

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

Criminal Appeal No.158 of 2014

Abdul Ghafoor versus The State, etc.

Murder Reference No.29 of 2014

The State versus Abdul Ghafoor alias Ahmed Ali.

**Date of Hearing** 29.05.2018

The Appellant by Mehroz Aziz Khan Niazi, Advocate.

The Complainant by Ch. Zafar Iqbal Chadhar, Advocate.

The State by Syed Nadeem Haider Rizvi, Deputy  
District Public Prosecutor.

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**Asjad Javaid Ghural, J.:-** Through the afore-titled criminal appeal under Section 410 Cr.P.C., appellant Abdul Ghafoor has assailed the legality of judgment dated 24.03.2014 passed by the learned Additional Sessions Judge, Sahiwal in a private complaint titled “Abdul Ghafoor versus Abdul Ghafoor alias Ahmed Ali & another”, in respect of offences under Section 302 & 34 PPC arising out of case FIR No.395 dated 25.07.2009 in respect of offences under Sections 302 & 34 PPC registered at Police Station Noor Shah, District Sahiwal, whereby he was convicted and sentenced as under:-

**Under Section 302(b) PPC**

Death penalty and to pay the compensation of Rs.100,000/- under Section 544-A Cr.P.C. to be paid to the legal heirs of deceased Mst. Sarwar Bibi and in default thereof to further undergo simple imprisonment for six months.

He is also extended benefit of Section 382-B Cr.P.C.

2. **Murder Reference No.29 of 2014** for confirmation or otherwise of the death sentence of appellant Abdul Ghafoor alias Ahmad Ali shall be decided through this single judgment.

3. Brief facts of the case are that complainant Abdul Ghafoor (PW-1) made complaint to Station House Officer Police Station Noor Shah District Sahiwal stating therein that about 12/13 years earlier his sister Mst. Sarwar Bibi (deceased) was married with Abdul Ghafoor alias

Ahmed Ali (appellant) but they were issueless. At the time of Nikkah, Abdul Ghafoor alias Ahmed Ali had mutated one acre agricultural land in favor of Mst. Sarwar Bibi. They led happy life in the early days but due to not giving birth to a baby, the relations between the spouses became strained and Abdul Ghafoor had been beating Mst. Sarwar Bibi off and on. He was restrained but he insisted to contract second marriage and receive back his agricultural land from the complainant's sister. Mst. Sarwar Bibi did not allow Abdul Ghafoor to contract second marriage and also refused to return the aforesaid piece of land due to which Abdul Ghafoor had nourished grudge. On 25.07.2009 at about 12:00 a.m, the complainant went to see his sister Mst. Sarwar Bibi and when he entered into the house he saw that Machhia accused was holding the hands of Mst. Sarwar Bibi while lying her on the cot, she was screaming that she would neither return the piece of land nor would she permit her husband to contract second marriage. On raising hue and cry, complainant Muhammad Riaz, Abdul Jabbar (PW-2), Zawar and Maqbool, a brother of the complainant alongwith other people of the vicinity attracted there. In their view Abdul Ghafoor inflicted Kassi blows under the throat and in front of chest of Mst. Sarwar Bibi. He also inflicted repeated Kassi blows at her chest. The complainant alongwith the witnesses tried to hold Abdul Ghafoor but he succeeded to flee away while extending threats.

The motive behind the occurrence was that due to non-giving birth of a child by Mst. Sarwar Bibi, Abdul Ghafoor had intended to contract second marriage and insisted to get back the piece of land from his wife Mst. Sarwar Bibi (deceased).

4. Upon aforesaid oral statement of the complainant before Siddique Sub-Inspector at Norang Chowk, a case FIR No.395 dated 25.07.2009 was registered at Police Station Noor Shah in respect of offences under Section 302 & 34 PPC (Ex.CW-5/A). During investigation co-accused Machhia was found to be not involved in this occurrence. Feeling aggrieved the complainant filed a private complaint Ex.PB wherein learned trial Court after recording the cursory statement of the witnesses proceeded to summon the accused persons to face the trial.

4. Muhammad Siddique, S.I (CW-4) recorded the complaint (Ex.PA) of the complainant on 25.07.2009 at Norang Chowk, which was sent to

Police Station for registration of formal FIR. He had visited the place of occurrence on the same day, inspected the dead body, prepared injury statement Ex.CW-3/B-1 and inquest report Ex.CW-3/B of the deceased lady and escorted her dead body to the mortuary. He prepared rough site plan of the place of occurrence Ex.CW-4/A and secured blood-stained earth vide recovery memo( Ex.CW-4/B). On 27.07.2009 draftsman, took rough notes from the place of occurrence and prepared scaled site plan Ex.CW-2/A and Ex.CW-2/B. He arrested appellant Abdul Ghafoor on 06.08.2009, who led to the recovery of weapon of offence i.e. a blood-stained "Kassi" (P-4), which was taken into possession vide recovery memo Ex.CW-4/C. After receipt of reports of Chemical Examiner, the same were presented before the Court.

5. Lady Doctor Saima Aslam (PW-3) had conducted postmortem examination on the dead body of deceased Mst. Sarwar Bibi on 25.07.2009 at 08:25 p.m., and observed the following injuries:-

1. Incised wound 13 cm x 4 cm deep going on lower left side of neck cutting left clavicle whole trachea oesophagus cut all major vessels cut and cutting six cervical vertebrae.
2. Incised wound 5 cm X 4 cm deep going about 2cm apart to injury No.1 from left side.
3. Multiple abrasions all over upper part of chest in front side.
4. Abrasion 6 cm X 1 cm on left side of neck.

The cause of death was due to injury No.1 causing injury to trachea, oesophagus, major vessels and fracture/cutting of left clavicle and cutting of six cervical of vertebrae leading to hemorrhage and shock and death. The injuries were ante-mortem in nature and were caused by sharp-edged weapon. Duration between injuries and death was immediate and between death and post-mortem examination within 10- hours.

6. At the commencement of the trial, learned trial court had framed a charge against the appellant to which he pleaded not guilty and claimed to be tried.

7. The prosecution had produced 02-witnesses besides the reports of Chemical Examiner (Ex.PC & Ex.PD), and that of the Serologist (Ex.PE). Five witnesses had been examined as Court witnesses (CW-1 to CW-5). The appellant, in his statement recorded under Section 342 Cr.P.C. had

denied and controverted all the allegations leveled against him, he did not opt to make statement under Section 340(2) Cr.P.C., however he had produced documents (Ex. DA to Ex. DF) in his defence.

8. Learned trial Court, upon conclusion of the trial had acquitted co-accused Machhia whereas convicted and sentenced the appellant as stated above, hence the aforementioned criminal appeal as well as the connected Murder Reference.

9. Learned counsel for the appellant submits that the appellant is quite innocent and had been falsely implicated in the alleged occurrence; that it was a blind murder and the prosecution witnesses of ocular account were chance witnesses as they had no occasion to be present at the venue of occurrence at the relevant time; that Abdul Jabbar (PW-2) was introduced as a witness in the supplementary statement, whereas he had figured nowhere in the crime report as a witness; that the supplementary statement was made on 20.01.2010 after about six months of the alleged occurrence, which was afterthought and has no evidentiary value in the eyes of law; that though the occurrence had taken place in the house of the appellant but he could not be held responsible for the said murder in the absence of any other incriminating evidence produced by the prosecution; that the recovery of "Kassi" at the insistence of the appellant was planted against him just to strengthen the prosecution version; that the prosecution remained fail to prove motive part of the occurrence through an independent source of evidence, which runs against the sentence of death; that it is a case of no evidence against the appellant. At the end, prayer has been made for the acquittal of the appellant from the said charge.

10. Conversely, learned Deputy District Public Prosecutor assisted by the learned counsel for the complainant has vehemently controverted the arguments advanced by the learned counsel for the appellant while submitting that it was a day-light occurrence, which had taken place in the confines of the house of the appellant and some part of the onus lies upon him to explain as to how his wife met with an unnatural death; that the appellant being sole perpetrator could not escape from the liability of committing the murder of his own wife; that the witnesses of ocular account being natural and straightforward have established their presence

at the venue of occurrence at the relevant time; that the witnesses of ocular account being real brother of the deceased had visited the place of occurrence, which was otherwise not unusual in our society to visit their sister's house and even no specific purpose was required for their visit; that the witnesses remained consistent, inter-se supported with the medical evidence; that the appellant, who was arrested subsequently on 06.08.2009, by itself indicates his guilty conscious; that the matter was reported to the police within 45-minutes, which excludes every possibility of deliberation and consultation prior to the lodging of FIR; that the recovery of weapon of offence and the motive part of the occurrence are fully established; that the gruesome act of appellant of murdering his wife in a callous manner does not permit to give him leniency in the matter of sentence.

11. We have heard the learned counsel for the appellant, learned Deputy District Public Prosecutor appearing for the State assisted by the learned counsel for the complainant and have perused the record with their assistance.

12. This unfortunate incident had taken place on 25.07.2009 at 12:00 noon, which was reported to the police by the complainant himself and was reduced into writing at 12:45 p.m., within the shortest span of time excluding every hypotheses of consultation, deliberation and fabrication prior to the registration of the case. The promptness of lodging the crime report indicates that the natural incident had been brought on record in its true perspective.

13. The mainstay of the prosecution case is on the testimony of ocular account furnished by Abdul Ghafoor (PW-1), the complainant and Abdul Jabbar (PW-2), both real brothers of the deceased Mst. Sarwar Bibi, medical evidence, the motive and the recovery of weapon of offence from the appellant. The complainant while appearing in the witness box had deposed exactly what he had averred at the time of reporting the matter to the police stating therein that about 12/13 years prior to the occurrence his sister Mst. Sarwar Bibi was married to Abdul Ghafoor (appellant) and at the time of Nikah, he had mutated one acre agricultural land in the name of his wife Mst. Sarwar Bibi. Earlier their relations remained cordial but as no issue was born during wedlock, their relations

became strained and the accused used to demand back his agricultural land already mutated in favor of the deceased and kept on pressurizing her for getting permission for second marriage. On the fateful day, the complainant went to see his sister and when he entered her house, he saw his sister was forcibly made lying on the cot, accused Machhia was strongly holding her arms whereas the appellant while holding "Kassi" in his hand was demanding return of the land and permission for second marriage. On hearing the cries of his sister Mst. Sarwar Bibi, his brother Maqbool, Zawar, Abdul Jabbar and Muhammad Riaz also reached at the spot and in their view the appellant inflicted several blows of "Kassi", which hit on the neck and chest of Mst. Sarwar Bibi, upon which she succumbed to the injuries at the spot. They tried to apprehend the accused, who extended threats of dire consequences. Abdul Jabbar (PW-2) had deposed almost identical story to that of the complainant. They were cross-examined by the defence wherein the complainant had admitted that in the first crime report he had cited Sarwar and Riaz as eye witnesses of the occurrence whereas Abdul Jabbar and Zawar, who had been introduced as eye witnesses in the private complaint were not earlier cited as witnesses in the FIR. However, he clarified that his house was situated towards the northern side of the place of occurrence with interval of 2/3 houses and it took hardly five minutes to reach at the house of the accused from his house. Despite lengthy cross-examination, the defence remained fail to establish that the witness was somewhere else and he could not reach at the place of occurrence within 4/5 minutes, as the appellant and the complainant were residing in the same vicinity with a distance of 2/3 houses and, thus, he had well established his presence at the place of occurrence at the relevant time. Even otherwise he remained affirm and consistent on all material aspects of the case and nothing could be extracted from his mouth, which could be used in favor of the appellant. We could not find any reason to discard the evidence of the complainant and even there was no occasion for the complainant to falsely implicate his brother-in-law (appellant) while letting off the real culprits for the murder of his real sister.

Although, the evidence of Abdul Jabbar (PW-2) is in line with the evidence of the complainant yet he had not been cited as a witness in the

first crime report which creates some doubt in respect of his presence in the house of the appellant at the relevant time but the evidence of the complainant was quite natural, consistent, straight forward and confidence inspiring being supported by the medical evidence as well as the recovery of weapon of offence i.e. blood-stained kassi, hence sole evidence of the complainant is sufficient to establish the guilt of the appellant while excluding the evidence of Abdul Jabbar (PW-2).

14. It goes without saying that the occurrence had taken place in the house of the appellant, where the access of anyone else was hardly possible. The appellant being husband of the deceased was under obligation to explain as to what happened and who had brutally butchered his wife who was residing under his roof and protection. The appellant had not participated in the funeral ceremony of his wife and he was arrested subsequently on 06.08.2009, which clearly depicts his guilty conscious. In the alleged occurrence the complainant had claimed to have seen the occurrence with his own eyes. Even otherwise, the appellant could not be excluded from the responsibility of the murder in issue especially when his vulnerable dependent has been done to death inside the confines of his house, particularly in a broad day-light and in such situation some part of the onus lies upon the appellant to explain as to how his deceased wife had been done to homicidal death. She had sustained four injuries including completely cut of throat through sharp edged weapon exactly in accordance with the allegation levelled by the prosecution against the appellant and, thus, there was no occasion for the complainant to falsely implicate the appellant in substitution in a gruesome murder of his sister.

15. Learned counsel for the appellant has much emphasis that one of the co-accused namely Machhia has already been acquitted of the charge by the learned trial Court, who had been assigned the specific role of holding arms of the deceased at the time of inflicting injuries by the appellant and, thus, the appellant also deserves the same treatment. This argument has no force because neither co-accused Machhia had caused any injury to the deceased nor was he connected with the motive part of the occurrence and he was found to be not involved in the alleged occurrence by the Investigating Officer and, thus, he was given benefit of

doubt. The role of co-accused Machhia cannot be equated with the role assigned to the appellant in any capacity whatsoever and, thus, his acquittal has no bearing upon the fate of the appellant's case.

16. Lady Doctor Saima Aslam (CW-3) had conducted autopsy on the dead body of deceased Mst. Sarwar Bibi on 25.07.2009 at 08:25 p.m., and observed two incised wounds 13 cm x 4 cm and 5 cm x 4 cm respectively deep going on lower left side of neck cutting left clavicle whole trachea oesophagus, cut of all major vessels, cutting of six cervical vertebrae and multiple abrasions all over upper part of chest in front of left side of her neck. The cause of death was due to injury to trachea, oesophagus, major vessels and fracture/cutting of left clavicle and cutting of six cervical of vertebrae leading to hemorrhage and shock and death. The injuries were ante-mortem in nature having been caused by sharp-edged weapon. The probable duration between injuries and death was immediate whereas between death and post-mortem examination within 10- hours.

The locale, size and seat of injuries and the kind of weapon used are exactly in consonance with the ocular account furnished by the prosecution and, thus, the medical evidence lends full support to the ocular version.

17. The motive as set up by the prosecution in the crime report as well as in the private complaint was that at the time of marriage between the appellant and the deceased, the appellant had mutated one acre agricultural land in favor of the deceased lady but when, no issue was born during the wedlock, the appellant had demanded to take the said land back and was intending to seek permission from the deceased lady for second marriage, which she had refused. Though both the witnesses of ocular account had deposed with regard to the motive part of the occurrence yet they had neither produced any mutation regarding the transfer of land in favor of the deceased as claimed for nor had they adduced any independent evidence to prove the plea of seeking permission by the appellant for second marriage from the deceased lady. In case any land was transferred by the appellant in favor of the deceased at the time of marriage then certainly the prosecution had an ample opportunity to bring on record such documentary evidence but unfortunately nothing could be brought on record. So far as the plea of

seeking permission for second marriage by the appellant is concerned, neither any independent evidence has been adduced by the prosecution other than the evidence of eye witnesses of the occurrence nor any documentary proof has been brought on record to substantiate their claim. We are of the firm view that the prosecution has badly failed to prove both the motives as asserted.

18. The appellant was arrested in this case on 06.08.2009 and during investigation he led to the recovery of a blood-stained "Kassi" in pursuance of his disclosure which was subsequently sent into the office of Chemical Examiner, Lahore and the reports of said office (Ex.PD & Ex.PE) had been received with positive result regarding origin of blood i.e human blood, which further strengthens the prosecution version.

19. In his statement recorded under Section 342 Cr.P.C the appellant had taken a plea that the prosecution witnesses had deposed against him being closely related to the deceased and also in order to grab his property and the cattle-heads, on receiving information about the alleged occurrence he immediately appeared before the police and tried to prove his innocence but he was not heard properly and was implicated in the aforesaid case. It is amazing, that the appellant, who was husband of the deceased lady had not become the complainant and preferred to flee away from the place of occurrence. The non-participation of the appellant in the funeral ceremony of his wife, instead of becoming complainant or reporting the matter to the Police with regard to the alleged occurrence, shows his guilty conscious. He did not utter even a single word that who had committed the murder of his wife and took a plea of simple denial, which does not solve the purpose and, thus, the statement of the appellant could not be given any weight.

20. From the evidence available on record, we have reached at an irresistible conclusion that the prosecution has been able to prove the charge of homicidal death of the deceased at the hands of the appellant through cogent, reliable and confidence inspiring evidence. The residence of the complainant was at the distance of two houses away from the place of occurrence and his deposition is quite natural, straightforward and exactly in consonance with the medical evidence. We have no occasion to discard the evidence of the complainant, who had seen the occurrence

with his own eyes. The sole evidence of a material witness is always sufficient to establish the guilt of an accused, if the same is confidence inspiring and trustworthy supported with other independent source of evidence because law requires quality of evidence and not quantity to prove the charge. We seek guidance from the case titled “NIAZ-UD-DIN and another versus THE STATE” and another” (2011 SCMR 725) wherein it has been observed at page 734 as:-

The statement of Israeel (PW-9) the eye-witnesses of the occurrence is confidence inspiring, which stand substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that “even in a murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable.” The reason being that it is the quality of evidence and not the quantity which matters. Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has right been maintained by the High Court.

The deceased lady had been butchered with sharp edged weapon in a callous and barbaric manner by her husband, who remained fail to give any explanation that who had committed the murder of his wife in his own confines. The recovery of blood stained Kassi alongwith the positive report of Chemical Examiner and that of the Serologist further strengthen the prosecution version. There is no iota of doubt in our mind that none else but the appellant has committed the murder of his wife. We are fully convinced and in agreement with the conclusion arrived at by the learned trial Court qua the conviction of the appellant, but so far as the quantum of sentence is concerned, it is settled and longstanding principle of law by now that non-proving the motive has bearing upon the question of quantum of sentence. Reliance is placed on case titled “NAVEED alias NEEDU and others versus The STATE and others” (2014 SCMR 1464). The relevant dictum at page No.1468 reads as under:-

“failure of the prosecution to prove the motive set up by it may have a bearing upon the question of sentence and in an appropriate case such failure may result in reduction of a sentence of death to that of imprisonment for life for safe administration of justice.

This view has been further fortified in case titled “HAQ NAWAZ versus The STATE” (2018 SCMR 21) wherein it has been observed as:-

“The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder.”

It was further held in case titled “NADEEM RAMZAN vs. The STATE” (2018 SCMR 149).

“It has been held by this court in many cases that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on a capital charge.”

Moreover a single mitigating factor would be considered to be sufficient to award lesser sentence. When a case qualifies for awarding of both sentences of imprisonment for life and that of the death, the proper course for the Court is to give preference to award lesser sentence. We seek guidance in this respect from the case titled “GHULAM MOHY-UD-DIN alias HAJI BABU and others versus The STATE” (2014 SCMR 1034) wherein it has been observed at page 1044 as:-

“In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternate course by awarding life imprisonment instead of death sentence.”

21. In view of what has been discussed above, Criminal Appeal No.158 of 2014 filed by appellant Abdul Ghafoor is without any merit, the same stands ***dismissed*** by maintaining his conviction, however the sentence of death in an offence under Section 302(b) PPC is modified to the imprisonment for life. The amount of compensation as well as the sentence in lieu thereof shall remain intact. The benefit of Section 382-B Cr.P.C is extended to the appellant.

22. Murder Reference No.29 of 2014 for confirmation of death sentence of Abdul Ghafoor is answered in the **NEGATIVE** and death sentence of the appellant is **NOT CONFIRMED.**

(S.M.Kazim Raza Shamsi)  
Judge  
Approved for Reporting.

(Asjad Javaid Ghural)  
Judge  
JUDGE