

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT**

**Cr. A.No.634-P of 2016 with M.Ref.No.
16-P of 2016.**

JUDGMENT

Date of hearing: 16.11.2017

Mr.Shakeel Ahmad Khan, advocate for the appellant.

Syed Bilal Ahmad Bacha, advocate for the complainant.

Mr.Rab Nawaz Khan, AAG for the State.

LAL JAN KHATTAK, J.- This criminal appeal is directed against the judgment dated 08.10.2016 of the learned Additional Sessions Judge-V, Charsadda delivered in case FIR No.34 dated 10.01.2015 u/s 302 PPC of Police Station Charsadda, whereby on conviction u/s 302 (b) PPC, the appellant has been sentenced to death with payment of Rs.1,00,000/- as compensation to legal heirs of the deceased.

2. Brief facts of the case are that on 10.01.2015, Bakhtiar Khan (PW-9) reported to SI Gul Zar Khan of PS Charsadda (PW-10) to the effect that he was present in his house when got information regarding murder of his daughter on which he rushed to the spot where he saw her dead body. He

charged the appellant i.e. his son-in-law in the case for causing *qatl-i-amd* of his daughter. Motive for the crime was stated to be soaring relations between the couple.

3. On arrest of the appellant and completion of investigation, complete challan was put in court, which indicted him for commission of the offence to which he pleaded not guilty and claimed trial. In order to prove its case against the appellant, prosecution examined 11 witnesses in all whereafter statement of the accused was recorded u/s 342 Cr.P.C., wherein, he professed his innocence. The learned trial court, after conclusion of the trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above. The appellant has impugned his conviction through the instant appeal whereas the learned trial court has sent murder reference for confirmation of the death sentence.

4. Arguments heard and record gone through.

5. Of course, there is no eyewitness to the occurrence but circumstantial evidence of the case fully connects the appellant with commission of the offence. Record shows

that the appellant was husband of the deceased, who was done to death in her house and that after his nomination in the case as accused, he went into hiding and remained fugitive from law for 51 days.

6. In the case in hand, abscondence of the appellant is very relevant. Normally abscondence hardly is taken into account for recording conviction of an accused but when a husband absconds after his nomination as accused for the murder of his wife, then such abscondence would matter being a relevant fact leading to his guilt in the case as per Article 21 of the Qanun-e-Shahadat Order, 1984. According to the card of arrest (Ex.PW11/8), the appellant was arrested in the case on 03.03.2015 while his wife was done to death on 10.01.2015. He has not offered any explanation for avoiding his lawful arrest in the case. The appellant's conduct for his remaining fugitive from law goes a long way to connect him with commission of murder of his wife. Record also shows (Ex.PW 11/6) that the appellant has parents, 7 sons and 3 daughters. He was supposed to be in touch with his family members about the affairs of his house but he did not liaison with them, even he did not

attend the funeral of his wife. Ibid conduct of the appellant has laid bare him as culprit in the murder of his wife.

7. Another pronounced aspect of the case is that the appellant has taken the plea that his wife had committed suicide. This stance of the appellant is not only baseless but supports the charge against him as not only medical examination of the victim belies the appellant's version qua suicide of the deceased but there is no material on record, which could show that the deceased had become fed up of her life and wanted to get rid of herself.

8. Further noticeable aspect of the case is that from the crime spot, the Investigating Officer had recovered one empty of .30 bore and also had taken into possession one 30 bore pistol from the appellant's possession when on 03.03.2015 he was arrested. The investigating agency had sent the crime empty and recovered pistol to FSL to ascertain whether the crime empty was fired from the pistol recovered from the appellant. The FSL report is (Ex.PW 11/4), which affirms that the .30 bore crime empty was fired from the .30 bore pistol.

9. In addition, there is nothing on record to show that the complainant had falsely implicated the appellant for the murder of his daughter. Even, otherwise, no sane person would ever substitute the actual culprit for another.

10. Thorough and careful examination of the case record shows that the prosecution has successfully proved its case against the appellant for his involvement in the case albeit there is no ocular account in the case but circumstantial evidence of the case in the shape of appellant's abscondance, recovery of empty of .30 bore from the crime spot, recovery of crime pistol from the appellant's possession, positive report of FSL (Ex.PW 11/4), conduct of the appellant and motive for the crime fully connects him with murder of his wife and the learned trial court has committed no legal error to record his conviction, which is hereby maintained, however, regarding the sentence, we are not in agreement with the learned trial court. Record shows that the appellant has minor sons and daughters, who have already lost their mother and if they are further deprived of their father, then in that eventuality they would suffer to the maximum because in

absence of their parents, they would become shelterless. Above aspect of the case, in the considered opinion of this court, is a mitigating circumstance to award lesser punishment to the appellant than the one awarded to him.

11. In view of the above, we maintain the conviction but reduce the appellant's sentence from death to imprisonment for life with benefit u/s 382-B Cr.P.C. The appellant shall also pay an amount of Rs.1,00,000/- as compensation to legal heirs of the deceased or in default whereof to suffer further six months SI.

12. Appeal partly allowed in the above terms while the Murder Reference sent by the learned trial court for confirmation of the sentence is answered in the negative.

JUDGE

JUDGE

Announced
16.11.2017.