

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Criminal Appeal No. 917 of 2019
(Muhammad Wasim vs. The State & another)

J U D G M E N T

Date of Hearing: 14.02.2022
Appellant by: Sardar Mehboob and Malik Muhammad
Yousaf Arain Advocates
Complainant by: Ms. Sidra Shamim Mirza Advocate
State by: Mr. Muhammad Ali Shahab Deputy
Prosecutor General and Mr. Muhammad
Laeq-ur-Rahman Assistant Deputy
Public Prosecutor

'Celebrities can be a big part of daily life. They provide us with laughs, comfort, entertainment, excitement, or a sense of escape. When a celeb we feel connected to passes away, it can feel like losing someone close to us because they may have been integral in some of our happiest or saddest moments; They made us laugh, they made us cry, but most importantly, they helped us forget about our difficult moments when we needed it most'¹

The tragic deaths of celebrities are always shocking for their fans. Fozia Azeem known as Qandeel Baloch a model, actress, social media celebrity and activist from Showbiz of Pakistan like many others Sharon Tate², Natalie Wood³, Andrés Escobar⁴ and Waheed Murad⁵, faced a miserable

¹ <https://www.teenvogue.com/story/why-we-feel-so-sad-after-celebrity-deaths>

² She was an American actress and Model. She along with four others on August 9, 1969 was murdered by members of the Manson Family. (https://en.wikipedia.org/wiki/Sharon_Tate)

³ She was an American Actress. She was found in the Pacific Ocean on November 29, 1981 after a boat trip to Catalina Island. (https://en.wikipedia.org/wiki/Natalie_Wood)

⁴ A Columbian Footballer who on July 2, 1994 was murdered in the aftermath of the 1994 FIFA World Cup, reportedly as retaliation for having scored an own goal. (https://en.wikipedia.org/wiki/Andr%C3%A9s_Escobar)

death when in the morning of 16.17.2016 she was found dead on her bed. Receiving this information, Muhammad Ilyas Haider Inspector (*Pw-20*) along with his official associates arrived at crime scene in the area of Gulistan Street Muzaffarabad, Multan where Muhammad Azeem (*Pw-29*), father of the lady deceased, made a statement (*PAT*) and maintained that his daughter Qandeel Baloch was in Showbiz who came from Karachi to celebrate the festival of 'Eid-ul-Fitr⁶'; Muhammad Wasim (*appellant*), brother of Qandeel Baloch, also came and asked her sister not to work in Showbiz; in the night he/complainant and his wife Anwar Bibi (*Pw-30*) slept on the first floor of the house, whereas Qandeel Baloch went for sleep in a room downstairs; when they/complainant etc. awoke up in the morning, Muhammad Wasim (*appellant*) was not present in the house; they were also under an impression that Qandeel Baloch was sleeping but after a considerable time, when they removed the cloth from her mouth, she was found dead having strangulation marks on her body. Muhammad Azeem claimed that his son Muhammad Wasim (*appellant*) had committed the 'Qatl-i-Amd⁷' of Qandeel Baloch on the pretext of honour and he was facilitated by Aslam Shaheen his/complainants' other son.

2. On the basis of above said declaration FIR⁸ No. 439 on the same day (16.07.2016) was recorded at Police Station Muzaffarabad district Multan under

⁵ An Actor from Pakistan also called Chocolate Hero. In a morning he was found lying on the floor, dead for several hours. (https://en.wikipedia.org/wiki/Waheed_Murad#Last_days_and_death)

⁶ Muslim festival marking the end of the fast of holly Ramadan

⁷ Murder

⁸ First Information Report to be recorded under Section 154 Cr.P.C

Sections 302/109 PPC⁹. Later on through a supplementary statement, Muhammad Azeem also implicated Haq Nawaz, Abdul Basit, Muhammad Abdul Qavi, Muhammad Zafar Hussain and Muhammad Arif (PO)¹⁰.

3. All accused including Muhammad Waseem (*appellant*) and excluding Muhammad Arif (PO) subsequent to submission of report under Section 173 Cr.P.C (*Challan*) were charged under Sections 302/201/404/311/34/109 PPC on 12.12.2018 who pleaded not guilty and demanded the trial.

4. In order to prove its case prosecution had produced as many as 35 witnesses, whereas appellant and his co-accused in their examinations made under Section 342 Cr.P.C¹¹ pleaded their false involvement. The specific version of appellant was as under: -

“I have been falsely implicated in this case. According to information when police came to know about the murder of my sister they pressurized my father to implicate someone otherwise they will be involved. The police also asked my father and mother to tell the names of my brothers and family members. Later on I and my brothers have been falsely implicated due to intervention of High-ups, which is in the prosecution case. In present case there is no direct evidence against me and as I have already stated that my judicial confession was obtained after torturing me. I am innocent.”

5. On conclusion of trial vide judgment dated 27.09.2019 passed by the learned Additional Sessions

⁹ Pakistan Penal Code (XLV of 1860)

¹⁰ Proclaimed Offender to be declared under Section 87 Cr.P.C

¹¹ Code of Criminal Procedure (V of 1898)

Judge Multan, Muhammad Waseem (*appellant*) was convicted under Section 311 PPC and sentenced to imprisonment for life whereas all other accused were acquitted.

6. Feeling aggrieved from his conviction, appellant has approached this Court through the instant criminal appeal.

7. Learned counsel for appellant maintained that the legal heirs of deceased during the trial had compounded the offence with appellant and his brother co-accused Aslam Shaheen which was rejected for the time being, however, while deciding the case finally, said compromise was again taken into consideration and relied upon but the learned trial court wrongly proceeded to convict the appellant under Section 311 PPC by ignoring the most important fact that it was not a case of '*Qisas*' but of '*Ta'zir*' so the provisions of Section 311 PPC had no role in the given situation.

8. On the other hand, learned Law officers for the State have argued that prosecution had proved its' case beyond reasonable doubt on the strength of confession made by appellant before a learned Magistrate, the DNA reports, Polygraphist test and recoveries at the instance of appellant; as the death of Qandeel Baloch was the result of honour killing, therefore, the leaned trial court despite compounding the offence between two sides, rightly convicted the appellant under Section 311 PPC.

9. **HEARD.**

10. The story about this occurrence is revolving around one family only. Muhammad Waseem (*appellant*) and Aslam Shaheen (*since acquitted*) are the real brothers of Qandeel Baloch (*deceased*) whereas Muhammad Azeem (*Pw-29*) and Mst. Anwar Bibi (*Pw-30*) are the parents of deceased, appellant and Aslam Shaheen.

11. Basic question before this Court is that whether the compromise was complete for all the purposes during the trial proceedings or not? Record indicates that on 22.08.2019 an application under Section 345 Cr.P.C for compromise between the legal heirs of deceased with Muhammad Waseem (*appellant*) and Aslam Shaheen was submitted before the learned trial court. This is not a fact under dispute that the only legal heirs of Qandeel Baloch at the relevant time was her parents Muhammad Azeem (*Pw-29*) and Mst. Anwar Bibi (*Pw-30*) because her two brothers were the accused of the case. On the same day, statements of both the legal heirs were recorded where they categorically maintained that they had forgiven Muhammad Waseem (*appellant*) and Aslam Shaheen (*since acquitted*) and they were having no objection for the acquittal of said assailants. It is important to add here that even today Mst. Anwar Bibi present in Court with her learned Advocate stands for the said compromise. However, Muhammad Azeem is not present as he is no more in this world now.

12. The learned trial court after recording the statements, on the same date dismissed the application and the relevant portion of the order is as under: -

“It is made clear that application u/s 345(2) Cr.P.C is not allowed for the time being, keeping in view the restrictions as imposed by Sec. 345 (2) Cr.P.C.”

(Emphasized applied)

13. The above order makes it clear that on 22.08.2019 the compromise was complete between two sides however its effect was postponed till a particular time.

14. The learned trial court in paragraph No.29 of the judgment again observed as under: -

“It is important to discuss here that parents of Fouzia Azeem alias Qandeel Baloch filed application for compounding the offence to the extent of accused Muhammad Waseem and Aslam Shaheen and same was dismissed by this court for the time being, keeping in view the provisions of Sec. 345 (2) Cr.P.C. wherein the discretion is granted to the court for acceptance of such compromise. Again the mother of deceased appeared before the court during course of arguments of defense counsels and insisted that compromise be accepted as she has lost her daughter and further does not want to lose her son, even if the compromise is accepted the case of Muhammad Waseem accused falls within the ambit of Sec. 311 PPC as he has confessed before the learned Judicial Magistrate while recording his judicial confession that he committed the murder of his sister due to her photographs and videos and the same has been discussed in

the preceding paragraph of this judgment.”

15. The conviction of Muhammad Waseem (*appellant*) under Section 311 PPC itself indicates that learned trial court had accepted the compromise but finding the case as of honour killing declared it within the ambit of Section 311 PPC.

16. An important question of law that whether appellant could be convicted under Section 311 PPC which is an outcome in case of waiver or compounding of ‘*Qisas*’ or still he had to be convicted under Section 302(b) PPC keeping in view the amendment¹² made in Section 302 PPC, shall be examined in some other appropriate case.

17. The conviction of an offender on the principle of ‘*fasad-fil-arz*’¹³ or on the pretext of honour killing must base on clear and qualitative evidence. As for the purpose of convicting the appellant under Section 311 PPC the learned trial court has mainly relied upon his confession recorded by Mr. Muhammad Sarfraz Anjum Magistrate (*Pw-34*) therefore, I am compelled to discuss the merits of that piece of evidence.

18. Appellant was produced before the learned Magistrate on 18.07.2016 and the statement which he made was as under: -

بلا حلف بیان کیا کہ میں نے قندیل بلوچ جو کہ میری ہمشیرہ ہے کو خود قتل کیا ہے۔ کسی کو اس بارے علم نہ ہے۔ جب میں قتل کر کے

¹² By way criminal Law (Amendment) (Offence in the name or on Pretext of Honour) Act, (XLIII of 2016) it has been provided that principle of *fasad-fil-arz* is attracted in cases under Sections 302(a) and 302(b) PPC. On the basis of same Act definition of *fasad-fil-arz* was introduced under Section 299(ee) that also includes the commission of offence in the name or the pretext of honour.

¹³ Defined under Section 299(ee) PPC

ڈی جی خان گیا تو اگلے دن میں خود پولیس کے سامنے پیش ہو گیا۔
میں نے اپنی ہمشیرہ قندیل کو اس کی تصویروں اور ویڈیو کی وجہ
سے قتل کیا ہے۔

19. No doubt that in the last line he gave a reason of murder of his sister due to pictures and videos but still it does not mean that murder was on the pretext of honour killing as the same was not specifically pleaded by appellant in his alleged confession. This goes without saying that a conviction particular in the case of capital charge cannot be recorded by presuming the facts.

20. A volunteer confession by accused is an important consideration before it is relied upon. The apex Court in *Azeem Khan's case*¹⁴ was pleased to formulate the following principles for a valid confession: -

- i. Before recording confession and that too in crimes entailing capital punishment the recording Magistrate had to essentially observe all the mandatory precautions (laid down in the High Court Rules and Orders).*
- ii. Fundamental logic behind the same was that, all signs of fear uncalculated by the investigating agency in the mind of the accused were to be shed out.*
- iii. Accused was to be provided full assurance that in case he was not guilty or was not making a confession voluntarily then in that case he would not be handed over back to the police.*
- iv. Sufficient time for reflection was to be given after the first warning was administered.*
- v. At the expiry of such time, recording Magistrate had to administer the*

¹⁴ Azeem Khan and others Vs. Mujahid Khan and others 2016-SCMR-274

second warning and the accused shall be assured that now he was in the safe hands.

- vi. All police officials whether in uniform or otherwise including Naib court attached to the court must be kept outside the court and beyond the view of the accused.*
- vii. After observing all these legal requirements if the accused person was willing to confess then all required questions as formulated by the High Court Rules and Orders should be put to him and the answers given, be recorded in the words spoken by him.*
- viii. Statement of accused should be recorded by the Magistrate with his own hand and in case there was a genuine compelling reason then, a special note was to be given that the same was dictated to a responsible official of the court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version.*
- ix. Accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he was Naib court wearing police uniform or any other police official/officer because such careless dispensation would considerably diminish the voluntary nature of the confession made by the accused.*

21. The honorable Supreme Court of Pakistan in *Ahmed Omers* case¹⁵ on the question of non removing of handcuffs during the statement under Section 164 Cr.P.C was also pleased to hold as under:-

“Any confession, even recorded under section 164, Cr.P.C will

¹⁵ The State through P.G Sindh and others vs. Ahmed Omer Sheikh and others 2021 SCMR 873

become invalid if the accused is produced before the Magistrate remained in handcuff while making such confession”

22. When examined the evidence of confession in the light of above settled principles, it has been observed that the learned Magistrate had committed following illegalities which are not curable: -

- i. Appellant was produced before learned Magistrate at about 02:30 pm whereas the alleged confession shows that it was recorded at 03:00 pm. In such a serious and high profile case only 30 minutes time for reconciliation for appellant was unreasonable to dispel or dislodge any impression of fear and undue influence on him.*
- ii. The entire court staff was retained inside the court. The learned Magistrate was supposed to ask only those members of his staff who were necessary keeping in view the security inside the court room.*
- iii. Appellant was produced in custody by police. The statement is completely silent that handcuffs of appellant were removed before he made the statement and thereafter he was again handcuffed.*
- iv. Except the confession recorded in Urdu, all other proceedings are in English but there is no oath of the Stenographer available on record to show that he had typed every fact in accordance with the dictation made to him by the learned Magistrate.*
- v. The confession on the face of it appears to be a so-called exercise because except the statement of appellant every fact typed was in English. Even the questions put to appellant and the answers thereof were typed in English. The learned Magistrate although in cross-examination responded that he also asked the questions in Urdu but he*

admitted that he did not mention this fact anywhere.

- vi. It was the duty of larded Magistrate to give a note that appellant was familiar with the English language and he gave the answers also in the same language. If it was not so, it was also his duty to give a specific note that all the questions and answers were translated to the appellant in Urdu language.*
- vii. The learned Magistrate did not give any certificate anywhere that what were those compelling reasons that he was unable to record the entire proceedings in his own hand writing. The statement in Urdu by the hand of learned Magistrate makes it clear that there was nothing wrong with him on that day so it is not understandable that why this exercise was completed in English and Urdu.*
- viii. No doubt that after the alleged confession appellant was sent to Jail but surprisingly his custody was handed over to the same Investigating Officer who had produced him in court with the application for recording of confession.*

23. In view of above circumstances, the value of confession cannot be considered more than a piece of paper.

24. Once the evidence of confession is discarded, there is no other material at all with the prosecution to establish that it was a case of honour killing. This fact cannot be skipped that it was an unseen occurrence and all the private witnesses named Muhammad Nawaz (*Pw-22*), Ashiq Hussain (*Pw-25*), Akhtar Hussain (*Pw-26*), Khair Muhammad (*Pw-27*), Sabir (*Pw-28*), Muhammad Azeem (*Pw-29*) and Anwar Bibi (*Pw-30*) had resiled from their statements. They were

declared as hostile by the prosecution but despite considerable cross-examination on them nothing favorable to the State could be brought on record.

25. I am conscious of the fact that a famous celebrity of the country lost her life without any sin but this fact alone is not relevant to sustain the conviction of appellant for the reasons that the Courts have to decide the cases in accordance with law that is to say '*a person will comply with the terms of the law or will abide by or obey the law*'. At this stage I will like to refer a Latin phrase '*Fiat Justitia*' which means 'Let Justice be done'. This also reminds me the golden principles while deciding a case which are as follows: -

- i. Appreciation of evidence involves weighing the credibility and reliability of the evidence presented in the case.*
- ii. Evidence is any matter of facts, the effect, tendency or design of which is to produce in the mind, a persuasion, affirmative or dis-affirmative, of the existence of some other matter of fact.*
- iii. Evidence means and includes all statements, which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and all documents including electronic records produced for the inspection of the Court.*
- iv. The standard of proof in Criminal case is not the same as in the Civil.*
- v. Importantly, in criminal case, the burden of proving the guilt of an accused is upon the prosecution.*
- vi. Prosecution must stand by itself. Essentially, accused need not establish his case beyond all reasonable doubt except in the cases, where burden relating to a fact in issue is on him.*

vii. If there is a real and reasonable doubt as to his guilt, the accused is entitled to the benefit of doubt.

viii. The law always requires that the conviction should be certain and not doubtful.

26. As a consequence of the discussion made above, this criminal appeal is ***allowed***. Impugned judgment to the extent of conviction of Muhammad Waseem (*appellant*) is ***set aside***. He is acquitted from the case on the basis of compromise. He is in custody and he shall be released forthwith if not required in any other case. The case property shall be dealt with in the same manners as directed by the learned trial Court.

(Sohail Nasir)
Judge

Approved for Reporting

(Judge)

Afzaal