

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D-28 of 2014
[Confirmation case No.30 of 2014]

Present.
Mr. Justice Naimatullah Phulpoto.
Justice Mrs. Rashida Asad.

Date of hearing: 16.09.2021.
Date of judgment: 30.09.2021.

Appellant: Abdul Rouf son of Haji Soomar by caste Parheri through Mr. Noor-ul-Haq Qureshi, Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General, Sindh.

J U D G M E N T

NAIMATULLAH PHULPOTO, J:- Appellant Abdul Rouf was tried by learned Sessions Judge, Tando Muhammad Khan in Sessions case No.12 of 2012 for offences under Sections 302, 109 PPC. After regular trial, the learned trial Court vide its' judgment dated 26.02.2014, convicted the appellant u/s 302(b) PPC as Tazir for committing Qatl-e-Amd of Abdul Rehman @ Baboo and Mst. Amna and sentenced to death on two counts and ordered to pay compensation of Rs.100,000/- for each deceased, to be paid to legal heirs of both deceased in terms of Section 544-A Cr.P.C, in case of default thereof, appellant was ordered to suffer SI for six (06) months more.

2. The brief facts of prosecution case as disclosed in the F.I.R are that complainant Muhammad Hassan belonged to labour class; he had five brothers, out of whom, Abdul Rehman @ Baboo aged about 30 / 32 years (now deceased) was 3rd number, who was Jamadar of Kathia

and Pukha community and was serving out of house. About 20/22 years ago, their mother had expired. After death of their mother, their aunt Mst. Amna wd/o Gul Muhammad @ Guloo (deceased), used to look after them. It is alleged that about 2/3 years, after the death of mother of complainant, they demanded hand of their maternal aunt Mst. Amna from appellant Abdul Rouf and his brothers, for marriage purpose but Abdul Rouf refused become annoyed from that day. It is further alleged that appellant Abdul Rouf declared that he would cause harm to Haroon or any one of his son. It is stated that house of complainant and house of Abdul Rouf are situated adjacent to each other. Brother of complainant namely Abdul Rehman @ Baboo, who was working out of house, returned home on 14.09.2011 at 06-00 P.M and stayed night in the house of his maternal aunt Mst. Amna. She was residing in the house of his maternal uncles. It is alleged that deceased Abdul Rehman was sleeping along with his brother Abdul Khaliq. On 15.09.2011 at about 01-00 A.M. they heard cries from the house of appellant Abdul Rouf. On cries complainant, his brother Abdul Khaliq and cousin Zahid woke up, went to house of accused and saw on torch and moon light that Abdul Rouf s/o Haji Soomar armed with hatchet was causing hatchet blows to his brother Abdul Rehman @ Baboo. Mst. Amna tried to save Abdul Rehman from the hands of Abdul Rouf, who also caused hatchet blows to her. She fell down on the ground and accused ran away along with hatchet. Complainant party found hatchet injuries on the body of Abdul Rehman @ Baboo. They also found hatchet injuries on the body of Mst. Amna. Both injured succumbed to their injuries on the spot. Then complainant narrated incident to his father, through mobile phone, who had gone to Hyderabad. Complainant for want of conveyance could not go to police station promptly. Thereafter, he left above named witnesses over the dead bodies, went to PS and lodged FIR against accused. It was recorded on

15.09.2011 at 0630 hours vide crime No.37 of 2011 at P.S Mulakatiar for offences U/Ss 302, 109 PPC.

3. After usual investigation, challan was submitted against accused/appellant under the above referred Sections. Co-accused Abdul Razzaque was shown as absconder and declared as proclaimed offender.

4. Trial Court framed charge against appellant / accused at Ex.6, who pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined in all eight (08) witnesses. Thereafter, prosecution side was closed.

6. Trial court recorded the statement of accused Abdul Rouf under Section 342 Cr.P.C at Ex.19. All the incriminating evidence was put to accused except motive; he denied the same. Accused examined himself on Oath at Ex.20 and examined in defence DWs namely Ibrahim Soomro and Jani Parheri.

7. On analysis of the entire evidence, learned trial court found the appellant / accused guilty and he was sentenced to death in the manner mentioned above. Trial court has made Reference to this court for confirmation of death sentence as required u/s 374 Cr.P.C. By this common judgment, we intend to decide Appeal as well as Confirmation Reference together, as both arise out of same impugned judgment and requires same appreciation of evidence.

8. Mr. Noor-ul-Haq Qureshi, learned advocate for appellant argued that there was inordinate delay in lodging of F.I.R without plausible explanation; that there are major contradictions in the evidence of prosecution witnesses; that ocular evidence is contradictory to medical evidence; that it was night time incident, the identification of accused on torch and moonlight was doubtful; that the prosecution has failed to prove its' case and prosecution story is unbelievable. It is further argued that

motive was potentially against father of complainant and was indirect and weak. He further submitted that trial court had also failed to put the incriminating evidence regarding motive to the appellant in his statement recorded u/s 342 Cr.P.C for his explanation. Lastly, it is argued that in case, Court is not convinced for acquittal of the accused / appellant, learned Defence Counsel has prayed for reduction of sentence of death to the imprisonment for life on the ground that prosecution has failed to prove the motive at trial. In support of his submissions, learned counsel for the appellant has placed reliance upon the case of **Mst. Nazia Anwar v. The State and others (2018 SCMR 911)**.

9. On the other hand, Mr. Shahzado Saleem Nahiyoon, learned Additional Prosecutor General Sindh argued that ocular evidence was corroborated by medical evidence; that blood stained hatchet was produced by appellant during investigation, report of chemical examiner was positive; that prosecution has established its' case against the accused. However, he conceded to the contention of defence counsel that motive as set up by prosecution in FIR could not be substantiated by prosecution at trial and recorded no objection for reduction of sentence of death to imprisonment for life in the view of Judgment in the case of Mst. Nazia Anwar v. The State and others (2018 SCMR 911).

10. We have heard the arguments of learned counsel for the parties, gone through the entire evidence available on record.

11. Dr. Abdul Rauf (PW-3) has deposed that on 15.09.2011 HC Dost Muhammad of P.S Mulakatiar brought the dead body of Abdul Rehman @ Baboo for conducting the postmortem examination and report. He found following injuries on the person of deceased:-

- i. Incised wound 12 cm x 2.5 cm just above the right eye laterally up to right ear, cutting the bone at right fronto temporal region upper side brain matter seen.

- ii. Incised wound 12 cm x 3 cm at right temporal region bone exposed below injury No.1.
- iii. Incised wound 9 cm x 2.8 cm bone exposed behind right ear.
- iv. Incised cut 8 cm x 2.8 cm at right side of neck bone exposed.

On the same date, lady Dr. Zubaida Samoo (PW-4) had received the dead body of Mst. Amna aged about 35 for conducting the postmortem examination and found the following injuries on dead body:-

Description of injuries.

- i. Incised wound 20 cm x 6 cm x born deep # fracture mandible bone start right cheek upto left side of neck # of 1st and 2nd cervical vertebrae bone during further dissection under injury No.1. There is rupture corated, artery, juggler vein with profuse bleeding and masseter muscle, digositice muscle, sterno clido mastoid muscle, trapezious muscle and spinal cord rapture with profused bleeding.
- ii. Incised wound 15 cm x 4 cm into bone deep from lower end of right fore-arm dorsal aspect up to 2nd metacarpal bone on further dissection # hamet bone, bisiform, triquterl 2nd metal carpal bone and extensor retiania colum ruptured muscle, extensor digiorm, extensor digite miniml, raptured and radial artery raptured and profused bleeding.

Both the doctors have opined that both deceased had sustained injuries by means of sharp cutting weapon and cause of death was due to shock and hemorrhage as a result of injuries sustained mentioned above which were anti-mortem in nature. Efficiency and integrity of the doctors have not been challenged in cross examination. Learned defence counsel has also not disputed the un-natural death of deceased persons. Trial court has rightly appreciated the evidence of doctors. Finding of the trial court calls for no interference by this court.

12. Crucial issue is who had committed Qatl-e-Amd of deceased Abdul Rehman alias Baboo and Mst. Amna? Record reflects that FIR Ex.10/A was registered at Police Station on the information furnished by Muhammad Hassan (PW-1). The contents of FIR which was recorded by complainant have already been mentioned above. Complainant has deposed at trial that deceased Abdul Rehman was his brother who was

Jamadar of Pakhan and Kerio community and used to serve out of house. After death of his mother, their father demanded the hand of Mst. Amna (now deceased) from the appellant Abdul Rouf and his other brothers but they refused and disclosed to the locality that he would cause harm to the complainant party. He further deposed that on 14.09.2011 at about 06.00 p.m, his brother Abdul Rehman (now deceased) came to the house, their cousin Zahid also came there alongwith Abdul Rehman. After taking meals Abdul Rehman went to sleep in the house of their aunt Mst. Amna. On 15.09.2011 at about 0100 hours, complainant, Abdul Khaliq and their cousin Zahid heard the cries from the house of accused Abdul Rouf. They immediately proceeded there and saw on the torch and moon light that accused Abdul Rouf was causing hatchet blows to Abdul Rehman alias Baboo. On which, Mst. Amna raised cries and tried to rescue Abdul Rehman but appellant also caused her hatchet blows. Both injured expired at the spot. Thereafter, accused / appellant ran away. PW-1 has clearly stated that he had identified accused Abdul Rouf. Complainant left his brother Abdul Khaliq and cousin Zahid over the dead bodies of Abdul Rehman and Mst. Amna and went to Police Station Mulankatiar where he lodged FIR of the incident. After registration of FIR at 7-00 a.m, he brought the police to place of incident, where dead bodies of Abdul Rehman and Mst. Amna were lying. Thereafter, police shifted the dead bodies to District Headquarter Hospital Tando Muhammad Khan for conducting the postmortem examination and report. Complainant was cross examined at length, he denied the suggestion that he had given the name of appellant in FIR falsely at the instance of Gul Muhammad Ghamaro due to enmity. He had also denied the suggestion that he had not witnessed the incident. PW-2 Abdul Khaliq was also the eye witness of incident. He narrated the same story / episode before trial court and clearly deposed that appellant caused hatchet blows to both deceased. PW Abdul Khaliq had also denied the suggestion in cross examination that he had deposed

falsely against the appellant at the instance of Gul Muhammad Ghamoro. PW-5 Zahid was also the eye witness of incident; he deposed that on the night of incident, he alongwith PW Abdul Khaliq and complainant Muhammad Hassan was sleeping in the house of Abdul Khaliq. On 15.09.2011 at about 0100 hours they woke up on the cries. They went to the house of Abdul Rouf and saw that accused Abdul Rouf was causing hatchet blows to Abdul Rehman and Mst. Amna was trying to save Abdul Rehman from appellant Abdul Rouf. On which, accused Abdul Rouf had also caused hatchet blows to Mst. Amna. Abdul Rehman @ Baboo and Mst. Amna succumbed to the injuries on spot. PW-8 Muhammad Farooque, who was I.O of the case, has deposed that on 15.09.2011, he was posted as SHO P.S Mullankatiar. On that date, at about 0630 hours complainant Muhammad Hassan appeared at PS and disclosed fact of cognizable offence. He recorded FIR at his verbatim. Thereafter, he went to the place of incident alongwith complainant at about 07:00 a.m. He reached there and examined dead bodies of deceased Mst. Amna and Abdul Rehman alias Baboo and prepared inquest reports in presence of mashirs namely Adam and Yar Muhammad. He secured blood stained earth of deceased Mst. Amna and sealed it. He also secured blood stained bed, mosquito net and blood stained pillow of deceased Abdul Rehman @ Baboo and put the same in polythene bag and sealed it in presence of same mashirs. He prepared memo of dead bodies at vardhat in presence of said mashirs. Thereafter, he referred dead bodies through HC Dost Muhammad to hospital for post mortem, examination and report.

13. The learned defence Counsel argued that there was delay in lodging of FIR, which has not been satisfactorily explained by the prosecution. It is submitted that incident had occurred on 15.09.2011 at about 1:00 a.m. (night) and F.I.R thereof was lodged at about 06:30 a.m. (morning time). Learned Additional P.G argued that delay has been fully explained. It is a matter of record that after incident the complainant

narrated the facts of incident to his father through mobile phone who was at Hyderabad; complainant made to sit above named witnesses over dead bodies, went to Police Station and lodged FIR against the accused. Delay in lodging F.I.R has been fully explained, there is nothing on record that delay was caused to falsely implicate the accused. Both deceased were closely related to appellant. Complainant had no enmity with appellant to falsely implicate him in this case. Complainant and the eye-witnesses who witnessed the occurrence appeared before the Trial Court and they remained consistent on all the material aspects of the case such as time of incident, place of incident and weapon used in the commission of offence and the defence counsel remained un-successful in bringing on record any mala fide or ulterior motive on the part of prosecution witnesses for false implication of accused in the case. Therefore, we hold that delay of 06 hours in lodging of F.I.R would not be fatal to prosecution case mainly for the reason that eye-witnesses had no motive to falsely implicate the appellant. Complainant Muhammad Hassan, Abdul Khaliq and Zahid were the natural witnesses because the incident occurred inside the house, therefore, eye-witnesses namely Abdul Khaliq and Zahid have also explained their presence in said house at the time of incident. Mere relationship of the PWs with deceased, which the defence counsel has contended, is no ground to reject their testimony. Let us now consider the law, on evidentiary value of a related witness. Learned defence counsel has argued that testimony of eye witnesses required corroboration which is lacking in this case. We know there is no such rule but in the present case, ocular evidence has been corroborated by medical evidence, recovery of blood stained hatchet and positive report of chemical examiner. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely.

Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent. It was appropriately observed in the case of KHADIM HUSSAIN v THE STATE (2010 SCMR 1090). The above precedent makes it amply clear that testimony of the related witness, if found to be truthful can be basis of conviction. We have every reason to believe that eye-witnesses namely Muhammad Hassan, Abdul Khaliq and Zahid were present in house where incident occurred and identified accused with hatchet in his hand.

14. So far the material contradictions in the evidence of PWs as highlighted by the learned Counsel for the appellant are concerned; we accept that there are some contradictions in the evidence of the PWs. However, in our view, these are not material contradictions but are minor in nature and are not sufficient for us to disbelieve the PWs' evidence when all the other evidence and facts and circumstances surrounding the case are considered. Moreover such omissions in our view, do not erode the credibility of these witnesses since the basic facts stated by them before the police do not contradict their earlier statement in a manner such that both their statements cannot co-exist. Moreover, as mentioned above, the defence side has also failed to prove the contradictions in the statement of these witnesses in the manner required by law. In this respect, reliance is placed upon the case of ZAKIR KHAN and others v. The STATE (1995 SCMR 1793).

15. As regards to contention of defence counsel that incriminating piece of evidence of motive was not put to accused in his statement recorded u/s 342 Cr.P.C, law is very settled that when the incriminating piece of evidence like motive is not put to accused in his statement recorded u/s 342 Cr.P.C, then same piece of evidence cannot be used against him for conviction.

16. We have found the evidence of complainant and other eye-witnesses to be trustworthy, reliable and confidence inspiring. Ultimate test of veracity of the witness is the inherent merit of his own statement which we find in this case to be full of merit when placed in juxtaposition with the prosecution case and the particular facts and circumstances of this case and other evidence on record.

17. In the case of *NAWAB ALI v. THE STATE* (2019 SCMR 2009) it is held that if prosecution asserts motive but failed to prove the same then such failure on the part of the prosecution may react against the sentence of death passed against the convict on the charge of murder. In this respect reliance has been made to the cases of *Ahmed Nawaz v. The State* (2011 SCMR 593), *Iftikhar Mehmood and another v. Qaiser Iftikhar and others* (2011 SCMR 1165), *Muhammad Mumtaz v. The State and another* (2012 SCMR 267), *Muhammad Imran alias Asif v. The State* (2013 SCMR 782), *Sabir Hussain alias Sabri v. The State* (2013 SCMR 1554), *Zeeshan Afzal alias Shani and another v. The State and another* (2013 SCMR 1602), *Naveed alias Needu and others v. The State and others* (2014 SCMR 1464), *Muhammad Nadeem Waqas and another v. The State* (2014 SCMR 1658), *Muhammad Asif v. Muhammad Akhtar and others* (2016 SCMR 2035) and *Qaddan and others v. The State* (20017 SCMR 148).

18. In the present case, in F.I.R as well as in the evidence, complainant Muhammad Hassan has deposed that after death of his mother, his father demanded hand of Mst. Amna from accused Abdul Rouf and his brothers but they refused which caused annoyance to the accused and he committed murder of deceased Abdul Rehman. Aunty of the complainant namely Mst. Amna came forward to rescue the deceased, she was also murdered. It is clear that appellant had motive against Haroon, the father of the complainant. It is not clear from the case of the prosecution that as to why the accused committed murder of the son of Haroon namely Abdul

Rehman and committed murder of Aunty of Mst. Amna. Examination-in-Chief on the point of motive of complainant Muhammad Hassan (PW-1) is reproduced as under:-

"I am complainant in this case. We are five brothers. Deceased Abdul Rehman alias Baboo was my No.3 brother. Who was Jamadar of Pakhan and Keria community and use to remain out of house. After death of my mother, my father demanded hand of Mst. Amna from accused Abdul Rouf and his brothers but they refused to give the hand of Mst. Amna to us. Accused Abdul Rouf and his brothers disclosed to the persons of locality that they will cause harm either to Haroon or to hs any son. On 14.09.2011 at about 6:00 p.m. my brother Abdul Rehman came to the house, our cousin Zahid also came there alongwith him. Abdul Rehman went to sleep after taking meals in the house of our aunt Mst. Amna. On 15.09.2011 at about 0100 hours I, Abdul Khaliq and cousin Zahid heard cries from house of accused Abdul Rouf and Aunt Mst. Amna, thereafter, we immediately went to the house of accused. We saw on torch and moon light that accused Abdul Rouf was causing hatchet blows to my brother Abdul Rehman alias Baboo on right side of head. Accused Abdul Rouf also caused hatchet blow to him at center of head. On which aunt Mst. Amna raised cries and tried to save Abdul Rehman at the hands of accused Abdul Rouf, who also caused hatchet blow to his sister Mst. Amna at right forearm and right side of heard. After received injuries deceased Abdul Rehman and Mst. Amna expired away on the spot. Thereafter accused ran away. I left my brother Abdul Khaliq and Zhid at the dead bodies of Mst. Amna and Abdul Rouf and proceeded to Police Station Mullankatiar. I lodged FIR at Police Station. After registration of FIR I brought Police of Mullankatiar at dead bodies of deceased Abdul Rehman alias Baboo and Mst. Amna. At about 7:00 a.m. I showed vardhat to the police in presence of mashir Adam and my uncle Yar Muhammad. Thereafter, police shifted dead bodies of deceased Mst. Amna and Abdul Rehman alias Baboo to District Head Quarter Hospital T.M.Khan. After got conducting post mortem of deceased Abdul Rehman, his dead body was received by my father Haroon and same, who is my read maternal uncle, who committed murder of my brother Abdul Rehman and his real sister Mst. Amna. Accused Abdul Rouf was asking to Abul Ghani to commit murder of Abdul Rehman alias

Baboo. I produce FIR at Ex-10/A which is same, correct and bears my LTI."

19. **This shows that something else was going on in the family of both parties which had led to the present occurrence but that something has been completely suppressed by the prosecution. Both deceased were sister and nephew of the appellant. Trial Court did not put incriminating piece of evidence of motive to the appellant for his explanation in his statement recorded under Section 342 Cr.P.C.**

20. We have come to the conclusion that prosecution had succeeded to prove its' case against the appellant / accused for the reasons that there were three eye witnesses of the incident namely complainant Muhammad Hassan, Abdul Khalique and Zahid, all of them are closely related to both deceased. They have specifically mentioned that appellant caused hatchet blows to deceased Abdul Rehman @ Baboo. Mst. Amna tried to rescue the deceased but appellant inflicted her hatchet blows. As regards to the source of light is concerned, it is stated that it was moon light and the torches were in the hands of PWs. As there is close relationship between the parties and incident had occurred in the house, it is generally observed that the villagers have no difficulty to identify the close relatives even at night time on moon light. Ocular evidence has been corroborated by medical evidence. Eye witnesses had no enmity whatsoever against the appellant to falsely implicate him in this case. PWs are closely related to deceased, is also no ground to reject their evidence for the reasons that PWs had no motive to falsely implicate the appellant in this case. Defence theory raised by the appellant that at the time of incident, he was present in Masjid has already been disbelieved by the trial court by assigning the sound reasons. It is generally observed that after Isha prayer, the persons who are offering the prayer return home from Masjid. Plea raised by appellant does not appear to be plausible. As

regards to the motive for commission of the offence is concerned, complainant has stated that his father had demanded the hand of Mst. Amna for marriage. Now the question arises as to why the father of the complainant was not murdered and deceased Abdul Rehman @ Baboo, the son of complainant was killed. It is clear that the motive was not directly attributed to the appellant. Moreover, trial court while recording the statement of accused u/s 342 Cr.P.C. did not put a question to the appellant regarding the motive. The statement under Section 342 Cr.P.C is pasted as under for the sake of convenience:-

(107) 71

Exhibit No: 19

IN THE COURT OF SESSIONS JUDGE, TANDO MUHAMMAD KHAN.
 Session Case No: 62 of 2012 (C.O.2 case No. 73 of 2011).
 The State
V E R S U S

Abdul Rauf.

STATEMENT OF ACCUSED U/S: 342 CR.P.C.

1.	Name	:	Abdul Rauf.
2.	F/Name	:	Haji Soomar.
3.	Caste	:	Parheri.
4.	Occupation	:	Cultivation.
5.	Age	:	40 years.
6.	Residence	:	Village Haji Soomar Parheri, Taluka Bulri Shah Karim.

Q.No:1 You have heard the prosecution evidence, wherein it is alleged that; you on 15.9.2011 at 01:00 AM, in your house situated in deh Soomar, Taluka Bulri Shah Karim, on abetment of absconding co-accused Abdul Razzak, in furtherance of your common intention, being armed with hatchet, committed Qatal-i-Amd of deceased Abdul Rahman @ Babu and Mst. Amna with the means of hatchet blows. What you have to say?

Ans: No Sir it is false.

Q.No:2 You have also heard the prosecution evidence, it is alleged that; you was arrested on 19.9.2011 at 0600 hours from Khokhar Road, Nau Wah Mori, by SHO/Inspector Muhammad Farooque Nizamani of PS: Mulakatiar in presence of mashirs namely Adam S/O Soomar Parheri and Yar Muhammad @ Tharo s/o Hussain Parhari. What you have to say?

Ans: No sir it is false. On 15.9.2011 I was arrest from my house.

Q.No:3 You have also heard prosecution evidence, it is alleged that; on 20.9.2011 at about 0730 hours you had voluntarily taken out blood stained hatchet, which was concealed by you in the Khabar tree, situated at the distance of 200-250 paces at the northern side of your house and produced before the police in presence of mashirs namely Adam S/O Soomar Parheri and Yar Muhammad @ Tharo s/o Hussain Parhari. What you have to say?

Ans: No sir. Nothing was produced by me before the police in presence of mashirs. In fact hatchet has been provided by the complainant party to police party to foist against me in order to strengthen the case against me.

Q.No:4 You have heard the prosecution evidence; it is alleged that the HC Dost Muhammad produced blood stained clothes of deceased namely Abdul Rahman @ Babu and Mst. Amna were secured in presence of mashirs namely Adam S/O Soomar Parheri and Yar Muhammad @ Tharo s/o Hussain Parhari. What you have to say?

Ans: No sir. It is false. The same have been managed by the complainant party in collusion with the police.

Q.No:5 You have also heard prosecution evidence; it is alleged that the recovered blood stained earth, clothes, Razai, pillow, mosquito net, Rilly, bori (katta) and hatchet sent to the chemical examiner for examination, whose report is in positive. What you have to say?

Ans: No sir. I have no concern with recovered blood stained articles, referred to the chemical examiner by the Investigation Officer, as nothing was recovered from my possession.

Q.No:6. Why PWs have deposed against you?
 Ans: They have deposed falsely against me at the instance of one Gul Muhammad Gamooro, as we have dispute over the land in which our house is situated and who want to dispossess us form said land. Such FIRs are registered against the Gul Muhammad Gamooro. On the night of incident I was present in Masjid situated in village Muhammad Soomro at the distance of 01 Kilometer away from our village in the eastern side.

Q.No:6. Do you want to say anything else?
 Ans: I am innocent. I have been falsely implicated in this case. PW Abdul Khalique is residing at Sukrand after kidnaping of his woman. Complainant has been looked after by one Syed Juman Shah, who is

10-02-14

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issueless. PW Zahid is residing about 02 Kilometers away from our village, therefore, how he came at vardhat during night hours. (47) 72

Q.No:7 Do you want to lead any evidence in defence?
 Ans: Yes, I want to examine Ibrahim s/o Mehro, by caste Soomro, R/O Village Muhammad Soomro, Taluka Buri Shah Karim and Jani s/o Adam by caste Parheri Village Soomar Parheri, Taluak Buri Shah Karim in my defence.

Q.No:8 Do you want to examine yourself on oath in disproof of the charge U/S 340(2) Cr.P.C.?
 Ans: Yes sir, I want to examine myself on oath u/s 340(2) Cr.P.C.

Dated:-10.02.2014.

(KHADIM HUSSAIN (PUNIO)
 SESSIONS JUDGE,
 TANDO MUHAMMAD KHAN.

Certificate
 Certified that the examination of the accused has been recorded with in my presence and hearing. The answers have been recorded correctly. It contains true and full account of the statements made by him.

Ramif
 10.02.14.

21. ***There is another aspect of the case, one lady Mst. Amna has also been murdered. After going through the entire evidence from cover to cover and after attending to different aspects of this case, we have found that although it is proved beyond doubt that appellant was responsible for murder of both deceased persons, yet the story of prosecution has many inherent obscurities ingrained therein. It is intriguing as to why the appellant committed the murder of young lady deceased namely Mst. Amna who was closely related to deceased. Motive was against the father of complainant but his son was killed. We have thus, entertained no manner of doubt that real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that the real cause of occurrence had remained shrouded in mystery. Such circumstances of this case have put us to caution in the matter of appellant's sentence and in the peculiar circumstances of the case we have decided to withhold the sentence of death passed against the appellant. Rightly reliance is placed on the case of Mst. Nazia Anwar v. The State and others (2018 SCMR 911).***

22. From the analysis of the evidence available on record in its entirety, we are of the opinion that prosecution had succeeded in establishing the charge brought against the appellant beyond reasonable doubt, his conviction is therefore, affirmed. However, we have decided to

exercise caution in the matter of appellant's sentences of death and have felt persuaded to reduce the said sentences of death to imprisonment for life on each count of the charge. Appeal is, therefore, dismissed and the convictions of the appellant on both counts of charge under Section 302(b) PPC are maintained but this appeal is partly allowed to the extent of appellant's sentences of death which are reduced to imprisonment for life on two counts of the charge. Compensation as ordered by the trial Court shall remain intact. In case of default thereof, to undergo S.I for 06 months on each count of both sentences. All the sentences of imprisonment passed against the appellant shall run concurrently. Appellant shall be entitled to benefit under Section 382-B Cr.P.C. Reference made by trial court for confirmation of death sentence is answered in NEGATIVE.

In the view of above, appeal and confirmation reference are disposed of in the above terms.

JUDGE

JUDGE

Tufail