

**Judgment Sheet**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR.**  
**JUDICIAL DEPARTMENT.**

**JUDGMENT**

**Criminal Appeal No.155-P/2012**

**Date of hearing 28.02.2024.**

**Faqir ur Rehman**  
**Vs**  
**Hussain Ahmad**

**Appellant (s) by:** Barrister Amir Khan  
Chamkani.

**Accused/respondents by:** Mr. Arshad Bilal  
Advocate.

**State by:** Mr. Muhammad Nisar  
Khan AAG.

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**WIQAR AHMAD. J.** Through instant criminal appeal filed under Section 417(2)A Cr.PC, appellant/complainant Faqir-ur-Rehman has challenged impugned judgment dated 21.02.2012, passed by learned Additional Sessions Judge-II, Swabi, whereby accused/respondent namely Hussain Ahmad, was acquitted from the charges levelled against him in case FIR No.616 dated 06.09.2011 registered under Sections 302/201 PPC at Police Station Zaida, District Swabi.

2. As per prosecution case, appellant/complainant Faqir ur Rehman brought dead body of his daughter namely Mst. Mahjabeen to Police Station Zaida on 31.08.2011 and made report that his daughter had been married to Hussain Ahmad (accused/respondent), who on 27.08.2011 had lodged report regarding burning of Mst.Mehjabeen due to gas cylinder and she had been taken by Hussain Ahmad to POF Burn Center Wah Cantt: for treatment. After death of his daughter, complainant satisfied himself that his daughter had been burnt by accused Hussain Ahmad and charged him in his report for commission of offence.

3. After completion of investigation, complete challan against accused/respondent was submitted before learned trial Court where after framing of formal charge against accused/respondent, the prosecution in order to prove its case produced as many as 12 witnesses. On close of prosecution evidence, statement of accused/respondent was recorded under Section 342 Cr.PC, wherein he denied allegations levelled against him however, he did not opt to be examined on oath or to produce defence evidence. After hearing arguments of learned counsel for the parties, learned trial Court

acquitted the accused/respondent from charges levelled against him vide impugned judgment dated 21.02.2012. Aggrieved from impugned judgment, complainant/appellant filed instant appeal before this Court for convicting and sentencing the accused according to law.

4. Learned counsel for the appellant/complainant argued that deceased had been killed inside the house of accused/respondent and that in report lodged by him, he had stated that deceased had died after catching fire from gas cylinder but as per report Ex.PW.1/1 of Dr. Zafar Iqbal (PW.1), traces of kerosene oil had been found on the body of deceased therefore, learned trial Court should have drawn an inference that the lady had been burnt to death by sprinkling kerosene oil on her.

5. On the other hand learned counsel for accused/respondent contended that medical report Ex.PW.1/1 had been issued on 05.09.2011 after five days of death of lady i.e, 31.08.2011, which fact had also been admitted by PW.1 in his cross examination. It was further contended that said witness has also admitted that lady had not remained under his treatment

and that he had inspected the dead body after her death. Learned counsel next contended that it has been admitted by PW.7 that the lady after receiving burn injuries had been taken to various hospitals for treatment by none else but accused/respondent, which showed his conduct immediately after the occurrence and was also fortifying factum of his innocence.

6. Learned AAG also supported arguments advanced by learned counsel for appellant/complainant.

7. Arguments heard and record perused.

8. Perusal of record reveals that deceased was wife of accused/respondent Hussain Ahmad, who had no doubt died inside house of accused/respondent but it was apparent that accused had taken the lady to the hospital immediately after receiving burn injuries and also shifted her to more equipped hospital so as to save her life. In this respect PW.7 (Mst.Naheed Akhtar) who was sister of deceased had admitted in her cross examination that after receiving burn injuries by deceased , she was first shifted to Swabi hospital by accused, then to LRH and thereafter to POF Wah Cantt:. Record also suggests that the lady had died at POF hospital, Wah Cantt: where she had been taken for treatment by her husband

(accused/respondent). Report had also been lodged by accused/respondent on second day of occurrence vide Naqal Mad No.11 dated 27.08.2011 to the effect that he alongwith other family members were present in his house where Mst. Mahjabeen was making preparation for 'Sehri' when she was burnt due to gas cylinder, which occurrence had taken place due to her negligence and thereafter she had been taken to POF Hospital Wah Cantt: for treatment. He did not charge anybody for the occurrence. In the circumstances burden lying on him under Article 122 of Qanun-e-Shahadat Order 1984, has also been discharged by accused/respondent wherein sufficient explanation is available in evidence in the shape of lodging report as well as taking lady to hospital. Besides, there is no direct evidence of occurrence which could connect accused/respondent with the commission of offence.

9. Regarding plea of learned counsel for appellant that lady has died due to sprinkling kerosene oil, analysis of statements of PW.1 and PW.2 is deemed necessary. PW.1 Dr. Zafar Iqbal (who was surgeon deputed at POF Hospital Wah Cantt;) stated in his examination in chief that as per history and record, the

deceased had got fire by kerosene oil. He also stated that on medical examination, her body had been found extremely burnt (upto 75% of total body area) and expired in hospital on 31.08.2011. In cross examination he admitted that the medical report Ex.PW.1/1 had been issued by him on 05.09.2011. He also admitted that it had not been mentioned that the lady has ever remained under treatment of said doctor. He also admitted that after death of the patient, death report had not been issued by him. Likewise, PW.2 Dr. Munawar Latif, Resident Medical Officer Surgery POF, Hospital Wah Cantt: has stated in examination in chief that he had issued death certificate Ex.PW.2/1. In his cross examination he admitted that death certificate had been issued on the basis of available history of case and that he had nowhere mentioned cause of burn to be kerosene oil. Same record was before the two doctors but the one issuing death certificate Ex.PW.2/1 had not mentioned anything about kerosene oil to be cause of burn while the other doctor i.e, PW.1 (Dr. Zafar Iqbal) has mentioned in his report that Kerosene oil has been cause of burning of body of deceased. Latter report of Dr. Zafar Iqbal had also been issued on 05.09.2011 after five

days of death of the lady which had taken place on 31.08.2011. The complainant had also recorded statement under Section 164 Cr.PC, on 08.09.2011, at much belated stage. In rest of evidence there is nothing to the effect which could have supported this factum of burning of body through kerosene oil. This Court while giving judgment in case o **"Amir Khan Versus The State and another"** reported as 2000 MLD 766 (Peshawar), had ignored a similar report of a lady doctor when said report had been found to be in contradiction of well established evidence in said case. Relevant observation is reproduced hereunder for ready reference:-

*"We are, therefore, of the view that in this case the prosecution has successfully proved that the deceased was burnt with acid and the statement of PW.9 Dr. Shahida Naveed though positive on the point of thermal injury yet creating doubt with regard to the substance of burning, cannot be made basis for discarding the whole confidence inspiring eye-witness account and other strong circumstantial evidence in the case."*

While deciding petition for leave to appeal against above judgment, Hon'ble Supreme Court of Pakistan in its judgment given in case of **"Amir Khan Versus The**

State and another" reported as 2000 SCMR 1885 has held;

*It has time and again been held by the superior Court that if a bald statement of a medical expert is opposed to the proved and admitted confidence inspiring and reliable account of the eye-witnesses or other A material and trustworthy evidence on record, then the latter are to be preferred against the former. In this case it is not understandable how could the lady doctor determine the nature of the injuries by certain smell. It is on record as referred to in the above para. from the trial Court judgement that the trend of cross-examination by the defence itself was that the deceased received burnts/hurts with acid. The eye-witnesses have consistently stated that the acid was thrown on the deceased. The report of the Chemical Examiner from Forensic Science Laboratory also shows that the clothes etc, of the deceased were burnt with "sulphuric acid". In view of this confidence inspiring evidence the -gratuitous remarks of the medical officer without any valid basis have no significance.*

In this case also the report Ex.PW.1/1 was not found well substantiated. Same was also issued by doctor at belated stage and same sufficiently stood contradicted by rest of evidence. Learned Court below through

impugned judgment has properly appreciated the evidence and discussed each and every point minutely.

10. Accused/respondent has already earned the order of acquittal from the learned trial Court and reappraisal of evidence by this Court in an appeal against acquittal requires a more liberal approach. "An order of acquittal" as held by the Hon'ble Supreme Court of Pakistan in case of **"The State through A.-G. N.-W.F.P vs Mehmood Khan and others reported as 2007 SCMR 1390**, "doubles the initial presumption of innocence of accused which would be stronger in case of verdict of acquittal recorded by Court of record." Similar observation had also been recorded by the Hon'ble Apex Court in the case of **"Muhammad Shafi Vs Muhammad Raza and another"** reported as 2008 SCMR 329.

11. In light of what has been discussed above, it is clear that prosecution has not been able to prove the case against accused/respondent beyond reasonable doubt. The judgment of acquittal impugned herein is based on proper appreciation of evidence and contains solid reasons recorded therein.

The appeal in hand was therefore found to be lacking

substance and same is accordingly dismissed in  
limine.



**Senior Puisne Judge**



**JUDGE**

*Date of hearing & announcement  
of judgment... 28.02.2024.*

*Date of preparation and  
signing of judgment ..... 29.02.2024.*

"A. Qayum PS"

DB)

Hon'ble Mr. Justice Ihtilaf Ibrahim & Mr. Justice Wiqar Ahmad.