

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeal No.S-47 of 2024

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Appellant: Muhammad Malook S/o Arbab Ali @
Raheem Bux,
Through Mr. Om Parkash H. Karmani,
Advocate.

Respondent: The State
Through Mr. Neel Parkash, Deputy
Prosecutor General (Sindh).

Dates of hearing **09.03.2026**

Date of Judgment **31.03.2026**

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JUDGMENT

Miran Muhammad Shah, J.- Appellant assailed the judgment dated 30.10.2019, penned down by the learned Additional Sessions Judge-I, Mirpurkhas, in Sessions Case No.25 of 2017, arising out of F.I.R No.41 of 2016 registered at Police Station Mehran, for offence under Sections 302, 311, 120-B and 34 PPC through which they were convicted and sentenced to undergo Life Imprisonment as Tazir and to pay Rs.5,00,000/- (Rupees Five lac only) as compensation to the legal heirs of the deceased Mst. Gul Naz U/S 544-(a) Cr.P.C and in case of default of payment, he shall suffer S.I for the period of One (01) year more. He has also given the benefit of section-382(b) Cr.P.C for the period, which he has remained in custody.

2. Brief facts of the prosecution case as per FIR No.41 of 2016 lodged by complainant ASI Muhammad Ali Shah on 22-9-2016 at 1600 hours at Police Station Mehran Mirpurkhas are that he was posted as ASI at P.S Mehran Mirpurkhas. On 21-9-2016 he was present on his duty. In the night time he came to know through spy information that within the jurisdiction of P.S at Malhi Colony, Mst. Gul Naz wife of Muhammad Malook was murdered at about 0430 hours by Muhammad Malook Rind with the help of Dhani Bux, Sajjan and Hazaro by fire shot of pistol and all the accused are available in the house. On such information he alongwith his staff namely PC Ali Sher, PC Muhammad Akram proceeded towards Malhi Colony at 0440 hours and when they reached near the house of Malook, they saw and identified that Muhammad Malook armed with pistol Hazaro armed with

pistol and Dhani Bux and Sajjan came out from the house, and on seeing police they started running towards bushes and garden to whom they tried to apprehend, but they succeeded in their escape by taking benefit of darkness. Then they entered into the house of Muhammad Malook and saw that the dead body of Mst. Gul Naz was lying in the courtyard and the blood was oozing. They brought the dead body at Civil Hospital Mirpurkhas and conducted necessary legal formalities and then waited for the legal heirs of the said deceased, but none from legal heirs of deceased appeared, hence on 22-9-2016 he lodged the FIR against the accused persons on behalf of the State.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

4. A charge was framed against appellant. He pleaded not guilty to the charged offence and claimed trial.

5. At trial, the prosecution has examined as many as nine witnesses. P.W No.1 WMO Dr. Rukhsana Haroon examined vide Ex:09, who produced police letter for postmortem at Ex:09-A, postmortem report of deceased Mst. Gul Naz at Ex:09-B and receipt at Ex:09-C respectively. P.W No.2 I.O retired SIP Abdul Ghafoor examined vide Ex:10, who produced mashirnama of arrest of accused Sajjan at Ex:10-A, Letter addressed to Mukhtiarkar for preparation of Sketch/map at Ex:10-B, letter dated:30-9-2016 for sending the crime empties to Forensic Lab: at Ex:10-C, another letter for sending the case property to Chemical Examiner at Ex:10-D report of Forensic Lab: at Ex:10-E, report of Chemical Examiner at Ex:10-F and mashirnama of arrest of accused Dhani Bux and recovery at Ex:10-G respectively. P.W No.3 Witness/mashir PC Ali Sher examined vide Ex:11, who produced mashirnama of place of incident at Ex:11-A, mashirnama of inspection of dead body at Ex:11-B, Danistnama at Ex:11-C, Lash Chakas Form at Ex:11-D and mashirnama of securing last wearing clothes of deceased at Ex:11-E respectively. P.W No.4 Witness/mashir PC Muhammad Akram examined vide Ex:12. P.W No.5 Complainant ASI Muhammad Ali Shah examined vide Ex:13, who produced copy of entries of Roznamcha of P.S at Ex:13-A, receipt of handing over deadbody to one Sher Muhammad at Ex:13-B and FIR at Ex:13-C respectively. P.W No.6 Witness Mst. Ameeran examined vide Ex:15. P.W No.7 Tapedar Shahid Raza examined vide Ex:16, who produced sketch/map of vardat at Ex:16-A. P.W No.8 Mashir Imam Bux examined

vide Ex:18, who produced mashirnama of arrest of accused Malook at Ex:18-A. P.W No.9 Witness SIP Abdul Mannan examined vide Ex:19. Thereafter the learned ADPP for the State closed the evidence side of the prosecution vide his statement at Ex:21.

6. Statement of appellant under Section 342, Cr.P.C. was recorded at Ex.25, wherein he has denied the allegations levelled against him by the prosecution, professed his innocence and claimed that he has been falsely implicated by the police. He, however, opted not to make a statement on oath under Section 340(2), Cr.P.C. nor did he produce any witness in his defence.

7. Upon culmination of the trial, the learned Trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the instant appeal.

8. Learned counsel for the appellant states that the impugned judgment is contrary to law and facts on record; that the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt; that there is no direct ocular account of the occurrence and the case is based upon circumstantial evidence, which has not been corroborated by any independent and reliable evidence; that the complainant is not an eye-witness and the FIR has been lodged on spy information, which has no evidentiary value under the law. He further contends that the prosecution witnesses have made material contradictions and improvements in their statements, which render their evidence unreliable; that no independent witness from the locality has been associated by the police despite availability; that the alleged recovery has not been proved in accordance with law and is doubtful in nature. Lastly, he prayed that the conviction and sentence awarded by the learned trial Court may be set aside and the appellant be acquitted.

9. On the other hand, learned A.P.G for the State argued that the prosecution has successfully proved its case against the appellant through cogent, consistent, and confidence-inspiring evidence, and the learned trial Court has rightly appreciated the same while passing the impugned judgment. He, therefore, prayed that the appeal being devoid of merit may be dismissed and the conviction and sentence awarded by the learned trial Court be maintained.

10. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions and also scanned the entire record carefully with their able assistance.

11. From the pleading of the case and upon perusal of the evidence on record, it transpires that this is a case of extraordinary circumstances, for which Section 311, PPC was substituted by Act XLIII of 2016 w.e.f. 21.10.2016. This Section was primarily substituted to address cases arising out of so-called honour killings. For the purpose of the present case, Section 311, PPC is reproduced as under:-

[311. Ta'zir after waiver or compounding of right of qisas in qatl-i-amd.----Where all *wali* do not waive or compound the right of qisas, or if the principle of *fasad-fil-arz* is attracted, the court may, having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with death or imprisonment of life or imprisonment of either description for a term of which may extend to fourteen years as ta'zir

Provided that if the offence has been committed in the name or on the pretext of honour, the punishment shall be imprisonment for life.]

12. Honour killing is an offence of a grave and gruesome nature, wherein the victim/deceased is often a kith and kin of the accused, who acts with the sole and misguided motive of killing in the name of the so-called honour and dignity of the family. Prior to the substitution of Section 311, P.P.C., the accused frequently took the plea of having killed a family member for the sake of honour and, in many cases, went unpunished. In such circumstances, cases were often not registered, and even when reported, the version presented in the complaint was frequently distorted and did not reflect the truth. As such incidents continued to occur. Sections of the media highlighted the issue, bringing these cases to public attention. Civil society, particularly women's rights forums, along with the general public, raised a strong outcry, emphasizing that such killings in the name of honour must be curbed through appropriate legislation. It was therefore deemed necessary to amend the law, as the mere application of Section 302, P.P.C. was insufficient. Section 302, P.P.C. is reproduced as under:-

[302. Punishment of *qatl-i-amd*. Whoever commits *qatl-i-amd* shall, subject to the provisions of this Chapter be;

- (a) punished with death as qisas;
- (b) Punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
- (c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable [Provided that nothing in clause (c) shall apply where the principle of fasad-fil-arz is attracted and in such cases only clause (a) or clause (b) shall apply.]

13. Such law did not provide adequate relief to the deceased/victim, as it failed to curb the continued occurrence of honour killings. It was only in the year 2016 that an amendment was introduced, providing greater protection to victims, particularly women ^{being} vulnerable segments of society. The concerned S.H.O. of the police station was empowered to become the complainant in such cases on behalf of the State. Now, whenever such incidents are reported, whether through word of mouth or spy information, the concerned S.H.O., or his authorized officer, is duty bound to assume the role of complainant and registers an F.I.R. in cases of honour killing.

14. Whenever the State becomes the complainant and Section 311, P.P.C. is invoked along with Section 302, P.P.C. in the F.I.R., the offence is to be treated as one of honour killing. At the time of trial, the learned Trial Court is required to ascertain in its judgment whether the S.H.O. or his authorized officer has rightly assumed the role of complainant, and whether the prosecution case revolves around the applicability of honour killing. In such circumstances, where the case is proved to be one of honour killing, the Court must deal with the matter with due care and diligence.

15. In many such cases, the prosecution witnesses, being family members of the deceased/victim, do not come forward to support the prosecution case. In such a situation, the Trial Court must not be swayed merely by the apparent weakness of the prosecution evidence, which at times tends to favour the accused. Rather, the Court must examine the deeper facts and surrounding circumstances of the case and remain mindful

of the vulnerability of the victim. The Trial Court must ensure that the victim's blood does not go in vain and that justice is done at all costs. It should also be watchful against being influenced by aggressive or emotional arguments of the defence, as such cases are to be of special and sensitive nature.

16. The wisdom of the legislature in responding to the concerns of the public at large and introducing these changes in criminal law is indeed commendable.

17. Now, turning to the facts and evidence of the present case, it is to be examined that the victim was shot dead in her own house, where the only person present was the accused, being her husband, with whom she was residing separately. At late hours of the night, at about 4:30 a.m., gunshots were heard from the house of the accused. Upon hearing the firing, the parents i.e. father and mother of the victim proceeded to the house of the accused, Muhammad Malook, where they, along with the neighbours, saw the accused coming out of the house with a pistol in his hand, stating that he had killed his wife.

18. Thereafter, they entered the house and found the victim lying dead on the floor of the courtyard. The victim was then taken to the hospital, where she succumbed to her injuries. Subsequently, the post-mortem examination was conducted. The accused being the only person available with deceased at the time of fire shots, reflects that circumstantially the accused is the culprit.

19. The prosecution evidence appears not to have been shattered by the defence. Although there were minor discrepancies in the statements of the prosecution witnesses, the same can be attributed to the close blood relationship between the complainant party and the accused. The evidence of Mst. Ameeran is vital to the prosecution case; it remained consistent throughout the proceedings and she has fully implicated the present appellant/accused. Being the aunt of the accused and the mother of the victim, her testimony is confidence-inspiring and free from material doubt.

20. The defence has primarily taken the plea of delay in the lodging of the F.I.R. and that the incident was unseen. On both counts, it can safely be observed that these are common features in cases of honour killing, particularly where the victim is the wife. Such incidents usually occur within

the confines of a house, where only the husband and wife are present, and therefore are rarely witnessed by others. The delay in lodging the F.I.R. is often not due to deliberation but arises from the process of ascertaining facts, especially where the police themselves act as the complainant.

21. This appears to be the situation in the present case, where the accused and the victim were residing separately in their own house, and the delay occurred due to procedural formalities undertaken by the police. Furthermore, the accused has not produced any evidence in his statement under Section 342, Cr.P.C. that could establish his innocence.

22. The recovery of the weapon is one aspect that came on record and was strongly emphasized by the defence. However, the same has been satisfactorily explained by the police. The prosecution, in support of its case, has relied upon 2018 YLR 1021, which sufficiently clarifies that non-recovery of the weapon of offence from the accused in a murder case, if properly explained by the police, is not fatal to the prosecution case.

23. I also relied upon the case law reported in 2022 YLR Note 97, in which the death sentence was confirmed in the matter on the ground of honour killing. The relevant portion is reproduced as under:-

- (i) That all the PWs are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on *Zakir Khan v. State* (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the murder of the deceased in the house to the arrest of the appellant and his subsequent judicial confession.
- (ii) It is well settled by now that police witnesses are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case either through cross-examination or otherwise. In this respect reliance is placed on *Zafar v. State* (2008 SCMR 1254), *Riaz Ahmed v. State* (2004 SCMR 988) and *Muhammed Hanif v. State* (2003 SCMR 1237). Likewise it is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on *Ijaz Ahmad v. The State* (2009 SCMR 99).

24. Hence, without extending any leniency to the accused, who has been charged with an offence falling within the category of honour killing, I do not find any merits in the present appeal. Consequently, Criminal Jail Appeal No.S-47 of 2024 is hereby dismissed, and the judgment dated 30.10.2019 passed by the learned Additional Sessions Judge-1 / Model Criminal Trial Court, Mirpurkhas, is upheld.