

**IN THE LAHORE HIGH COURT, MULTAN  
BENCH MULTAN  
JUDICIAL DEPARTMENT**

**1. *Criminal Appeal No.670 of 2012***

(Abdul Ghafoor alias Allah Ditta Vs. The State & another)

**2. *Criminal Appeal No.662 of 2012***

(Manzoor Hussaain Vs. The State & another)

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**3. *Murder Reference No.95 of 2012***

(The State Vs. Abdul Ghafoor alias Allah Ditta)

**Date of hearing:** 26.04.2018

**Appellants by:** Mr. Tahir Mehmood, Advocate.

**Complainant by:** Mehr. Habib Ullah Girwah, Advocate.

**State by:** Ch. Muhammad Iftikhar-ul-Haq, Additional  
Prosecutor General.

**QAZI MUHAMMAD AMIN AHMED, J:-**Mst. Hajran

Bibi, 23/24, henceforth referred to as the deceased, was strangulated to death at 5:00 a.m. on 02-08-2011, within the area of Chak No. 149-C/TDA, Tehsil and District Layyah, situating at a distance of 8-miles from Police Station Saddar; incident was reported by her brother Ghulam Qasim (PW-9) through statement (Ex.PF) recorded by Zafar Iqbal, SI (CW-3) 8:30 a.m. at the spot. According to the complainant, the deceased was married with her first cousin Abdul Ghafoor alias Allah Ditta; the couple was blessed with a son. Five/six days before the occurrence, the deceased was thrashed by her husband and father-in-law, appellants herein, and as protest left home, however, the complainant with intervention of notables arranged reconciliation. On the fateful day, Koru son of Ghulam Ali conveyed news of deceased's death to her family whereupon the witnesses rushed to her house; she was lying dead on a cot with marks of

violence around the neck; complainant alleged that she was done to death by the appellants who admitted their guilt and sought pardon.

Dr. Nimra Andleeb (PW-8) conducted autopsy and found 1 cm wide ligature mark, 30 cm in length accompanied by contusions on face, right mandibular bird and chest; left cornu of hyoid bone was fractured; asphyxia was blamed as cause of death with interregnum between death and postmortem estimated as 6 to 12 hours.

Zafar Iqbal SI (CW-3) carried out initial investigation. Mazhar Hussain SI (CW-2) arrested the appellants on 10-8-2011; Abdul Ghafoor alias Allah Ditta appellant, pursuant to a disclosure, led to the recovery of two pieces of *Dopatta* (P-4/1-2). Dissatisfied with police investigation, the complainant instituted a private complaint; in the wake of issuance of process, the appellants were indicted on 18-6-2012; they claimed trial, pursuant whereto, prosecution produced as many as 13 witnesses to drive home the charge; they include three court witnesses. Fate of prosecution case is hinged upon various pieces of circumstantial evidence, comprising statements of Muhammad Bukhsh (PW-6) and Ghulam Haider (PW-7); they are witnesses of extrajudicial confession, supported by Ghulam Qasim (PW-9), architect of the case. On forensic side, hyoid bone sections revealed blood hemorrhage; vaginal swabs did not generate seminal stains. Accused confronted the prosecution evidence with a detailed denial; the bottom line is that the deceased was mysteriously found dead in the house of the complainant. The learned trial Judge, however, proceeded to convict the appellants under section 302(b) read with section 34 of the Pakistan Penal Code, 1860; Abdul Ghafoor is sentenced to death with compensation of Rs.200,000/- whereas Manzoor Hussain is sentenced to imprisonment for life with compensation of Rs.100,000/-; in both cases, to further undergo six months simple imprisonment in the event of default; the lifer was extended benefit of section 382-B of the Code of Criminal Procedure, 1898.

Crl. Appeal No.670 of 2012 and Crl. Appeal No.662 of 2012 dispute vires of the impugned judgment whereas Murder Reference No.95 of 2012 seeks confirmation of death penalty; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the appellants contends that there is no direct evidence to frame the appellants, father and son inter se, with the crime; that there was no motive for the appellants to take deceased's life and if at all they had to commit the murder, there were more discreet methods to settle the score; that medical evidence does not support prosecution case set up in the crime report; that a recklessly indiscreet cross-examination, notwithstanding, prosecution has miserably failed to establish place of occurrence being under appellants' occupation and, thus, plea that the deceased was done to death inside complainant's own house cannot be dismissed out of hand; the bottom line is that prosecution has not been able to prove its case beyond reasonable doubt and, thus, it would be unsafe to maintain the conviction. The learned Law Officer assisted by counsel for the complainant, contrarily, defended the impugned judgment on the ground that deceased's unnatural asphyxial death stands fully established through medical evidence and appellants' admission before independent witnesses established the case against them to the hilt and, thus, a learned Judge rightly convicted and sentenced the appellants, as every hypothesis of their innocence stood excluded. It is argued that Abdul Ghafoor alias Allah Ditta failed to satisfactorily explain as to what befell upon his better-half and thus, no view other than appellants' guilt can be possibly hypothesized. Confirmation of death penalty has been prayed for.

3. Heard. Record perused.

4. Ghulam Qasim (PW-9) received information about the death at 5:00 a.m. through Koru, kept away from the witness box, thus, as to when the deceased met homicidal death is left to our imagination; time between death and postmortem conducted at

2:55 p.m, as 6 to 12 hours does not adjust on its outer side and as such also reflects upon arrival of the complainant and other PWs on the crime scene at stated time. Ghulam Qasim has massively improved upon his statement initially made before the police. In crime report Ex.PF, he is stated to have confronted the appellants who confessed their guilt and sought pardon, however, in the witness-box, he abandoned this position and instead alleged that both of them slipped away upon his arrival; seemingly he shifted from his earlier stance upon reconsideration, as it was not very difficult for the witnesses to subdue the empty handed appellants, if at all they had confessed their guilt before the witnesses, three in number and thus, a change in the earlier position was considered convenient; he has been duly confronted with his wavering positions. The next piece of evidence relied upon by the prosecution is a joint extrajudicial confession by both the appellants before Ghulam Haider and Muhammad Bukhsh, PWs, however, Mazhar Hussain SI (CW-2) categorically denied appearance of the witnesses before him on 8-8-2011 to share details of any confessional statement. Seemingly there is no reason as to why the Investigating Officer would withhold this information while he had taken all other investigative steps to appellants' detriment. It appears that private complaint was instituted to space evidence, earlier omitted. On independent analysis statements of Muhammad Bukhsh (PW-6) and Ghulam Haider (PW-7) are found far being plausible for more than one reason; the appellants in the absence of any direct evidence against them had no earthly reason to make their breasts clean, that too, in a joint session before the PWs merely to retract therefrom subsequently; conduct of the witnesses like complainant himself is mind boggling; the assassins were at their mercy, therefore, a natural and obvious response by the witnesses would have to apprehend them instead of permitting them to conveniently flee from the scene. Evidence of extrajudicial confession is universally viewed as a weak piece of evidence and cannot be made basis for conviction

unless found to have come from a most unimpeachable source, that too, without strong corroboration; it is not a case in hand. Therefore, this most vital link relied by the prosecution obviously fails to constitute chain of circumstances between the appellants and the crime. Argument that the deceased was done to death in complainant's house under mysterious circumstances, though not in accord with the crime scene shown in site plan Ex.PC as well as in the face of a naively indiscreet cross-examination, nonetheless, merits serious consideration in view of negative seminal report. Homicidal nature of death cannot be doubted, however, this by itself cannot establish appellants' guilt, particularly after prosecution's failure to establish the story of extrajudicial confession. The deceased, according to the complainant, was dead at 5:00 a.m. on the fateful day; there is nothing on record as to how Koru received information, passed on to the complainant and this brings the whole episode into mystery and, thus, appellants cannot be convicted merely on account of their relationship with the deceased or upon their failure to satisfactorily explain the circumstances leading towards deceased's death without potential risk of error. Reliance is placed in the case of Nazeer Ahmmad Vs. the State (2018 SCMR 787), relevant portion whereof is reproduced:-

*"...S.302(b)---Qatl-i-Amd---Accused-husband alleged to have killed his wife in their matrimonial home----Burden of proof----Scope----In such a case some part of the onus shifted to the accused to explain the circumstances in which his wife had died an unnatural death in their house, however, shifting of some part of the onus to the accused may not be relevant in a case where the entire case of the prosecution itself was not reliable and where the prosecution failed to produce any believable evidence----Initial onus of proof always laid upon the prosecution and if the prosecution failed to adduce reliable evidence in support of its own case then the accused person could not be convicted merely on the basis of lack of discharge of some part of the onus on him."*

On the whole case is fraught with doubts and, thus, it would be unsafe to maintain the convictions. Consequently, by extending benefit of doubt to the appellants Crl. Appeals Nos.670 and 662 of 2012 are **allowed**; they are acquitted from the charge and shall be released forthwith, if not required in any other case. **Murder Reference No.95 of 2012** is answered in the **NEGATIVE** and death sentence is **NOT CONFIRMED**.

*(Ch. Mushtaq Ahmad) (Qazi Muhammad Amin Ahmed)*  
*Judge Judge*

**Approved for Reporting**

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