

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.D-17 of 2021.
Confirmation Case No.02 of 2021
Muhammad Ahsaan v. The State

Present:-

Mr. Justice Amjad Ali Sahito.

Mr. Justice Muhammad Osman Ali Hadi.

Appellant : Muhammad Ahsaan through Mr. Irfan Ali Khaskheli, Advocate.

Respondent : The State through Mr. Nazar Muhammad Memon, Addl. P.G.

Date of hearing : 04.06.2025.

Date of Decision : 12.06.2025.

J U D G M E N T

Muhammad Osman Ali Hadi, J:- Through this Cr. Jail Appeal, appellant Muhammad Ahsaan s/o Muhammad Zaman by caste Punjabi Rajput has called in question the Judgment dated 28.01.2021 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court Jamshoro @ Kotri in Sessions Case No.301 of 2019 (Re: The State v. Muhammad Ahsaan) arising out of crime/F.I.R No.322 of 2019, registered at P.S Kotri District Jamshoro for an offence under Section 302 & 311-PPC, whereby he was convicted U/s 265-H(ii) Cr.P.C for offence punishable U/s 302(b) PPC and sentenced him to death subject to confirmation by this Court with compensation amount of Rs.200,000/- (Rupees Two Lacs only) to be paid by accused/appellant to the legal heirs of deceased with benefit of Section 382-B Cr.P.C. A reference for confirmation of the death sentence was also sent to this Court.

2. The facts as incorporated in the FIR are that on 07.10.2019 on behalf of State ASI Shabbir Ahmed Samoon lodged FIR at PS Kotri District Jamshoro that he is incharge at PP Telegraph. He along with

H.C Muhammad Qasim and PC Sahib Khan were present at P.P. At about 0930 hours in the morning, one Muhammad Ahsan s/o Muhammad Zaman by caste Punjabi Rajput r/o original Tando Jan Muhammad, Taluka Digri District Mirpur Khas at present r/o Hingora Colony near Manzoor Brohi Chowk Kotri appeared at P.P and disclosed that he had contracted marriage with Mst. Naseem alias Bushra d/o Ghulam Rasool Jatt aged about 35 years about 17 years ago. Out of such wedlock they had issues every one namely Ahsan aged about 15 years and Hasnain aged about 6 years. He further disclosed that he is labourer/Mason by profession and works in day time and used to come home in night, and at night time, his wife used to talk with a stranger person on phone call, therefore, he had also restrained her from talking but she did not pay heed. He further disclosed that today in the morning, his son Ahsan went to Garage shop for work and another son namely Hasnain went to school, while his wife was present in the house and suddenly one call rang on the cell phone of his wife and she had accepted it and tried to talk meanwhile he had snatched her phone and heard the voice of an stranger person and then he had thrown the mobile phone due to honour at about 0900 hours took sotti/stick and caused sotti blows to his wife Mst. Naseem @ Bushra on her head on which she raised cries and ran towards the room and had fallen down inside the room near door. The sotti was broken, he then took pakka brick and stone and caused blows on her face and head and committed her murder and he then had got changed his blood-stained cloth and then appeared at P.S and disclosed that due to honour he had committed murder of his wife Mst. Naseem alias Bushra. On his such disclosure, the complainant had arrested the accused, prepared such memorandum of arrest in presence of H.C Muhammad Qasim and PC Sahib Khan and detained the accused in lockup of P.P and then they left the P.P and arrived at the pointed place and saw the dead body of Mst; Naseem alias Bushra was lying inside the room of the house of accused near plastic Kaleen, conducted necessary proceeding, took the dead body to Civil Hospital for post mortem, meanwhile sons of deceased namely Ahsan and Hasnain arrived and identified the dead body and contacted with the relatives, who asked them to bring the dead body at Kunri. The dead body was sent to Kunri with Ahsan and PC

Mumtaz Ali in ambulance to their village, thereafter, the complainant returned back at P.S and lodged the FIR that on account of honour, the accused Muhammad Ahsan had committed the murder of deceased Mst; Naseem alias Bushra.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant. The charge against present appellant/accused was framed, to which he pleaded not guilty and claimed trial.

4. To establish accusation against the accused, the prosecution examined as many as 07 witnesses i.e. PW-01 Dr. Saba Shah (WMO) at Ex.4, who produced police letter, lash chakas form and post mortem report at Ex.4/A to Ex.4/C. PW-2 ASI Shabbir Ahmed (complainant) at Ex.6, who produced memo of arrest, entry No.5, memo of place of incident and dead body, four photographs of dead body on one page, lash chaks form, danishnama, letter No.214 dated 07.10.2019 issued for post mortem of deceased, memo of clothes of deceased, receipt of handing over dead body, FIR No.322 of 2019, arrival entry No.28, departure entry No.7, entry No.17 and arrival entry No.4 & letter No.PS 322/2019 addressed to chemical examiner at Ex.6/A to Ex.6/N. PW-3 HC Muhammad Qasim (witness/mashirnama at Ex.07. PW-4 PC Mumtaz Ali, who took the dead body with sons of deceased to Kunri at Ex.8. PW-5 Ahsan (witness/son of deceased) at Ex.10. PW-6 Shahzad Ahmed Qazi, Tapedar at Ex.11 who produced police letter No.PS/322/2019 dated 11.10.2019 and sketch of place of incident dated 30.10.2019 at Ex.11/A & 11/B respectively. PW-7 SIP Khadim Hussain, Investigation Officer of the case at Ex.12, who produced entry No.130 dated 07.10.2019, interrogation entry No.9 from 0900 hours to 0930 hours dated 14.10.2019, chemical report LAB No.18316 dated 06.11.2019 and video statement of accused Ahsan in USB at Ex.12/A to 12/D respectively. Thereafter, the prosecution closed its side vide statement at Ex.13.

5. Statement of the accused was recorded under section 342 Cr.P.C at Ex.14, wherein he denied the prosecution allegations leveled against him and claimed his innocence. However, he neither

examined himself on oath under section 340 (2) Cr.P.C nor led any evidence in his defense.

6. The learned Trial Court after hearing the learned counsel for the respective parties and appraisal of the evidence, convicted and sentenced appellant Muhammad Ahsan s/o Muhammad Zaman in terms of the Impugned Judgment dated 28.01-2021 as stated above. The conviction and sentence, recorded by the learned trial Court, have been impugned by appellant before this Court by way of filing the instant captioned appeal.

7. The learned counsel for appellant at the very outset submitted that he is not pressing the instant appeal on its merits, but he submits that if the death sentence of appellant may be converted into life, he will be satisfied. However, he argued at some length and contended that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the Impugned Judgment; that all the material witnesses and complainant contradicted their version regarding the information about the incident, as well as there being contradictions in the evidence of WMLO; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court; that there are no eye witness of the alleged incident and the witnesses examined did not support the case of prosecution. He further stated there were contradictions in their statements, but despite the same the learned Trial Court acted hastily and convicted the appellant; that evidence of the seven witnesses examined by the prosecution was neither credible nor confidence inspiring and suffered from material contradictions. He stated the above are fatal to the case of prosecution and create serious doubt in establishing guilt of the appellant.

8. He further contended that the appellant is innocent and has falsely been implicated in this case due to personal enmity with local police. He contended that it is admitted fact that there was no eye witness of the alleged incident and that the police itself was the complainant. He concluded by stating that no evidence showing the accused had committed the alleged crime was collected. He relied upon case law reported as 2024 SCMR 1600.

9. While rebutting the above contentions, learned Additional Prosecutor General Sindh vehemently opposed for such proposal of conversion of sentence from death to life and submitted that the deceased was brutally murdered by the appellant/accused and as such his sentence may be maintained. He further raised the following contentions: that the name of the appellant transpires in the F.I.R and he had himself admitted his guilt, but subsequently he pleaded not guilty; that the circumstances of the case does not require any eye witness as this incident happened at home and murder was committed by the appellant, who was admittedly husband of the deceased Mst. Naseem @ Bushra; that the narrated account is consistent with medical as well as the circumstantial evidence. He further argued that no material contradiction or discrepancy has been pointed out by the learned defense counsel to show a false implication in this case. Therefore, in such circumstances, learned APGS concluded the learned Trial Court has rightly awarded the conviction and sentence to the appellant which was in accordance with the law. He prayed for dismissal of the appeal.

10. We have heard the learned counsel for the parties and have gone through the evidence with their able assistance.

11. Upon examination of the case record, it is revealed that the appellant committed the brutal murder of his wife, who was approximately 35 years of age and a mother to two young sons. The alleged motive for the crime appears to stem from the appellant's suspicion that his wife was engaged in telephonic communication with an unknown individual. On the date of the incident, the appellant was present at his residence when at approximately 0900 hours, his wife's mobile phone received a call. As she attempted to answer the call, the appellant reportedly seized the phone from her and upon allegedly hearing the voice of an unfamiliar male individual, became enraged. The appellant then took a wooden stick (commonly used for washing clothes) and inflicted eight (08) severe blows to his wife's forehead and other areas of her head, resulting in her death. The injuries sustained were of such a grievous nature that the cranial cavity was breached, exposing brain matter.

12. The matter did not conclude with the commission of the offence. Subsequent to the murder of his wife, namely Naseem alias Bushra (**“the deceased”**), the appellant appeared at the Police Post Telegraph Kotri and made an extra-judicial confession in the presence of three police officials, namely ASI Shabir Ahmed (PW-2), Head Constable Muhammad Qasim, and Police Constable Sahib Dino. The appellant admitted to having murdered his wife and further disclosed that the deceased’s body was lying at his residence.

13. Upon such information police party of P.P Telegraph Kotri under proper roznamcha entry proceeded to the pointed place of incident and found the dead body of deceased Mst. Naseem @ Bushra lying in room as per features disclosed by the appellant/accused. Thereafter, lifeless the body of the deceased was brought to the hospital. After the post-mortem and legal formalities were conducted, the body was sent to Kunri as per the will and wish of deceased’s son Ahsan. Meanwhile an FIR was also lodged on behalf of the State by the complainant ASI Shabbir Ahmed, only nominating the present appellant as an accused. He has produced the memo of arrest of the appellant as Ex. 6/A. Entry No.6/B. Memo of place of incident and dead body as Ex. 6/C. Pictures as Ex.6/D. Examination of dead body as ex. 6/E. Inquest report. 6/F. Letter to M.L.O produced as Ex.6/G. Memo of clothes as Ex.6/H. Receipt of 6/I. The complainant produced FIR as Ex.06/J and entry No.6/K. The complainant also produced his return entry as Ex.6/L. The complainant also produced departure entry 6/M as well as a Letter to the Chemical Examiner as Ex.6/N.

14. During a lengthy test of cross-examination, the complainant admitted that *“The accused when came at P.P Telegraph voluntarily on that occasion I, HC Muhammad Qasim and PC Sahib Dino were only sitting at P.P Telegraph Voluntarily says that thereafter, I called other police officials at P.P. I called the police officials to come at PP via phone as they were deployed at PP. It is correct that in police papers, neither I have disclosed that i called my staff members at PP. Khurshed nor their cell phone numbers are provided. The accused came at PP and directly came to me and narrated the facts of incident. It is correct that when the accused came at PP Telegraph no blood*

was available on his clothes. We found the door of the house of accused opened from outside but it was seems just like closed. Voluntarily says that outer door of house of accused was locked with karra, however, the door of the room where dead body of deceased was present, was seen opened. It is correct that in case papers, it is not stated by me that we found the main door of the house of accused locked from outside with karra. I myself entered in the house of accused at the first instance. I prepared the papers at the place of incident and on that occasion the mashirs were with me I prepared the papers with my own hand writing I prepared the papers while sitting on the bed available inside the house of accused. We went to the place of incident on our motorcycles It is correct that in case papers, I did not disclose that we went to place of incident on motorcycles nor details of the motorcycles is provided in the case papers. It is correct that in entire case papers it is not written that we went to place of incident with investigation kitt. We spent 35 to 40 minutes at the place of incident in observing the legal formalities. The accused came at P.P Telegraph at 0930 hours. First the accused narrated the facts and then he was arrested by us. The accused consumed 15 to 20 minutes in narrating the entire incident to us. The accused was as narrating the facts to us. I was writing it. I inquired from the accused about the incident. The accused first narrated the facts of incident then he was arrested. First entry was maintained in the register and then memo of arrest of accused was prepared. I myself maintained the entry in the register and had prepared the memo I handed over the accused to my constables for safe custody purpose, as there is no lockup at P.P Telegraph and thereafter, we proceeded to place of incident. It is correct that in the case papers it is written that accused was kept in police lockup. From P.P Telegraph we reached at place of incident within 10 minutes. I sealed the piece of Kaalen in the plastic dabba at place of incident and said plastic dabba was available in our investigation bag. I see momo of clothes of deceased at Ex 6/H and say that it is not written in it that the clothes of deceased were blood stained. It is correct that FIR was registered at 1500 hours. It is correct that arrival entry was maintained at 1600 hours at P.P Telegraph I see entry No.7 at Ex 6/L and say that it is written in it as no legal heir of deceased came in the hospital, hence, dead body of deceased was sent to her native place

by the hand of PC Mumtaz Ali Lakhair. I myself took the case property for the office of chemical examiner Karachi for chemical report. It is incorrect to say that I did not produce the receipt before this court to show that I had deposited case property with the office of chemical examiner Karachi I see entry No. 4 at Ex 6/M and say that it is not written in it that on which kind of vehicle I went to office of chemical examiner Karachi and on which kind of vehicle I came back at PS after depositing case property with the office of chemical examiner Karachi.....I went to the office of chemical examiner Karachi in rekshaw from Al-Asif bus stop. It is correct that Doctors of office of chemical examiner Karachi are well educated. It is correct that in the memo, the kind of brick is not specified whether it is of roof, whether it is of wall etc”.

15. The prosecution also examined HC Muhammad Qasim (PW-3). He has also corroborated the same story narrated by the complainant ASI Shabir Ahmed. During cross-examination, he confirmed that in his presence and those of other police officials, the appellant admitted to committing the murder of his wife (i.e. the deceased).

16. The prosecution also examined PW SIP Khadim Hussain, Investigation Officer of the case, who had produced multiple documents during the course of evidence. Police also secured blood-stained clothes of the deceased and the accused, a Sooti (*stick usually used for washing clothes*), a brick and stone from the place of incident. The complainant ASI Shabbir Ahmed also took photographs of the deceased on the very first visit of place of incident and prepared such mashirnama. The dead body of the deceased was sent to the hospital for post-mortem and examination. He had also received blood-stained clothes from the medical officer. Parcels containing piece of carpet, clothes of deceased Mst. Naseem @ Bushra, pieces of stones, wooden piece, cloth piece & clothes of accused Mohammad Ahsaan were sent to the Director Laboratories & Chemical Examiner to the Government of Sindh, Karachi and such report is also available on record and was produced by Investigation Officer during his evidence. The Chemical Report

reflects result of the examination showing Articles No.1 to 9 (noted above) to be stained with human blood.

17. An extra-judicial confession, though inherently considered a weak type of evidence, is not inadmissible *per se* under Article 40 of the Qanun-e-Shahadat Order 1984, provided it is voluntary, truthful, and corroborated by independent evidence. In the instant case, the accused/appellant made an extra-judicial confession in the presence of police officials, which ordinarily would not carry probative value. However, the prosecution has successfully substantiated the said confession through strong corroborative evidence, including recovery of dead body and of the crime weapon, on the direction of the accused in his confession. Medical and forensic reports were also consistent with the account given, as well as independent witness testimony. While the confession itself may not stand on its own due to the limitations set forth under Articles 38 and 39 of the Qanun-e-Shahadat Order 1984, its corroboration through legally admissible and reliable evidence renders it credible. Therefore, the confession, when viewed in totality with the supporting material, justifies the reliance for forming the basis for the conviction of the accused, and the Impugned Judgement was correct in holding the same.

18. In the instant matter, the witnesses have sufficiently explained the date, time and place of occurrence, as well as each and every event of occurrence was disclosed by the appellant to the police witness in a clear-cut manner. The murder weapons i.e. stick, stone & bricks which were used while committing murder were available at the crime scene, as was disclosed by the appellant himself. We would mention here that the deceased was the wife of the appellant/accused, while an FIR is lodged on behalf of State by ASI Shabbir Ahmed. Thus, no material has been brought on record by the appellant to show that any prior deep-rooted enmity existed between the complainant and him (i.e. the appellant), which could have been the reason for claiming false allegations of involvement against the appellant in this case.

19. The direct evidence also finds corroboration from the medical evidence concerning the cause of death, time of incident and the

weapon(s) used in the commission of the offence. This was established from the evidence given by Dr. Saba Shah (PW-1) who received the dead body of the deceased Mst. Naseem @ Bushra for a post-mortem examination.¹ She started the post-mortem at 11:05 a.m. and completed the same at 12:05 p.m. The probable duration between the death and post mortem was approximately between 1 ½ to 2 ½ hours. During the external examination, she found eight injuries on the dead body. All injuries were caused by hard and blunt substances. The cause of death was due to hemorrhage, as well as shock and damage of a vital organ (brain) result from injury No.1 (mentioned against column No.13). The evidence and medical record produced by the Doctor were also matched together.

20. The medical evidence has also supported the other corroborating evidence. The strength of evidence is further bolstered by the recovery of the murder weapons, i.e. articles such as the stick, stone & brick, which were found on the indication given by the appellant, where his blood-stained clothes were also discovered. The articles used in crime were sent to the Laboratory alongwith clothes of the deceased, as well as of the appellant/accused, which were found to be stained with human blood. The prosecution witnesses were in line with respect to the vital points of their depositions, and they remained unshaken during their cross-examination. We also have not observed any major contradiction in the depositions.

21. Turning to the case in hand, the motive set-up in this case also stood established. The First Information Report (FIR) was lodged on behalf of the State by ASI Shabbir Ahmed, and no ill will or *mala fide* against him has been established by the appellant/accused. The post-mortem on the dead body of deceased was conducted without any lapse of time. The appellant in his statement recorded under section 342 Cr. P.C, has merely denied having participated in the incident and stated that he is innocent, and prayed for justice. He has not provided any further plausible defense for himself.

22. As to the sentence a lenient view cannot be taken. The circumstances in this case illustrate the act of the appellant as nothing less than gruesome and merciless. No mitigating

¹ The body of the deceased was identified by Ahsan Ali & Hasnain, both being sons of the deceased.

circumstances to alter his sentence to that of life imprisonment has been shown to us. The deceased was a young woman of 35 years in age, and was deprived of her life and future by the barbaric acts of the appellant, only in the name of alleged honour.

23. Learned Counsel for the appellant had relied upon the term ‘provocation’², but had failed to show exactly what or how provocation was induced. In his own arguments, and by the statements furnished in the Trial, it was submitted the deceased’s phone rang and the appellant snatched the same. This could not be attributed as an act of provocation, as the appellant by his own admissions (as recorded) himself ‘snatched’ the phone from the deceased, after which he proceeded to brutally beat / murder her. Meaning, since it was the appellants’ own action of snatching the phone that led to him committing the murder, the plea of provocation would appear frail. There was no act on record that appears to have been voluntarily committed by the deceased which could invoke a defense of provocation under law.

24. Moreover, since the appellant (as recorded) has stated he repeatedly told the deceased not to speak on the phone with ‘strange persons’, his reaction on the day of the murder cannot be considered sudden or without malice aforethought, as he had previously admitted to telling his wife not to speak on the phone on several instances prior. He could have separated or chosen to peacefully leave / divorce his wife on past occasions, but he did not opt to do so.

25. Learned counsel for the appellant relied upon the case of *Liaqat Hussain v The State*,³ regarding mitigating circumstances. In the said case the facts were separate, and in that case a statement was made in court that the legal heirs of the deceased (in that case) had pardoned the convict, and they no longer wished to pursue the matter. Hence, we don’t feel the said case law is applicable to the matter at hand. We would instead refer to *Asad Mahmood’s*⁴ case of which the relevant portion reads:

² Cited from Black’s Law Dictionary

³ 2024 SCMR 1600

⁴ 2010 SCMR 868

“28. The penalty of death must be imposed if the Court finds the manner and method of incident to be in the nature of a brutality, horrific, heinous, shocking involving terrorist nature. Normal sentence in a conviction under section 302(b), P.P.C. is death except where Court finds some mitigating circumstances which may warrant imposition of lesser sentence.

29. Having considered the matter from all angles in the light of material available on file, we are of the view that this is a case of premeditated occurrence in which two persons were brutally murdered and learned trial Court rightly convicted and sentenced to Akhlaq Ahmed-accused to death.

26. We next refer to another case of the Apex Court of *Muhd. Akhtar Ali v The State*⁵ where it was opined:

“4. ...In the end, the learned counsel stressed that it was not a case in which death penalty could legally be imposed. However, he was unable to refer to any mitigating reason/circumstance which could be considered for awarding the lesser penalty of life imprisonment. This was a brutal murder of a young girl of 15/16 years of age without any justification and the petitioner acted as desperate and hardened criminal and fired two shots at innocent girl and so the imposition of normal penalty of death was fully justified.

5. We find no merit in this petition and, accordingly, while refusing leave to appeal, dismiss it.

27. The upshot of the above discussion is that the prosecution had successfully established its case against the appellant, which was corroborated by medical & forensic evidence, including recovery of the crime weapons/Soti/ Brick. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned Trial Court while passing the Impugned Judgment, which in our humble view is detailed and based on proper appreciation of the evidence. No serious ground for mitigation was put forth by the appellant. Moreover, the appellant

⁵ 2000 SCMR 727

consistently fought against the allegations levelled against him, and never showed any sign of remorse. The extreme viciousness of the crime also cannot go unnoticed. This notion of vigilante justice in society, especially against women and children, needs to be deprecated and discouraged, and perpetrators of the same need to face the severest punishments available under law.

28. The Impugned Judgment does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by the learned Trial Court are hereby **maintained** and the appeal filed by the appellant merits no consideration, which is **dismissed** accordingly.

29. As a result of the above findings, the reference bearing **No.02 of 2021** submitted by the learned Trial Court for confirmation of death sentence to the appellant is answered in the **AFFIRMATIVE.**

JUDGE

JUDGE

Ali.