

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE MALIK SHAHZAD AHMAD KHAN
JUSTICE SHAKEEL AHMAD

JAIL PETITION NO.565 OF 2022

(On appeal against the judgment dated 17.10.2022, of the High Court of Sindh, Circuit Court, Hyderabad in Criminal Jail Appeal No.S-275-A of 2017)

Salman

... Petitioner

Versus

The State

...Respondent

For the Petitioner: Mr. Waseem Anwar Bhatti ASC

For the State: Mr. Khadim Hussain, Additional Prosecutor
General Sindh

For the Complainant: Nemo

Assisted by: Sardar Nadir Mahmood Sadiq Law Clerk

Date of Hearing: 02.10.2026

J U D G M E N T

MALIK SHAHZAD AHMAD KHAN, J:- Salman, petitioner, along with Imran (co-accused since acquitted), was tried by the learned Additional Sessions Judge, Hyderabad, in case registered vide FIR No. 68 dated 23.03.2013 under Sections 302/34 PPC at Police Station Qasimabad, District Hyderabad. The learned Trial Court vide its judgment dated 07.11.2017, convicted Salman petitioner and Imran co-accused under Sections 302(b)/34 PPC and sentenced each of them to imprisonment for life as Tazir. They were also directed to pay compensation amounting to Rs.200,000/- each to the legal heirs of the deceased, as envisaged under section 544-A Cr.P.C or in default thereof to further undergo six months RI each. Benefit of Section 382-B Cr.P.C. was also extended in their favour. In appeal, the learned High Court vide judgment dated 17.10.2022, upheld the judgment of the learned Trial Court to the extent of

Salman petitioner, whereas Imran (co-accused), was acquitted while extending him the benefit of doubt.

2. Arguments heard. Record perused.

3. As per contents of the FIR, on 23.03.2013, at about 2.00 p.m, Salman petitioner, who was son-in-law of Muhammad Akbar complainant, made a phone call to the complainant that he (petitioner), had murdered his wife namely Mst. Tanvir Akbar alias Ayesha with a firearm. On receiving the said information, the complainant along with the PWs reached at the house of the petitioner and saw that his daughter namely Mst. Tanvir Akbar alias Ayesha had sustained firearm injuries on her abdomen and left foot and she was lying dead at the spot. The complainant further stated that the occurrence was committed by the petitioner on account of a matrimonial dispute with the deceased. Hence the FIR of this case.

4. We have noted that according to the prosecution story, as narrated in the FIR (Ex-6A) by Muhammad Akbar complainant (PW-1), there was no eye-witness of the occurrence. Muhammad Akbar complainant (PW-1), was resident of village Meerwah Gorchani, District Mirpur Khas. He, after coming from district Mirpur Khas, lodged the FIR at police station Qasimabad of district Hyderabad. The FIR was lodged by the complainant after four (04) hours from the time of receiving alleged phone call of the petitioner. All these facts show that the FIR was lodged with a considerable delay from the time of occurrence but even then the name of any eye-witness was not mentioned therein. However, after registration of the FIR, on the same night Muhammad Riaz (PW-2), was introduced as an eye-witness of the occurrence. The said witness was another son-in-law of the complainant. He was resident of Hashim Nagar, District

Mirpur Khas, whereas the occurrence took place in District Hyderabad. Although he (PW-2) tried to justify his presence in a different district on the day and time of occurrence while stating that he had come to Hyderabad for some shopping but no necessary details of the said shopping were given by him to establish that the articles intended to be purchased by him from Hyderabad were not available in Mirpur Khas and as such the reason of his presence in a different district at the time and date of occurrence could not be proved. The said witness also conceded that the complainant had a mobile phone but he did not inform the complainant after the occurrence (though he was son-in-law of the complainant). It is not understandable that if he had seen a heinous offence of the murder of his sister-in-law then as to why he neither informed the complainant nor to the local police, immediately after the occurrence rather he stated that after witnessing the occurrence, he went back to Mirpur Khas. As mentioned earlier, his name was not mentioned as an eye-witness in the contents of the delayed FIR. We are, therefore, of the view that the evidence of abovementioned eye-witness subsequently introduced by the prosecution in this case is not worthy of reliance and his evidence has rightly been disbelieved by the learned High Court in paragraph No.10, of the impugned judgment.

5. After taking out of consideration the evidence of the only eye-witness produced in this case by the prosecution namely Muhammad Riaz (PW-2), their only remains the circumstantial evidence against the petitioner. We have noted that Muhammad Akbar complainant (PW-1), stated in the FIR that on the day of occurrence, the petitioner made a phone call to him and informed

him that he (petitioner), had committed the murder of his wife Mst. Tanvir Akbar alias Ayesha (deceased) with the help of a firearm but neither the phone number of the complainant nor the phone number of the petitioner has been mentioned therein. No CDR of the phone of the complainant or the petitioner has been brought on the record to establish the abovementioned claim of the complainant.

6. There was no other circumstantial evidence available on the record against the petitioner like the evidence of last seen, wajtakar, extra judicial confession etc, except the recovery of a pistol and positive report of FSL. However, we have noted that as per FSL report, the empties and the pistol were deposited together in the office of FSL, therefore, it is not safe to rely upon the abovementioned pieces of prosecution evidence. Reference in this context may be made to the judgments reported as “Abdul Wahid v. The State” (2023 SCMR 1278) and “Sarfraz v. The State” (2023 SCMR 670).

It is true that the petitioner was arrested on the day of occurrence and pistol was recovered from his possession on the said day and as such there was no chance with the police to send the empties earlier to the office of FSL but it is noteworthy that the witness who had taken the pistol and empties to the office of FSL has not been produced in the witness box by the prosecution, in order to establish the safe custody of the abovementioned alleged recoveries. Furthermore, as the eye-witness namely Muhammad Riaz (PW-2), was subsequently planted in this case to strengthen the weak prosecution case, therefore, possibility cannot be ruled out that the evidence of recovery of pistol and positive FSL report were also fabricated by the prosecution to strengthen its case. We are,

therefore, of the view that it is not safe to rely upon the above-referred prosecution evidence qua the recovery of pistol and positive report of FSL.

7. We have further noted that a vague and ambiguous motive of matrimonial dispute was alleged by the prosecution. Admittedly, Mst. Tanvir Akbar alias Ayesha was living with the petitioner till the date of occurrence. The prosecution witnesses have not given any reason of matrimonial dispute between the petitioner and the deceased, like non-payment of the maintenance allowance, drugs addiction of the petitioner or intended second marriage of the petitioner etc. No family suit or any application filed by either party against the other was brought on the record to prove the abovementioned motive. We are, therefore, of the view that the prosecution could not prove the alleged motive against the petitioner.

8. While relying upon Article 122 of Qanun-e-Shahadat Order, 1984, as well as, on the judgments of this Court reported as 'Arshad Mehmood v. The State' (2005 SCMR 1524) and 'Saeed Ahmed v. The State' (2015 SCMR 710), it is argued by learned Additional Prosecutor General that as the dead-body of Mst. Tanvir Akbar alias Ayesha (deceased), was recovered from the house of the petitioner and as the deceased was wife of the petitioner, therefore, it was duty of the petitioner to explain the death of the deceased and as there was no plausible explanation on behalf of the petitioner, therefore, he was rightly convicted and sentenced in this case. There is no substance in the abovementioned argument of learned APG because an accused cannot be convicted and sentenced merely on the ground of absence of a plausible explanation given by him as envisaged

under Article 122 of the order *ibid* or merely on the basis of recovery of dead body of the deceased from his house in absence of other reliable evidence against him, which is very much lacking in this case. The above-mentioned article will only come into play when the prosecution had first discharged its legal burden to prove the guilt of the accused by producing convincing and reliable evidence. The judgments cited by learned APG have already been distinguished by this Court in number of cases. Reference in this context may be made to the judgments reported as “Muhammad Pervaiz v. The State and others” (PLD 2019 Supreme Court 592), “Asad Khan v. The State” (PLD 2017 Supreme Court 681), “Nazeer Ahmed v. The State” (2016 SCMR 1628) and “Abdul Majeed Vs. The State” (2011 SCMR 941). In the case of ‘Asad Khan’ supra, at page No.684, it has been observed as under:-

4. It had been held by this Court in the case of Arshad Mehmood v. The State (2005 SCMR 1524) that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the latter case of Saeed Ahmed v. The State (2015 SCMR 710) the said legal position had been elaborated and it had been held that an accused person is under some kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the confines of his house; It had, however, been held in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the entire case of the prosecution stands demolished or is found to be utterly unbelievable there an accused person cannot be convicted merely because he did not explain the circumstances in which his wife or some vulnerable dependent had lost his life. In such a case the entire burden of proof cannot be shifted to him in that regard if the case of the prosecution itself collapses. The present case is a case of the latter category wherein the entire case of the prosecution has been found by us to be utterly unbelievable and the same stands demolished and, thus, we

cannot sustain the appellant's conviction and sentence merely on the basis of an inference or a supposition qua his involvement.

Likewise, in the case of **'Nazeer Ahmed'**, *ibid*, in paragraph No.4, of the judgment, this Court has observed as under:-

4. It may be true that when a vulnerable dependent is done to death inside the confines of a house, particularly during a night, there some part of the onus lies on the close relatives of the deceased to explain as to how their near one had met an unnatural death but where the prosecution utterly fails to prove its own case against an accused person there the accused person cannot be convicted on the sole basis of his failure to explain the death. These aspects of the legal issue have been commented upon by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524), Abdul Majeed v. The State (2011 SCMR 941) and Saeed Ahmed v. The State (2015 SCMR 710)."

9. It was further argued by learned Additional Prosecutor General that as the dead-body of Mst. Tanvir Akbar alias Ayesha (deceased/wife of the petitioner), was recovered from the house of the petitioner, therefore, it is to be presumed that the petitioner was responsible for the murder of his wife and as the petitioner has not explained that as to how his wife was murdered, therefore, his conviction and sentence may be maintained. We have noted that it was brought on the record during the evidence of the prosecution witnesses that apart from the petitioner, his brother (Imran co-accused since acquitted) and other family members were also residing in the same house wherefrom the dead-body of Mst. Tanvir Akbar alias Ayesha (deceased), was recovered. The allegation of enmity of divorce to the real sister of the deceased was also levelled by the complainant party against Imran co-accused (since acquitted). The said Imran co-accused may be annoyed with the deceased on account of the abovementioned divorce. Any other

family member or any other person may be having some other grudge against the deceased. The house of occurrence was not in exclusive possession of the petitioner and it was jointly owned by his other family members, therefore, it is difficult to fix responsibility of the murder of the deceased, only on the shoulders of the petitioner. Moreover, it was first and foremost duty of the prosecution to prove its case against the petitioner through some cogent and reliable evidence (direct or circumstantial). Until and unless the prosecution first discharges its duty, the abovementioned onus to explain the un-natural death of his wife does not shift on the shoulders of the petitioner. Furthermore, it is by now well settled that presumptions or probabilities howsoever strong, cannot take place of the conclusive proof, which is required to convict an accused under the administration of criminal justice system of this country. Reference in this context may be made to the judgments reported as “Naveed Asghar and 2 others v. The State” (PLD 2021 Supreme Court 600), “Nasrullah alias Nasro Vs. The State” (2017 SCMR 724), “Ghulam Qadir and 2 others v. The State” (2008 SCMR 1221), “Muhammad Jamshaid and another Vs. The State and others” (2016 SCMR 1019) and “Abdul Mateen v. Sahib Khan and others” (PLD 2006 Supreme Court 538). In the case of ‘Nasrullah alias Nasro’, *ibid*, in paragraph No.5, of the judgment, this Court has observed as under:-

5.....the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and no one else who would have committed that murder.....”

Likewise, in the case of **Muhammad Jamshed and another**, *supra*, at page Nos.1020 & 1021, it was held as follows:-

“3.....The motive set up by the prosecution had been disbelieved and ruled out of consideration by the trial Court and the only circumstance relied upon by the prosecution was that the dead-body of the deceased had been found inside the house of the appellant and, hence, it was concluded by the Courts below that it must be none other than the present appellant who had done the deceased to death. We have found such an approach adopted by the Courts below to be nothing but speculative. It is trite that the suspicion however grave or strong can never be a proper substitute for proof beyond reasonable doubt required in a criminal case. **The house in issue was admittedly inhabited by many other members of the appellant's family.**

.....It has, thus, surprised us to learn that not only the trial Court but also the High Court had concluded that the prosecution had proved its case against the appellant beyond reasonable doubt. we expect the courts below to do better in future.”

(Bold and underlining is supplied for emphasis)

In the case of **Naveed Asghar and 2 others**, ibid, at page No.636, it has been observed as under:-

“33. It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught.....”

Similarly in the case of **Ghulam Qadir and 2 others**, supra, at page No.1228, it has been held as under:-

*“16. It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge-makers the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt and this duty does not change or vary in the case. **A finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. Mere conjectures and and probabilities cannot take the place of proof. Muhammad Luqman v. The State PLD 1970 SC 10.**”*

(Bold and underlining is supplied for emphasis)

We are, therefore, of the view that there is no substance in the above-mentioned argument of the learned APG.

10. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the petitioner beyond the shadow of doubt. Consequently, this petition is converted into an appeal and the same is allowed. The judgments dated 17.10.2022 and 07.11.2017 of the learned High Court and the learned trial Court, respectively, are hereby set aside. The petitioner is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

JUDGE

JUDGE

Islamabad, the
02nd of October, 2026
Approved For Reporting
Aitzaz