IN THE HIGH COURT OF SINDH AT KARACHI

CR. JAIL APPEAL NO.65/2017

Appellant : Ghulam Nabi,
through Ms. Abida Parveen Channar, advocate.

Respondent : The State,
through Mr. Abdullah Rajput, DPG.

Date of hearing : 3rd and 7th September 2018

Date of order : 7th September 2018.

JUDGMENT

Salahuddin Panhwar, J: By this jail appeal, appellant assailed judgment dated 30.01.2017 passed in S.C. No.127/2013 arising out of Crime No.48/2013, u/s 302 PPC, PS Mirpur Bathoro, whereby he was convicted and sentenced for imprisonment for 14 years R.I. as Tazir and to pay compensation of Rs.100,000/- to the minors/legal heirs of deceased and in case of default to suffer S.I. for six months more; he was extended benefit of section 382(b) Cr.P.C.

2. Briefly, prosecution's case is that complainant and accused Ghulam Nabi Soho have matrimonial relations and the niece (daughter of the brother of complainant) as Mst. Gulshan aged about 38/39 years was married with accused; she had four sons and four daughters out of the wedlock; there as dispute between the spouse and the accused on domestic matter and they have strained relations with each other. That on 16.05.2013 at the noon time complainant received call on his mobile phone from one Haji Hussain son of Ismail

Soho, who informed that Mst Gulshan had been made injured by her husband Ghulam Nabi Soho by causing her injuries with spade, while she was being taking towards hospital of Mirpur Bathoro she succumbed to the injuries. On such information complainant arrived at hospital/village Saleh Soho where his nephew Mehram and Haji Hussain were also available; they narrated that they were present in their house situated in village Saleh Muhammad Soho, they heard the cries from the house of accused Ghulam Nabi Soho and rushed there; it was about 1400 hours, they saw accused Ghulam Nabi son of Saleh Muhammad Soho caused spade blow to his wife on her neck and she after receiving spade injury fell down; they tried to apprehended the accused but he ran away from the house; injured Gulshan was lying on earth, blood was oozing from her neck due to spade injury. They arranged vehicle, took the injured towards hospital Mirpur Bathoro but in the way at 1400 hours she succumbed to the injuries; they informed the police about the incident. Thereafter, the dead body was taken towards Taluka Hospital Mirpur Balhoro and wherefrom to Taluka Hospital Sujawal where postmortem was conducted and police handed over the dead body to the complainant party hence FIR was registered on 17.05.2013 at 1430 hours.

3. To the charged framed, appellant pleaded not guilty and claimed trial. Prosecution examined Complainant Muhammad Hassan at Exh.4, PW Mehram examined at Exh.5, Haji Hussain at Exh.6, Witness/mashir Ghulam Rasool examined at Exh.7; lady Dr. Ishrat Parveen examined at Exh.8. Trial Court examined tapedar

Ghulam Rasool at Exh.9, PW Sajjan Ali examined at Exh.10 and investigation officer Qamardin Magsi examined at Exh.11, thereafter prosecution closed its side. The statement of the accused recorded under section 342 Cr.P.C at Exh 13. He neither led any defense evidence nor examined himself on oath.

4. Learned trial Court framed and answered points for determination as under:-

1	Whether, deceased Mst. Gulshan died her un-natural death?	Affirmative.
2	Whether, the accused Ghulam Nabi Soho on 16.5.2013 at 1400 hours in his house committed Qatl-e-Amd/ murder of his wife deceased Mst Gulshan and caused her death by spade blow on her neck as alleged?	Accordingly.
	What should the Judgment be?	Accused Ghulam Nabi Soho is convicted under section 265-H (ii) Cr.P.C.

5. I have heard learned counsel for appellant and learned DPG.

6. The learned counsel for appellant argued that appellant has been falsely involved in this case; that there is material contradiction in the evidence of prosecution witnesses; most natural witnesses were never examined by prosecution; all the witnesses are related to the complainant and highly interested and there is no independent witness hence appellant is entitled to benefit of doubt.

7. Learned D.P.G. argued that prosecution successfully established its case against the appellant; no motive for false implication is established; blood-relations cannot be believed to have falsely involved appellant; medical evidence as well recovery of crime weapon supported prosecution case hence by impugned judgment they have been rightly convicted and sentenced.

8. The perusal of the record shows that unnatural death of the deceased is not a matter of dispute rather was unchallenged fact. The un-natural death could always be taken as half portion of the charge (case of prosecution) as there remains the half portion which relates to particular manner normally consisting on details of accused, time and place of incident.

9. After proving of *un-natural* death in such like cases, the prosecution would only require establish claimed manner of the incident including accused, date, time, place of incident and manner thereof. If such question comes in appeal then only thing remain would always be “whether the lower court rightly found other part of the charge proved beyond shadow of doubts or otherwise?”.

10. Let’s examine the case on settled principles of appreciation of evidence. Perusal of the record shows that there had never been a *denial / dispute* with regard to place of

incident i.e **'inside house of the appellant / accused Ghulam Nabi Soho'.** It needs not be reiterated here that whenever one is found to have died *un-naturally* within confines of a house then some part of the onus is always upon the close relatives of the deceased (*residents of house)* to explain as to how their near one had met an unnatural death. Reliance can safely be placed on the case of Nazeer Ahmed v. The State (2016 SCMR 1628) wherein it is observed as:-

> "4. It may be true that when a vulnerable dependant 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)."

The perusal of the record also makes it clear that during course of examination of prosecution witnesses, the appellant / convict, *no where,* attempted to claim easy excess of others nor he came forward with any other defence plea detailing manner of death of his wife within his own house. Thus, *prima facie,* it can safely be concluded that learned trial court judge was quite right in taking it against the appellant.

11. Further, perusal of the record shall show that both the eye-witnesses of the case namely Mehram and Haji Hussain Soho categorically supported prosecution case in respect of each aspects of the manner wherein the prosecution claimed happening of the incident.

Perusal of the record shall show that both these **eye-witnesses** categorically detailed the manner of incident which shall stand quite obvious from comparative perusal of operative part thereof which is:-

PW Mehram	**PW Haji Hussain**
On 16.05.2013, I was at my house alongwith my cousin Haji Hussain Soho. It was **about 02:00 pm,** in the meantime we heard hue and cry from the direction **of the house of accused Ghulam Nabi Soho**. Whereupon **I and Haji Hussain Soho** rushed towards the house of the accused, within our sight, accused caused the **spade blow on the neck side of the deceased lady**. We attempted to apprehend him but he ran away.	On 16.05.2013, I was at Goth Saleh Soho in **the house of my cousin namely Mehram Soho**. It was **about 02:00 pm,** in the meantime 1 heard cries from the **house of accused Ghulam Nabi Soho**, who is also my cousin. I alongwith Mehram Soho rushed towards his house and inside their house, I saw the accused Ghulam Nabi was quarrelling with his wife Mst, Gulshan and gave her **spade blow on the front of her neck**. We tried to intervene and to hold him but after committing this act, he managed to flee alongwith the spade in his hand.

The perusal of the record shall also make it quite clear that no specific enmity has been pleaded against these witnesses which could justify such **specific** accusation against the appellant as *false*. Further, it also a matter of record that complainant of the instant case also falls within meaning of **blood-relation** of the

deceased and *prima facie* had no reason to falsely involve the appellant / convict in the instant case. Necessary to add that **'interested witness'** is one who is partisan or inimical towards the accused or has a motive or cause of his own to falsely implicate the accused in the crime. Reference may be made to the case, reported as 2009 SCMR 825.

It is also a matter of record that both eye-witnesses are **'maternal cousins'** of the deceased while the complainant is **maternal uncle** of deceased, therefore, would fall within meaning of **'blood-relations'.** It is also a matter of record that it is the appellant / convict who is the **only claimed culprit** of incident. In such like eventuality the substitution of real culprit with an **innocent** person is normally not possible least would require a very strong reason / motive for close relatives (blood-relations) of the deceased. Reference may be made to the case of *Khizar Hayat v. State* (SBLR 2011 SC 183) wherein it is observed as:-

> "6. …. It is a case of single accused, who has fired upon the deceased Ghulam Ghous, therefore, substitution of a culprit is not possible besides it is a rare phenomenon where a witness whose close relative has been murder would substitute the accused with an innocent person thereby allowing the actual accused to go escort free. …"

Further, perusal of the record would show that on arrest the appellant / convict voluntarily produced the **crime weapon** which strengthened the prosecution. The medical

evidence has also corroborated the prosecution case in respect of all aspects which the medical evidence can i.e nature of the injuries, kind of weapons as well probable timing of death / injuries. Reference may be made to the case of *Muhammad Mansha v. State* (2018 SCMR 772) wherein it is observed as:-

> "…. It has been declared by this Court in various judgments that the medical evidence neither pin point the accused nor establish the identity of the accused, and at the most can depict the locale of injury, duration, weapon used etc and medical evidence can never be considered to be a corroborative piece of evidence and at the most can be considered a supporting evidence only to the best of specification of seat of injuries, the weapon used, duration, the cause of death etc.."

If all aspects i.e unnatural death of deceased (wife of appellant/ convict) within confines of his house; direct and specific accusation by the **'blood-relation'** , involving a **single** person (appellant / convict) as **culprit;** recovery of **crime weapon** and corroboration from medical evidence are viewed then same would be sufficient to stamp the conviction, so recorded by the trial Court. Reference may well be made to the case of *Nazia Anwar v. State* (2018 SCMR 911) wherein it is held as:-

> "3. The occurrence in this case had taken place in broad daylight and inside the house of Mst. Sadiqa Bibi complainant. An FIR in respect of the alleged occurrence had been lodged with reasonable promptitude wherein the present appellant was named as the sole perpetrator of the alleged murder. Mst. Sadiqa Bibi complainant (PW2) was a natural witness of the occurrence being an inmate of the house wherein the occurrence had taken place and

> the time of occurrence was such that the complainant was likely to be present in her house at that time. The complainant had absolutely no reason to falsely implicate the appellant in the murder of the complainant's daughter who was also a friend of the appellant. The record of the case shows, and it is so recorded in the FIR itself, that the appellant had been apprehended at the spot inside the relevant house and was later on handed over to the local police. A blood-stained dagger had also been recovered from the place of occurrence. The medical evidence had provided full support to the ocular account... I have not been ale to take a view of the matter different from that concurrently taken by the courts below. ..."

Though there had never been any **specific defence** by the appellant / convict however he (appellant / convict) at later-stage i.e recording of his statement under section 342 Cr.PC, introduced a ***specific defence plea*** thereby claiming happening of murder as:

> ***"Mst. Gulshan was his wife she had been made injured by his sister-in-law namely Mst. Sakina. The complainant party in order to save Mst. Sakina implicated him in this false case."***

The truth never requires deliberation or consultation but was / is always supposed to come to light at very *first* opportunity. Thus, deliberate delay on part of the appellant / convict in not disclosing his defence was rightly taken by trial court against the appellant / convict.

Be that as it may, while reiterating to well established principle of law that ***'burden of proving a***

circumstance / fact that is especially within knowledge of a person is for him to establish **and failing to do the absence whereof is to be presumed'** , as held in the case of *Abdul Karim Nausherwani v. State* (2015 SCMR 397), I would say that since through such defence plea the appellant / convict attempted happening of the incident in a quite different manner from the one, as was claimed by the prosecution, therefore, it was always obligatory upon the appellant / convict to have proved the same. The perusal of the record shows that real-brothers of the appellant / convict were residing near the place of incident i.e house of the appellant / convict but the appellant did not bother to examine any of them hence, even if plea is believed, even then with-holding of such material evidence, would allow presumption against the appellant / convict within meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984.

Since, I am quite conscious of the legal position that absence of motive or failure thereof could not necessarily result in disbelieving *otherwise* proved case but, at the most, may be taken as **'mitigating circumstance'** hence could reflect upon quantum of sentence *only*. Reference may well be made to case of *Amjad Shah v. State* (PLD 2017 SC 152). The sentence, awarded to the appellant, is already considerably less than available for offence in question hence this aspect would not advance the case of appellant / convict. Thus, I find no illegality

in the impugned judgment of conviction, so recorded by the trial court Judge, same was accordingly maintained.

12. These are the reasons of short order dated 07.09.2018 whereby instant appeal was dismissed.

IK **J U D G E**