

PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.

Date of Order or Proceeding	Order or other proceedings with Signature of judge
20.09.2019	<p><u>Cr.A.No.1036-P/2018</u></p> <p>Present:</p> <p style="text-align: center;">Malik Nasrum Minallah, Advocate, for the appellant.</p> <p style="text-align: center;">****</p> <p><u>AHMAD ALI, J.</u> Through this appeal under section 417 (2-A), the appellant has impugned the judgment dated 19.09.2018, whereby the learned Additional Sessions Judge-II, Nowshera, has acquitted the respondent (Said Nawab) from the charges levelled against him under section 302 PPC, in case FIR No.58 dated 02.03.2017, registered at Police Station Akbar Pura (District Nowshera).</p> <p>2. Brief facts of the case, as per prosecution, are that the complainant Jabir Ullah, has reported the matter to the local police in terms that his daughter Mst. Saleem Akhtar wife of Said Nawab (respondent herein)</p>

resident of Bajawar presently Mohallah Saidan Akbar Pura, was residing in his house, who was abducted by accused-respondent for marriage some one year ago but the report was not lodged as compromise between the parties was effected and the accused-respondent and deceased Mst. Saleem Akhtar were residing in his house. The appellant was working in Abid Flour Mills, when reached the house, the room adjacent when opened, there he found the dead body of her daughter Mst. Saleem Akhtar lying on bed and upon her body, no injury was found. Cause of death was also not known to the complainant/present appellant. Hence, the FIR ibid was registered by the prosecution.

3. On completion of investigation, challan was submitted in Court, which indicted the present respondent for the crime to which he pleaded not guilty and claimed trial. Prosecution in order

to prove its case, examined 07 witnesses in all, whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned Trial Court, after conclusion of trial, acquitted the respondent-accused of the charge levelled against him vide judgment impugned herein whereagainst the appellant has filed the instant appeal.

4. We have given our anxious consideration to the submissions made by the learned counsel for the appellant and perused the record with his able assistance.

5. It is an unseen occurrence and the complainant/PW1 while charging the present accused-respondent in the instant case stated that he is a watchman at the flour mill. He left the house after taking a meal for the duty, and saw his son-in-law, proceeding inside the room. On the next morning when he returned, observed that the door of the said room is still closed. He

entered the room of his daughter and found her dead, whereas the accused was missing. In cross-examination, the complainant stated that after taking dinner he left at 06:00 pm, and when he returned at 8:00 am next morning found the outer door locked. Inmates of the house heard hue and cry last night from daughter's room. The complainant has allegedly himself opened the door, deceased was on his bed, when quilt was removed, she was found dead. Astonishingly, no lady from the inmates of the house entered the room for query. The complainant stated that as the accused-respondent disappeared after the occurrence, so he guessed that the respondent administered poison to his daughter. The complainant is not an eye witness to the occurrence nor he has noticed the accused-respondent while administering any poisonous substance to his daughter.

6. PW-2 who is witness to the recovery memo for blood-stained garments and samples from the deceased, negating the stance of complainant, who earlier stated that there was no injury on the body of deceased. PW2 is also not an eye witness to the occurrence.

7. Postmortem report of deceased show the time of death and examination as 06-12 hours. If the time in between is considered as 12 hours it favour the accused-respondent, as the same goes to 09 pm and if the poison is administered may have taken 01 to 03 hours, 6 pm approximately, the time when the complainant left the house. Question is why the accused-respondent did not left the house at that very time after administering poison to the deceased and why inmates of the house did not notice the same. Silence of the inmates of the house also creates doubts and suggests that the occurrence

	<p>has not taken place in the mode and manner as alleged by the complainant. PW-3 arrested the accused-respondent, however, he has neither recovered any incriminating articles from him nor anything on his pointation was ever recovered. PW-4 is the 2nd wife of complainant, who in her cross-examination stated that the deceased is her real daughter and that she is not an eye witness to the occurrence. According to her, the complainant went to the room of the deceased for awaking her. It is not appealable to a prudent mind that in the presence of children and other inmates of the house, a father proceeds to awake her married daughter. She further deposed that the door was not locked. It was PW-6 who informed the complainant after gaining knowledge from FSL report that the deceased was administered poison and then the complainant charged the present</p>
--	---

accused-respondent for the murder of deceased Mst. Saleem Akhtar.

8. Scrupulous perusal of record reveals that the ocular evidence in the instant case is based on the statements of complainant/PW1 and PW-4 his wife, who were examined in the case, respectively, but their testimonies were not consistent, trustworthy and confidence-inspiring. Moreover, there are glaring contradictions in their statements, which proves that occurrence has not taken place in the mood, manner, time and place as alleged by the prosecution.

9. In view of non-recovery of any incriminating substance from the place of occurrence as well as from the accused, proves that the occurrence had not taken place in the mood and manner as alleged by the prosecution.

10. As stated above the witnesses produced by the prosecution were either not telling the truth or trying to

suppress the actual truth before the court, therefore, the testimony cannot be relied upon. A witness who lied about any material fact must be disbelieved as to all facts. '*Falsus in uno, falsus in omnibus*' is a Latin phrase meaning "false in one thing, false in everything". The rule held that a witness who lied about any material fact must be disbelieved as to all facts because of the reason that the "presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury" and that "Faith in a witness's testimony cannot be partial or factional. Guidance could be placed on *PLJ 2019 SC (Criminal Cases) 265*".

11. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that said witness will declare the truth about any other aspect of the case. Maxim has not

been accepted by superior Courts in Pakistan. It has been held by the august Supreme Court of Pakistan that job of a judge is to discover truth. A Court of law cannot permit something which law expressly forbids with all due respect, we feel that such an approach, which involves extraneous and practical considerations, is arbitrary besides, being subjective and same can have drastic consequences for rule of law and dispensation of justice in criminal matters. When a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath credibility of such witness regarding involvement of other accused in the same occurrence would be irretrievably shaken. Afore-discussed main rule shall suffer serious change if an when it is examined in light of Islamic Principles. The Holy Qur'an deals with matter and it can be seen that giving testimony its

due importance and weight is an obligatory duty and those who stand firm in their testimonies are among people of righteousness and faith. According to the corpus of traditions of Holy Prophet (PBUH), false testimony is one of greatest sins, offence of Qazf, which has been defined. It can be seen that Holy Qur'an puts a great emphasis upon need to meet requisite standard of evidence, so much so, that for a person levelling allegation but not meeting given standard, it not only provides for a penal punishment, but also for withdrawal of such a person's civic right to give evidence in all matters of his life. A court of law cannot grant a license to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when law of land makes perjury or testifying falsely a culpable offence.

12. So in the light of above-mentioned judgment of the Apex

Court, the testimony of complainant could not be relied upon and uncalled-for.

13. The learned Trial Court has fully appreciated the case evidence both, ocular and circumstantial, in its true perspective and, while keeping in view, contradictions in the statements of the PWs on certain material points including place of occurrence has rightly concluded qua acquittal of the respondents from the charge levelled against them. On re-appraisal of case evidence, there is no room for interference by this Court in the impugned judgment.

14. In addition, before us is an appeal against acquittal where standard for appreciation of evidence is different than the one in appeal against conviction, as once an accused is acquitted, then he earns double presumption of his innocence, which cannot be taken away from him unless

it is shown that the judgment of acquittal is based on surmises or presumptions, which is not the case here.

15. In view of the above discussion, this appeal, being bereft of any merit, is hereby dismissed in limine.

Announced;
20.09.2019

J U D G E

J U D G E