

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 60 OF 2023

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 17.03.2023, passed in Crim. Appeal No. 14 of 2019).

Tasleem Zahin d/o Abdul Majeed Challayar Tehsil Dudyal,
District Mirpur.

... Complainant-Appellant

VERSUS

Majid Ali s/o Muhammad Rasheed caste Arain, r/o Muhallah Rasoolabad Colony Sind Tandoadam District Sangharr and another.

...Convict-Respondents

Appearances:

For the complainant-
Appellant:

Raja Inamullah Khan, Advocate.

For the State:

Kh. Muhammad Maqbool War,
Advocate-General.

For the accused:

Mr. Imtiaz Hussain Raja,
Advocate.

Date of hearing: 21.02.2024

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal arises out of the judgment of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High Court*), dated 17.03.2023 passed in Criminal Appeal No. 14 of 2019, whereby, the appeal filed by the complainant-appellant, herein, was dismissed.

2. The facts involved in the case are that the accused-respondent faced charges in the offences under sections 302 and 448, APC, tried in the Additional District Criminal Court Dadyal. According to the contents of FIR, on 28.08.2012, at 7:30 am, the complainant, Tasleem Zaheen, received a phone call informing him that his brother, Abdul Majeed (deceased), was lying injured in the courtyard of his house. In response, Tasleem Zaheen, accompanied by Abdul Rehman and Dilpazeer, arrived at the scene of occurrence at 8:15 am and found Abdul Majeed's dead body lying on the ground. The complainant raised suspicion that Jahanghir and his nephews might have murdered the deceased as there was a dispute over land between accused and the deceased. After completion of investigation, the challan was presented before the Court of competent jurisdiction on 31.10.2014, with the prosecution bringing forth 21 witnesses to support their case. During the trial, the accused-respondent

maintained his plea of innocence and alleged that false evidence had been fabricated against him. Subsequently, after hearing arguments from both sides, the learned trial Court, through judgement dated 16.10.2019, acquitted the accused-respondent, of the charge citing benefit of the doubt.

3. Raja Inamullah Khan, the learned Advocate representing the complainant-appellant, contended that the judgments of both the Courts below are the result of misreading and non-reading of evidence. He pointed out that the lower Courts, while delivering the challenged judgments, failed to comprehend the relevant law and prosecution evidence in its true context. He further argued that the prosecution established its case through compelling and credible evidence beyond a reasonable doubt against the respondent, however, both the lower Courts acquitted the accused of the charge without properly examining the record. He emphasized that the statements of the prosecution witnesses are entirely consistent with the ocular testimony and these witnesses have no motive for false implication of the accused. Moreover, the accused was identified as culprit by the police during the investigation which was not taken into account by the High Court in its impugned judgment. He also pointed out that the recoveries made during the investigation and the statement of the

accused recorded under section 164, Cr.PC have been proven in a clear and consistent manner, with corroboration from independent evidence. He further argued that no material contradictions were found in the evidence of the witnesses and this evidence was also supported by the Medico-legal Report. Additionally, the recovery of an iron rod further corroborates the evidence linking the accused with the murder of the deceased. The learned Advocate asserted that the prosecution had established its case against the accused and thus, the acquittal of the accused on the basis of the benefit of doubt is not justifiable. He also emphasized that the confessional statement of the accused recorded under section 164, Cr.PC, in which he admitted that he is a hitman paid assassin, should be sufficient to convict him. He concluded by praying for acceptance of appeal.

4. Mr. Imtaiz Hussain Raja, the learned Advocate representing the accused, vehemently countered the arguments presented by the learned counsel for the appellant. He maintained that the trial Court and the High Court rightfully acquitted the accused of the charge of murder. Stressing that the case was based on circumstantial evidence surrounding the blind murder of the victim, he asserted that the prosecution was obligated to prove its case beyond reasonable doubt without any breaks in the chain. However, the prosecution failed in this regard, leading to the

just acquittal of the accused. He further contended that the statements of the witnesses concerning the recovery of the iron rod, presumed to be the weapon of offense, were riddled with material contradictions, casting doubt on the veracity of the recovery. He pointed out that the post-mortem report suggested the use of a sharp-edged weapon for the deceased's death, not the iron rod. The learned Advocate highlighted that the accused, at the time of recording of his statement under section 164, Cr.PC, was unaware that he would not be handed over to the police afterwards. Therefore, the accused's statement was made under duress, fearing police torture and thus, should not be considered reliable evidence. Referring to a series of Court precedents, he stressed that even the slightest doubt must benefit the accused, which aligns with the teachings of Prophet Muhammad (Peace be upon him) as per the Ahadith. One Hadith, in particular, advises judges to err on the side of caution in favor of the accused. Concluding, he stated that the accused was indeed innocent, as indicated by the record and his acquittal by the lower Courts was just and correct. In support of his submissions, the learned Advocate placed reliance on the cases reported as *Waseem Hussain and other vs. M. Rafique and another* [2017 SCR 428], *Kareem Dad vs. Zaheer and another* [2004 SCR 36], *Ghulam Rasool Shah vs. State and others* [2009 SCR 390], *Messrs Sindh*

Tech. Industries ltd. Vs. Messrs Investment Corporation of Pakistan [1998 SCMR 1533], Arshad Ali vs. The State [2004 P.Cr.LJ 1403], and Anwar and another vs. The State [2001 SCMR 1518].

5. Kh. Maqbool War, the learned Advocate-General, echoed the arguments put forth by the learned Advocate representing the complainant-appellant.

6. Having considered the arguments advanced by the learned Advocates for the parties and carefully scanning the available case record, it is apparent that the present matter pertains to a case of blind murder with no direct evidence on record, thus relying entirely on circumstantial evidence. Although there are no barriers to convict solely based on circumstantial evidence including the imposition of the death penalty, it is imperative to adhere to the principles established by Superior Courts in evaluating such evidence. Specifically, the prosecution bears the burden of establishing the guilt of the accused beyond any reasonable doubt, which is the cornerstone of criminal jurisprudence. All established facts must unequivocally support the inference of the accused's culpability and the chain of events linking the offense to the accused must be unbroken, indispensable and interwoven and circumstantial evidence should manifest as coherent with chain, one end of firmly anchored to the body

of the deceased and the other inexorably tied to the accused's involvement.

7. It is a deeply ingrained principle in the realm of law and justice that individuals cannot be convicted of crime based solely on assumptions, without the presence of rebuts, legally admissible evidence of impeccable quality. Likewise, the gruesome or abhorrent nature of a crime should not sway a Court from its obligation to meticulously evaluate evidence and afford the accused the presumption of reasonable doubt, a right that is inherent and inviolable. Any influence stemming from the nature of crime or external factors may lead judges to an erroneous conclusion, resulting into miscarriage of justice. In the cases relying on circumstantial evidence, the courts must exercise heightened caution and vigilance, particularly when there exists a risk of the fabricated or flawed evidence. For an inference of guilt to be justified, circumstantial evidence must meet a standard that leaves no room for doubt regarding the accused's innocence. Should circumstantial evidence falls short of this benchmark, relying on it, particularly when considering capital punishment, reliance on it would be perilous. Thus, it is prudent wiser and judicious to refrain from relying solely on circumstantial evidence to ensure the attainment of justice. Our view is fortified from the case reported as *The*

*State vs. Mst. Falawat Jan and another*¹, in which it has been held by this Court: -

“It may be stated here that in case of circumstantial evidence, the evidence should be of such a degree and character that it should exclude the possibility of innocence of an accused. Besides, it should link together all the chains of the prosecution story so as to convince the Court to reach an irresistible conclusion that the accused person was the culprit beyond any reasonable doubt. The evidence in the instant case is not only insufficient but the same is of such a nature that conviction is not sustainable upon the same: for instance, the garments which allegedly belong to the accused-respondent were not found blood-stained. Thus, mere production of the clothes of the respondent, Muhammad Khaliq, by his wife, is no evidence against him. Similarly, the recovery of knife is not only suspicious, as indicated above, but it was also not proved to have been stained with human blood.”

Similarly, in the case reported as *Wazarat Hussain vs. Nazir Akhtar & another*², it has been held by this Court that: -

“6. Before dealing with the testimony of the witnesses it may be observed that circumstantial evidence means evidence afforded by testimony other than the eye witnesses which bear upon a fact or other subsidiary facts which are relied upon as consistent that no result other than truth of principal fact and facts shall be so proved that they shall not leave any possibility of innocence of accused. And this possibility shall be of such a high degree and standard that a prudent man after considering all the facts and circumstances is able to reach at the conclusion that he is justified in holding the accused guilty and from the evidence no other inference can be drawn except the guilt of accused. The circumstances from which the inference adverse to accused is

¹ [1992 SCR 366]

² [2009 SCR 273]

sought to be drawn must be proved beyond all doubts.”

8. In the light of the aforementioned discussion, we direct our attention to the particulars of the present case, as per the details outlined in the First Information Report (FIR), Tasleem Zahin, the complainant was informed via a phone call on August, 25, 2012 at 7:30 am, that his brother Abdul Majeed (deceased) had been found injured in the courtyard of his residence. Subsequently, Tasleem Zaheen, accompanied by Abdul Rehman and Dilpazeer arrived at the scene at 8:15 am, where they found Abdul Majeed's lifeless body lying on the floor. The complainant voiced suspicion regarding Jahanghir and his associates for the murder of his brother, citing a land dispute. Initially, Jahanghir and co-accused were implicated but subsequently they were cleared in police investigation despite interrogating approximately 20-25 other individuals, the actual perpetrator remained unidentified, leading to the closure of the investigation on May, 05, 2014. Majid Ali (accused) was apprehended in Sindh, Pakistan, two years following incident, and a case was filed against him on October, 31, 2014. Given the absence of direct evidence, the prosecution relied on circumstantial evidence, including the confessional statement of the accused recorded under section 164, Code of Criminal Procedure (Cr.PC), the recovery of an iron rod, the post-mortem report, and the medico-legal report.

9. Given the significant reliance placed by the prosecution on the confessional statement of the accused-respondent recorded under section 164, Cr.PC, it is impulsive to conduct an initial analysis of this statement, however, before delving into the assessment of the confessional statement, it's important to note that a fundamental legal principle is that the confessional statement must be both voluntary and credible. In absence of corroboration by the other evidence or if obtained under duress or coercion, it cannot be safely relied. Section 164 Cr.PC, delineates a specific procedure for recording statements. For clarity, the relevant provision is reproduced below for reference: -

“164. Power to record statements and confessions: (1) Any magistrate of the first Class and any Magistrate of the Second Class specially empowered in this behalf by the Provincial Government may, If he is not a police officer, record any statement or confession made to him in the course of an investigation under this chapter or at any time afterwards before the commencement of the inquiry or trial. (1-A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement,

(2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case: Such confessions shall be recorded and signed in the manner provided in Section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried-

(3) A Magistrate shall, before recording any such confessions explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:--

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him."

10. The accused's confessional statement under section 164, Cr.PC, was recorded on August 12, 2014. However, the accused subsequently retracted his confession. It is well established legal doctrine that a retracted confession can still be admissible as evidence against the person who made it provided that the confession is bolstered by other independent evidence, such as recoveries, the medico-legal report and the motive established by the prosecution. Reference may be made to a case reported as *Abdul Qayyum & others vs. The State & others*³, wherein, it has been observed: -

"After going through the Court's statements of the witnesses, who got recorded their statements under section 164, Cr.P.C., it appears that their statements under section 164, Cr.P.C., were recorded when they were in the custody of police

³ [2019 SCR 105]

and they remained under the pressure of the police and the prosecution failed to rebut their version. Thus, under law such statements which have been got recorded under the pressure of the police, cannot be read against the accused and the Courts below wrongly relied upon the same. It is also well settled principle of law that statement under section 164, Cr.P.C., when retracted by the deposer, then strong corroboration and extra-ordinary care is required for awarding conviction on the basis of such statement, whereas, in the instant case situation is quite otherwise as neither strong corroboration is available nor the Courts below took the extra-ordinary care while relying upon the statements.”

The same proposition came under consideration in the case reported as *Nizam-ud-Din vs. The State*, [2010 PCr.LJ 1730], wherein, the Lahore High Court observed as under: -

“It is settled law that until and unless the extra-judicial confession is not corroborated by any other independent piece of evidence, no reliance can be placed on it coupled with the fact that the joint extrajudicial confession is inadmissible in evidence, therefore, it would not be safe to maintain conviction of the appellant on the basis of such type of evidence.”

11. In his confessional statement, the accused revealed that he was employed as a paid servant in Najeeb's household. Allegedly, Najeeb instructed him to commit the murder of the victim in exchange for 300,000/- rupees and a piece of land. The accused-Najeeb allegedly paid him 300,000/- rupees out of which he utilized Rs. 100,000/- and deposited the remaining Rs. 200,000/- in Meezan Bank Tando Adam Khan. Furthermore, the accused stated that Najeeb provided him with an iron rod which he used to fatally

strike the victim's head, subsequently, concealing the body in a room before fleeing to Sindh, However, voluntary nature of the accused's statement is questionable, as critical details such as the date of payment of the Rs. 300,000/- and precise circumstances of the incident are omitted. The lack of these crucial specifics raises doubt about the reliability of the statement, particularly regarding coercion by the police. Additionally, if the confession was deemed credible, it would necessitate corroboration from other evidence, such as the recovery of weapon by the police and the findings of medico-legal report. Notably, the post-mortem report indicates that the cause of death was inflicted by ta sharp-edge weapon for comprehensive understanding, the pertinent excerpt of the medical report is reproduced below; -

“Injuries:

- (01) *Incised wound measuring 03 cm in length and depth extending to the bone lying on the occipital region of skull starting 02 cm above to the external occipital protuberance and 2cm to the left of Miocene extends down and to the right.*
- (02) *Incise wound, measuring 3 cm in length and deep to the bone lying 0.5 cm above and parallel to injury # 01.*
- (03) *Incise wound measuring 03 cm in length and having depth reaching to the bone starting at a distance of 01.5cm where the injury number 01 ends and continuous down and to the right. Its start point is about 0.5cm below to the acute point of injury number 01 in the vertical axis.*
- (04) *Incised wound measuring 2.5 cm in length and extending deep to the bone starting at a distance of .5 cm where the injury #03 ends and moves down and to the right. Its start point is about 0.5 cm below to the start point of injury number in the vertical axis.*

- (05) *Incised wound on the right ear, cutting through the cartilage of pinna of the right ear and cutting it apart from its central point in the vertical axis, and causing an incised wound on the perichondrium avascular tissues as well causing incised wound that continuous for 0.3cm behind the pinna of the right ear.*
- (06) *Incised wound, measuring 01 cm in length and lying vertically and 01cm to the left of the midline on the upper line.”*

A forensic examination has revealed a series of incised wounds on the body, each is described in meticulous detail. The first injury is a 3 cm long and deeply incised wound located on the occipital region of the skull. It extends to the bone, commencing 2 cm above the external occipital protuberance and 2 cm to the left of the Miotic line and then moving downward and to the right. The second incised wound is also 3 cm in length reaching to the bone is positioned 0.5 cm above and parallel to the first wound. The third incised wound measures 3 cm in length and reaching the bone, begins 1.5 cm from the endpoint of the first injury, moving downward and to the right. The start of this wound is 0.5 cm below the acute point of the first wound on the vertical axis. The fourth incised wound is 2.5 cm long and reaching the bone, starts 0.5 cm from where the third wound ends, moving downward and to the right. Its commencement is approximately 0.5 cm below the first wound on the vertical axis. The fifth incised wound is on the right ear, cutting through the cartilage of the pinna and separating it from its central point on the vertical axis. This wound also incises the

avascular tissues of the pooknion and extends for 0.3 cm behind the pinna. The sixth incised wound measures 1 cm in length and is vertically positioned is located 10 cm to the left of the midline on the upper limb. The medico-legal report of the deceased highlights a significant inconsistency in the confession provided by the accused while the accused's claim to have used an iron rod to commit the murder, and the police reportedly recovered the said rod from him, the injuries sustained by the deceased do not align with those typically inflicted by an iron rod. Instead, the wounds described in the medico-legal report bear the characteristics of those caused by a sharp-edged weapon, given their precise nature and considerable depth, with some wounds penetrating to the bone. Specifically, the incised wound on the occipital region of the skull measuring 3 cm in length and depth and extending to the bone, can not feasibly be attributed to an iron rod. The forensic evidence casts doubt on the veracity of the accused's confession, indicating that the murder weapon was likely not an iron rod. Consequently, there exists the possibility that the accused may not be culpable for the victim's death. The pertinent medical evidence was provided by the attending doctor i.e. Dr. Muhammad Younas, Civil Medical Officer THQ Hospital Dadyal, who conducted the post-mortem report. He produced the relevant record, neither any expert witness provided an oral statement regarding the

post-mortem report contently nor the aforesaid doctor got his statement recorded before the Court. According to Article 71 of Qanun-e-Shahdat Order, 1984, oral evidence pertaining to opinions and grounds for holding those opinions must be provided by individuals holding such opinions. Thus, the Doctor who conducted the post-mortem or examined the injuries could offer an opinion or medical findings based on their expertise. The absence of secondary evidence from another doctor or expert to elucidate the nature of injuries further comprehend the deficiency in medical testimony, such crucial aspects leave the medical evidence unsupported and insufficient to establish its case.

12. Establishing a motive is not an absolute requirement to prove a criminal offence, however, once the prosecution introduces a motive as part of their case, they bear the burden of proving it. Failure to prove sufficient evidence to substantiate the alleged motive can lead to adverse inferences being drawn against the prosecution' case. In this case, the prosecution outlined a motive in the First Information Report alleging that the property dispute was underlying cause of the deceased murder, however, not a single motive during the proceedings. Furthermore, the Investigation Officer in the challan, disclosed a new narrative regarding motive of murder. Astonishingly, he deposed in his statement before the Court that the incident occurred due to

the deceased's alleged illicit relationships with the wife of the accused's son. This revelation undermines the prosecutions' entire narrative, significantly altering the course of the case, therefore, when this situation arose in a case, the prosecution evidence cannot be safely relied upon.

13. In addition, significant contradictions emerge in the witness statements concerning the recovery of iron rod effected from the room. The recovery witnesses, Ch. M. Najeeb and Ch. M. Khalil, testified that the door of the room where purportedly the iron rod was recovered, was open while the Deputy Superintendent Police (DSP) and the Investigation Officer while contradicting this stance stated that the door was locked and was subsequently opened by the accused who then pointed out the iron rod. Moreover, the presence of DSP and Investigation Officer at the scene raises serious doubts. Given the substantial inconsistencies among the witness's testimonies, the conviction of any accused became untenable. It is a firmly established legal principle that even the slightest doubt should wight in favour of the accused, particularly, when the prosecution's narrative is riddled with uncertainties, as is evident in this case.

14. The learned counsel for the accused rightly referred to the *Hadith* of the Prophet Muhammad (Peace be upon him), Jamia Tirmizi Volume 1, page No. 514, Hadith No. 952, wherein, regarding benefit of doubt, the Holy

Prophet (Peace be upon him), has guided that ‘protect the Muslims from Hudoos as much as possible, if there is any way to free the accused, then free him as it is better for a Judge to make a mistake in pardoning than to make a mistake in punishing’. The principle of affording the benefit of doubt to an accused individual is firmly entrenched within our legal system. Granting this benefit does not require an abundance of circumstances casting doubt, rather if there exists a singular circumstance that engenders reasonable doubt in the mind of a prudent person regarding the guilt of accused, the accused is entitled to his benefit. This entitlement is not bestowed as an act of grace or concession but rather as a fundamental right.

15. On this point, in *Muhammad Saeed vs. State’s*,⁴ case, this Court has recently passed an authoritative judgment, wherein, a similar situation arose before the Court and the Court while extending the benefit of doubt to the accused and acquitted him of the charges. The Court, observed as under: -

“It is already settled by the Courts time and again that for the purpose of giving benefit of doubt to an accused, more than one infirmity is not required, rather, single infirmity creating reasonable doubt in the mind of a prudent person regarding the truth of the charge, makes the whole case doubtful. The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep

⁴ Criminal Appeal No. 36/2023, decided on 15.08.2203

rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him):

Abu Huraira reported: The Messenger of Allah, peace and blessings be upon him, said,

“Avoid applying legal punishments as long as you find an excuse to avoid them.”

Source: Sunan Ibn Maḥjah 2545

Grade: *Hasan* (fair) according to Al-Suyuti

Al-Suyuti said, “A principle of law states that legal punishments are suspended by doubts.”

Source: al-Ashbah wal-Nazaʿir 2/122

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ادْفَعُوا الْحُدُودَ مَا
وَجَدْتُمْ لَهُ مَدْفَعًا

2545 سنن ابن ماجه كتاب الحدود باب الستر على المؤمن ودفعت الحدود
بالشبهات

317 المحدث السيوطي خلاصة حكم المحدث حسن في الجامع الصغير
قال السيوطي القاعدة (في الفقه) الحدود تسقط بالشبهات
2/122 الأشباه والنظائر الكتاب الثاني في قواعد

13. According to the celebrated principle of administration of criminal justice, the burden lies on the prosecution to prove its case through cogent evidence by exclusion of all the doubts. For the better administration of justice in criminal legal system, the accused person is always extended with the benefit of "reasonable" and not of "imaginary" doubt. What constitutes a reasonable doubt is a basic question of law; essentially a question for human judgment by a prudent person to be found in each case, taking in account fully all the facts and circumstances appearing on the entire record. It is an antithesis of a haphazard approach for reaching a fitful decision in a case.”

16. The case laws referred to and relied upon by the learned counsel for the appellant having distinguishable facts

and circumstances, are not attracted to the case in hand. It is well established legal principle that each case must be adjudicated based on its unique circumstances. Verdicts rendered in criminal cases should be limited to the specific facts presented in the case at hand and cannot be universally applied to all cases.

In view of the above, we aligned with the High Court's findings that the incriminating circumstances were not sufficiently proven beyond reasonable doubt and the chain of evidence was incomplete, consequently, there was insufficient certainty to attribute the commission of the crime to the accused, therefore, the instant appeal stands dismissed.

JUDGE

JUDGE

Muzaffarabad:
11.03.2024