells out from his defence that the complainant refused to give share to the deceased from the inherited property and a quarrel took place between them in the house of the complainant during which she died and her dead body was thrown at the place of occurrence.

In support of the above mentioned defence, Ali Rizwan (son of the deceased and the appellant) appeared as DW.1. The statement of DW.1 is mainly challenged on the pretext of his tender age as on the day of his deposition, he was about 10-years

old. In this regard, learned counsel for the complainant as well as the learned law officer made reference to Article 3 of the Qanun-e-Shahadat Order, 1984 and thereby portrayed that no reliance can be placed on the testimony of Ali Rizwan (DW.1). I am afraid that the said arguments are not in consonance with the intent of legislatures so far as Article 3 of the Qanun-e-Shahadat Order, 1984 is concerned. In order to evaluate the legal status of the above mentioned arguments, it would be in the fitness of things to have a look as to how Article 3 of the Qanun-e-Shahdat Order, 1984 stands legislated. For ready reference, Article 3 is reproduced as under:-

> "**3. Who may testify**. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.
> Provided that a person shall not be competent to testify if he has been convicted by a Court of perjury or giving false evidence.
> Provided further that the provisions of the first proviso shall not apply to a person about whom the Court is satisfied that he has repented there after and mended his ways.
> Provided further that the Court shall determine the competence of a witness in acceptance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Quran and Sunnah for witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available."

From above, it evinces that so far as the admissibility of the testimony of a child witness is concerned, it relates to his capacity and competency to understand the questions and then to address them rationally. The tender age solely is no ground to discredit the testimony of a witness if otherwise it is proved that he is mature enough to understand the consequences of his statement and is found competent enough to give rational answers put to him. The meticulous examination of deposition of Ali Rizwan reveals that not only he narrated his version competently and with maturity, it further appears that he successfully stood the testy of cross-examination by giving

rational answers. Despite being cross-examined at length, he budged not a single inch from what he asserted in his examination-in-chief. It is of immense importance to mention here that throughout the trial, Muhammad Abbas (appellant) remained behind bars and had no opportunity to meet Ali Rizwan so as to tutor him to make a false statement. In this backdrop, this Court has no reason to out-rightly discredit the statement of Ali Rizwan. The Hon'ble Supreme Court of Azad Jammu and Kashmir in a case titled as *Qadeer Hussain. The State* **(1995 P Cr. L. J 803)** while embarking upon the legal worth of the child witness held as under:-

> "Article 3 is a rule of caution. The question in each case which a Court has to decide is whether a particular child who has appeared in the witness box is intelligent enough to be able to understand as to what evidence he or she is giving and to be able to understand the questions and be able to give rational answers. A child for tender years is not by reason of his youth, as a matter of law, absolutely disqualified as a witness. There is no precise age which determines the questions of competency. This depends upon the capacity and intelligence of the child, his appreciation of the difference between falsehood and truth, as well as his duty to tell the latter."

The above mentioned defence of the appellant is getting ample support from the statement of Muhammad Nawaz (PW.2) who stated in unequivocal terms that during the spot inspection, Abbas (appellant) was also present at the spot. In this regard, relevant portion from his deposition is being reproduced which is as under:-

> "We remained at the spot for about one hour. About 8-10 persons were present at the spot. About 4-5 police personnel were at the place of occurrence. Accused Abbas present in Court was also with us at the spot."

Now the question arises that if at all Muhammad Abbas (appellant) was the killer of his wife, why he opted not to flee away from the vicinity. Likewise, if at all, by then the complainant had moved the application for the registration of F.I.R (Exh.PB) why he was not arrested from the spot. Keeping

in view the fact that at no point of time during the trial, prosecution made any effort to re-examine Muhammad Iqbal (PW.3), this Court has no other option but to place explicit reliance on what he stated before the Court.

According to the record, above mentioned statement of PW.2 was never challenged by the prosecution either through tool of his re-examination as provided under Articles 132 (3) and Article 133 (3) of Qanun-e-Shahadat Order, 1984. In this situation, this Court is not left with any other option but to place reliance on what was stated by Muhammad Nawaz (PW.2).

18. In the above circumstances, it is noticed by the Court that the evidence adduced by the prosecution does not rings true as it suffers from inordinate delay of the registration of F.I.R, unnatural conduct of the witnesses, their presence at the crime scne with a big question mark and lastly the conflict of ocular account with the medical evidence. Conversely, the appellant through his defence version remained successful in creating certain dents in the prosecution case, giving rise to reasonable doubts, the benefit of which cannot be withheld from him. Resultantly, **Criminal Appeal No.875 of 2015** is **ACCEPTED** and Muhammad Abbas (appellant) is acquitted of the charge. He shall be released forthwith if not required to be detained in any other criminal case.

(Ch. Abdul Aziz)
Judge

APPROVED FOR REPORTING

(Ch. Abdul Aziz)
Judge

Najum*