

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Criminal Jail Appeal No.D-77 of 2020
[Confirmation Case No.19 of 2020]

Present:-

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khadim Hussain Soomro

Appellant: Sain Bux son of Abdul Hakeem Magsi, through Mr. Altaf Ahmed Shahid Abro, Advocate.

Respondent: The State through M/s Nazar Muhammad Memon and Shahzado Saleem Nahiyoon, Addl.P.G.

Complainant: Through Mr. Sameeullah Rind, Advocate.

Date of hearing: 17.05.2023.
Date of decision: 01.06.2023

J U D G M E N T

KHADIM HUSSAIN SOOMRO, J:- By this judgment, we intend to dispose of the above-captioned appeal against the impugned judgment dated 08.10.2020, passed by the learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad in Sessions Case No.696 of 2020 Re: State vs Sain Bux & others, arising out of FIR No.09/2020 for an offence punishable under sections 302 P.P.C, registered at P.S. Mari Jalbani, whereby appellant Sain Bux has been convicted under section 302(b) P.P.C for committing the Qatl-e-Amd of his wife Mst. Rukhsana and sentenced to death, subject to its confirmation under Section 374 Cr.P.C. The accused was also directed to pay the compensation of rupees two hundred thousand (Rs.200,000/-) to the legal heirs of deceased Mst. Rukhsana, failing which the accused shall undergo further simple imprisonment of six months .

2. The brief facts narrated in the present case are that complainant Dost Muhammad lodged FIR on 25.05.2020, stating that Sain Bux, son of Abdul Hakeem Magsi, married Mst. Rukhsana, his sister and Sajjad Hussain, is their son. Accused Sain Bux used to maltreat Mst. Rukhsana. 25th May 2020 was declared a holiday on the occasion of Eid; therefore, the complainant reached the house of Mst. Rukhsana for

greeting Eid with her, where he saw Nisar Ahmed, his cousin and Sajjad nephew were available. Mst Rukhsana was talking to them. The complainant joined them, and they were sitting in the same room. At about 12 noon Sain Bux entered the house, and on arrival, he scolded Mst. Rukhsana on which the complainant tried to restrain Sain Bux from scolding her. Meanwhile, accused Sain Bux drew a pistol from the folder of his Shalwar and, with intent to commit murder, fired upon Mst. Rukhsana and the same hit her on the neck, and she fell down after raising a cry. The complainant and others beseeched the accused in the name of the Holy Book, and the accused, along with a pistol, went out of house. The complainant and others arranged transport and shifted the injured Mst. Rukhsana to Taluka Hospital Sakrand for treatment. However, Mst. Rukhsana died on reaching the hospital. The complainant informed the police of P.S. Mari Jalbani; they arrived at Taluka Hospital Sakrand, where post mortem of deceased Mst. Rukhsana was conducted, and after post-mortem, the dead body of the deceased Mst. Rukhsana was returned to the complainant for funeral and burial. The complainant, after that, lodged FIR against the accused for murdering Mst. Rukhsana, in a domestic dispute.

3. After completing the usual investigation, the report under Section 173 Cr. P.C (Challan) was submitted by the investigating officer against the above named accused.

4. The trial Court framed the charge against accused at Ex.2, to which he pleaded not guilty and claimed to be tried. To establish accusation against the accused, the prosecution examined PW-1 Dr. Nasreen Begum (Woman Medical Officer) at Ex.3, who produced letter issued by police for post mortem of deceased and lash chakas form at Ex.3/A, post mortem examination report of deceased at Ex.3/B and receipt obtained from SIP Mehmood regarding handing over dead body of deceased after post mortem at Ex.3/C. Evidence of PW-2, Muhammad Afzal (Tapedar) was recorded vide Ex.4, who produced sketch of place of incident at Ex.4/A. Evidence of PW-3 Dost Muhammad (complainant) was recorded vide Ex.6, who produced receipt of dead body of deceased after post mortem at Ex.6/A and FIR at Ex.6/B. Evidence of PW-4, Nisar Ahmed (eye witness and mashir) was recorded vide Ex.7, who produced Danishnama at Ex.7/A, mashirnama of dead body at Ex.7/B, mashirnama of clothes of deceased at Ex.7/C, mashirnama of place of incident at Ex.7/D, mashirnama of arrest of accused

at Ex.7/E, mashirnama of recovery of pistol and bullets on pointation of accused at Ex.7/F and his statement recorded u/s 164 Cr.P.C at Ex.7/G. Evidence of PW-5, WHC Mumtaz Ali (Incharge of malkhana) was recorded vide Ex.8, who produced entry recorded in register of malkhana about depositing articles of case property in malkhana of PS at Ex.8/A. Evidence of PW-6, SIP Mehmood Ahmed (investigation officer) was recorded vide Ex.9, who produced daily diaries of the entries about his movements and recovery made by him during the course of investigation . Letter addressed to Mukhtiarkar for heirship certificate of deceased at Ex.9/H, letter addressed to Mukhtiarkar for providing list of legal heirs of deceased at Ex.9/I, letter submitted in Court of Civil Judge & Judicial Magistrate Sakrand for recording 164 Cr.P.C statements of witnesses at Ex.9/J, notice issued ot the witnesses for attending Court of Civil Judge & Judicial Magistrate Sakrand for recording 164 Cr.P.C statements at Ex.9/K, RC No.17 at Ex.9/L, RC No.18 at Ex.9/M, daily diary entries No.19 and 15 at Ex.9/N, report of Sindh Forensic DNA & Serology Laboratory about blood stained clothes of deceased and blood stained earth secured from place of incident at Ex.9/O and report of ballistic expert at Ex.9/P. Vide statement at Ex.10 ADPP for the State closed prosecution side of evidence.

5. The statement of the accused was recorded under section 342 Cr. P.C. at Ex:11, wherein he claimed his innocence; however, he neither examined himself on oath nor any witness in his defence to disprove the charges as required under Section 340(2) Cr.P.C.

6. The learned trial Court after hearing the learned counsel for the respective parties and appraisal of the evidence, convicted and sentenced appellant Sain Bux in a manner as stated above. The conviction and sentence, recorded by the learned trial Court, have been impugned by appellant Sain Bux before this Court by filing the instant Criminal Appeal.

7. Learned counsel for the appellant submits that the impugned judgment is against the law and facts of the case; that the appellant is innocent and has falsely been implicated in the present case; that all the witnesses cited in the case are closely related; that no independent person has been shown as a witness to believe that the appellant has committed the offence; that the medical evidence conflicts with the ocular testimonies; that there is a contradiction in the statements of witnesses; that appellant

Sain Bux in his statement u/s 342 Cr. P.C, while denying the prosecution allegations, stated that he had been falsely implicated in this case as Mst. Rukhsana was a woman of questionable character, and he made such a complaint to her questionable to her brother/complainant Dost Muhammad, who committed her murder; however, he falsely involved him in this case. Learned counsel for the appellant further contended that there was a delay of about 9 hour in lodgment FIR though the distance between the place of incident and the police station is about 10 to 11 kilometres. He further contended that there is inconsistency in the ocular account as PW-3 Dost Muhammad, in his cross-examination, stated that they were not served tea whereas PW-4 Nisar Ahmed said that Mst. Rukhsana served tea to him as well as the complainant. The complainant states in his cross that two cots were lying in the room where the incident occurred, and Mst. Rukhsana was sitting alone, whereas PW-4 stated he was sitting with Mst. Rukhsana on the cot. He further urged that in the examination-in-chief of PW-3 and Pw-4, they stated that Sajjad, son of the appellant and deceased Mst. Rukhsana was present at the time of the incident, but the prosecution did not examine him. Therefore the adverse presumption could be drawn that he was unfavourable to the prosecution, that is why he could not be examined. He also urged that as per the post-mortem report, the dead body was identified by Dost Muhammad and Torab, brother of deceased Mst. Rukhsana, but Torab was neither examined in the investigation nor durig the trial. PW-1 Dost Muhammad, in his cross-examination, stated that they shifted the dead body of Mst. Rukhsana in the vehicle of Babu Mangsi, who was not examined either by the investigation or the trail court. PW-2 Tapedar, he prepared a sketch of the place of the incident. However, per the discloser made by the complainant to PW-2, who prepared the sketch Point-A where the deceased Mst. Rukhsana was shown to sustain an injury, and point No. B the position of the appellant where he was standing both were at a distance of 20 feet. Whereas, PW-1 Dr Nasreen stated in her cross- examination that the deceased sustained firearm injury at a distance of three feet and there was no blackening or cheering. He further contended that the bullet hit the deceased on her neck and chest, but there was no hole on the last wearing cloth. The I.O. of the case did not collect the last wearing clothes from the doctor, but the complainant produced the same during his evidence. As per the evidence of the complainant while shifting Mst. Rukhsana to the hospital; blood was smeared on his clothes, but the

same was not produced to the I.O. for chemical examination. The R.C. certificate produced by the investigation officer shows that only one empty was sent to the ballistic expert, whereas the ballistic expert report shows that 30 bore pistol and one empty, the I.O foisted weapon upon the accused at the instance of the complainant. Lastly, he contended that the prosecution has miserably failed to prove its case against the appellant, and thus, according to him, the appellant is entitled to acquittal.

8. While rebutting the above contentions, learned counsel for the complainant and learned Additional Prosecutors General, Sindh for the State argued that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt, that there is an obvious motive for committing the murder by appellant. The ocular evidence is fully corroborated by the medical testimony. They next submitted that there was a daylight incident which took place inside the house of the accused; therefore, there is no misidentification. The accused preplanned carrying a weapon with him to kill the deceased due to some dispute between them. It is further submitted that the incident occurred on the day of Eid, when the presence of PWs at the place of incident was natural, and their presence were not denied. However the learned counsel for complainant and additional prosecutor admitted that the murder of Mst Rukhsana took place on spur of movement without any premeditations, they prayed for the dismissal of the instant appeal.

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

10. Reassessment of the entire episode of the prosecution case reveals that an innocent lady has lost her life at the hands of appellant who is her husband. The whole case of the prosecution depends upon the ocular, medical and circumstantial evidence produced before the learned trial court. The prosecution examined the complainant Dost Muhammad, PW Nisar Ahmed, who is also mashir of this case. PW Dr. Nasreen Begum (Woman Medical officer), PW Tapedar Muhammad Afzal, PW WHC Mumtaz Ali and PW Investigation Officer SiP Mehmood Ahmed.

11. The complainant Dost Muhammad in his evidence, narrated the same facts as mentioned in the FIR; however, for the sake of convenience, the evidence of the complainant is reiterated here precisely.

He deposed in his examination-in-chief that he by profession is a government servant and accused Sain Bux is his cousin and deceased Mst. Rukhsana is his sister. He further stated that the deceased sister Rukhsana had a son, namely Sajjad Hussain Magsi, after marriage with Mst. Rukhsana accused Sain Bux used to subject her to torture. On 25.05.2020 it was Eid Holiday; he proceeded to the house of his sister Mst. Rukhsana for greeting her Eid. On reaching her house, he saw that his maternal cousin Nisar Ahmed and his nephew Sajjad Hussain were available in the house. He reached the house at about 12:00 in the noon. They were all chatting with each other. At that time, his brother-in-law /accused Sain Bux entered the house and shouted at Mst. Rukhsana. He tried to intervene and restrain the accused from scolding Mst Rukhsana but accused Sain Bux became annoyed and drew a pistol from the folder of his Shalwar and fired upon her, which hit her on the base of her neck. He tried to catch hold of the accused and apprehend him but accused Sain Bux pointed his Pistol towards him and escaped away. He saw that his sister was lying in an injured condition and unconscious. He arranged transport and shifted his injured sister to Taluka Hospital Sakrand for treatment; however, immediately after reaching the hospital, she expired, and doctors certified her death. The complainant informed the police of PS Mari Jalbani, who arrived at the hospital and inspected the dead body of the deceased in the presence of Sajjad Hussain and Nisar Ahmed. After post mortem, the compliannat received the dead body from the police, and the police obtained a receipt from him. On the same date viz 25-05-2020, at 11:20 pm night, he reached P.S Mari Jalbani and lodged FIR, he further stated that on the same date, he pointed out the place of the incident to the investigation officer from where he secured the deceased's blood, an empty bullet which was sealed in the presence of mashirs. On 27.05.2020, SIP Mehmood Ahmed arrested the accused Sain Bux from village Bheda. He prepared mashirnama of his arrest in the presence of Sajjad and Nisar Ahmed.

12. The eye-witness, namely Nisar Ahmed, who is also mashir in this case, by supporting the version of the complainant, reiterated the same facts as narrated by the complainant. Further he stated that 01.06.2020, during interrogation, the accused consented to produce the weapon which he used in the crime and disclosed that he had concealed the Pistol under a heap of banana leaves. The Pistol was recovered on the piontation of the

accused. The Pistol was wrapped in a black plastic bag and the accused disclosed that he committed the murder of the deceased with this unlicensed Pistol. The Pistol was loaded with 02 live bullets, and its barrel was emitting the smell of gunpowder. The Investigation officer sealed the Pistol and prepared such a mushirnama, and separate FIR under Arms Act was registered against the accused.

13. Besides, PW-5 WHC Mumtaz Ali deposed that on 26.05.2020, he was posted as WHC at P.S Mari Jalbani. On that day, he received sealed parcels of case property containing blood-stained earth, clothes of the deceased and an empty bullet shell which were sealed in separate parcels. SIP Mehmood, SHO PS Mari Jalbani handed over to him for keeping the same in Malkhana of P.S. He recorded entry in register No.19 and kept the parcels mentioned above in malkhana of P.S.

14. The investigating officer SIP Mehmood Ahmed recorded his examination-in-chief; however, for the sake of brevity, the leading narration of this witness is reproduced here. He deposed that on 25.05.2020, he was posted as SIP/SHO at PS Mari Jalbani. On the same day at 1300 hours, Dost Muhammad Magsi informed through a mobile phone call that his sister Mst. Rukhsana had been murdered by her husband, Sain Bux Magsi, by firing a pistol shot on her. Dost Muhammad further informed that the dead body of Mst. Rukhsana has been lying in Taluka Hospital Sakrand and requested to initiate legal proceedings. He recorded relevant entries in the daily diaries; after that, he, along with his staff, proceeded to Taluka Hospital Sakrand, where he inspected the dead body of Mst. Rukhsana in the mortuary in the presence of mashirs Nisar and Sajjad. He prepared lash chakas Form, Danishtnama and Mashirnama of the dead body and obtained signatures of mashirs. He further deposed that the deceased Mst. Rukhsana had an injury on the base of her neck above her chest, which was through and through and exited from her back. The dead body of Mst. Rukhsana was handed over to Woman Medical Officer for postmortem. After the postmortem, he handed over the dead body to the complainant for funeral and burial and obtained a receipt from him. He further deposed that on the same date 25.05.2020 at 2300 hours Dost Muhammad, Sajjad Hussain, and Nisar arrived at PS Mari Jalbani. Dost Muhammad disclosed an incident which was a cognizable offence; therefore, he lodged FIR. On the same date, he recorded statements of PWs

Nisar and Sajjad. On 26.05.2020 at 0720 hours in the morning, complainant Dost Muhammad produced blood-stained clothes of the deceased in the presence of Nisar and Sajjad. He sealed the clothes of the deceased and prepared mashirnama and obtained Mashir,s signatures on a sealed parcel. He handed over a sealed parcel of clothes of the deceased to WHC for depositing the same in malkhana of P.S. On the same date, he, along with the complainant and mashirs Nisar and Sajjad left P.S. and reached the place of the incident on pointation of the complainant; he inspected the place of incident and secured blood of the deceased and an empty bullet shell of 30, both were sealed separately. He prepared mashirnama of the place of the incident and obtained the signatures of mashirs Nisar and Sajjad. He deposed that on 27.05.2020 arrested accused Sain Bux on pointation of the complainant and in the presence of mashirs Nisar and Sajjad and prepared such mashirnama. After that, he returned to P.S. along with the accused. On 01-06-2020, the I.O of the case interrogated him about the weapons on which the accused voluntarily handed over the pistil used in the crime.

15. The counsel for the appellant emphasised that the complainant is a resident of District Council Nawabshah, which is 30 km away from the scene of the occurrence. Therefore, the complainant's availability at the relevant time at the place of incident is unnatural, he cannot be considered a natural witness; instead, he is a chance witness. The defence counsel further claimed that the complainant and eyewitness PW-4 Nisar Ahmed are cousins and that there is no independent witness to back up the prosecution's case. The mere relationship of the prosecution witnesses with the deceased cannot be used to distrust the witnesses testimony just because they are blood relatives. The complainant and PW said very clearly that 25.05.2020 was Eid holiday, and they came to the house of the deceased for Eid greetings, where this incident occurred. In the lengthy cross-examination, the PWs justified their attendance at the scene of the occurrence at the relevant time and have supported each other on main aspects of the case. The learned Counsel further highlighted the differences in the complainant's and PW-4's evidence. The complainant stated in cross-examination that Mst. Rukhsana did not serve him tea; however, PW Nisar stated in cross-examination that she did so. This is not the material contradiction to doubt the prosecution case on. Finally, the

defence counsel contended that according to PW No. 1 Dr. Naseem Bengum's cross-examination, the shot at the deceased was fired at a distance of 3 feet; however, there was no blackening or charring present on the dead body of the deceased; hence there is a contradiction between medical and ocular testimonies. We observe that various causes, casual differences and conflicts in medical evidence and the ocular version are extremely probable. When live shots are fired, witnesses make only a tentative assessment of the distance between the deceased and the assailant; they cannot calculate the exact length. It becomes highly improbable to mention the location and the exact distance of the fire shots accurately. Minor differences in medical evidence relating to the form of injuries do not negate direct evidence because witnesses are not required to provide a photocopy of their ocular report. Even otherwise the discrepancy between the ocular account with the medical evidence in the present context of the case is not material, in this context we have taken help from the recent case of **NASIR AHMED V/S The STATE 2023 S C M R 478, paragraph no 6 of the judgment is reproduced as under:**

The value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it becomes highly improbable to correctly mention the location of the fire shots with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence.

16. This is admitted fact that the incident wherein the sister of the complainant lost her life had taken place on 25.05.2020 at 1200 hours, whereas the matter was reported to the police at 2320 hours, on the same night while the inter se distance between the place of occurrence and the Police Station was 10 to 11 kilometres. This aspect of the case reflects that

the matter was reported to the police promptly without delay. The complainant is the brother-in-law and cousin of the appellant-accused, whereas P.W-4 Nisar is also a cousin of the deceased; therefore, there is no chance of misidentification of false implication of the appellant. The prosecution in order to establish its case, has mainly relied upon the statements of Dost Muhammad, the complainant (PW-1) and Nisar Ahmed (PW-4), these prosecution witnesses were subjected to lengthy cross-examination by the defence, but nothing favourable to the appellant or contrary to the prosecution case could be produced on record. These PWs remained consistent, trustworthy and unimpeachable on each material point of the prosecution case. Therefore, it can safely be concluded that the ocular account provided by the prosecution is consistent, straightforward and confidence-inspiring.

17. The medical evidence available on the record is in line with the ocular version so far as the nature, locale, time and effect of the injuries on the deceased's person are concerned. We have categorically asked the learned counsel for the appellant reasons of the implication of the accused in this crime, on which no reasonable explanation has been given. Even the son of the appellant, Sajad Hussain, who was shown to be present at the time of the incident, did not come forward to give evidence in defence of the appellant, his father. It is a well-established principle of law that the mere relationship of the prosecution witnesses with the deceased cannot be a ground to reject the evidence of such witnesses.

18. During proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eyewitnesses. As discussed above, that are not material contradictions which can put dent to the prosecution case. Minor differences are unavoidable due to lapse in remembrance caused by the preceding interval and may occur spontaneously. The accused cannot gain from such slight differences. Eyewitnesses have provided information about the incident, proving that they observed the horrific event. So far as the recovery of the weapon of offence i.e. pistol from the appellant, is concerned, the occurrence happened on 25.05.2020 while the weapons were recovered on pointation of the appellant from the banana garden on 01.06.2020. after six days of the incident. The recovered pistol was sent to the Ballistic Expert on 03-06-2020. According to the Ballistic expert report, says "one 7.63mm

(30) bore pistol now marked as "C" was fired from the above mentioned 7.63mm(30) bore pistol No. rubbed, in question, in view of the major points i.w.striker pin marks, breech face marks and ejector marks etc are **similar**". In these circumstances, it is safe to say that the prosecution has produced credible evidence to support the appellant's conviction.

19. However, in terms of punishment, we believe that the incident occurred on the spur of the moment and that there was no premeditation on the side of the appellant. The incident happened in the appellant's home on Eid day when the complainant and Nisar PW-4 came to meet her. A profound examination of the record suggests that something occurred soon before the occurrence that prompted the appellant to fire on the deceased. In response to our precise question, the learned Additional Prosecutor General and the complainant's counsel could not deny that the incident occurred on the spur of the moment. Admittedly, the appellant made a single fire upon the deceased and did not repeat the same. It is admitted that the appellant and the deceased were husband and wife; their marriage took place about 30 years ago; during such period, there was no slight skirmish either reported at the police station or before any court of law, even both eyewitnesses did not state the exact bone of contention between the appellant and his wife which culminated in Mst Rukhsana's murder. It is also undisputed that there is no record of deep-seated animosity between the parties. We have drawn the wisdom from the recent case law from these identical facts and circumstances, in the case of **MUHAMMAD ABBAS V/S The STATE, 2023 S C M R 487** , **paragraph no 06 of the judgment is reproduced as under**

“ There is no denial to this fact that the unfortunate incident wherein brother of the complainant lost his life had taken place on 09.04.2009 at 9:00 p.m. whereas the matter was reported to the police at 01:20 a.m. on the same night while the inter se distance between the place of occurrence and the Police Station was 25 kilometers. This aspect of the case clearly reflects that the matter was reported to Police promptly without there being any delay. As the parties were related to each other, therefore, there is no chance of misidentification. In order to prove its case, the prosecution has mainly relied upon the statements of Ameer Hussain, complainant (PW-1) and Muhammad Amin (PW-2). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioners or adverse to the prosecution could be produced on record. These PWs remained

consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical evidence available on the record is in line with the ocular account so far as the nature, locale, time and impact of the injuries on the person of the deceased is concerned. So far as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the petitioners is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the petitioners could not point out any reason as to why the complainant has falsely involved the petitioners in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query she remained unsuccessful and could not point out any major contradiction, which could shatter the case of the prosecution. On account of lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally. The accused cannot claim benefit of such minor discrepancies. The eye-witnesses have given details of the occurrence, which prove that they have witnessed the tragic death of Sarfraz. The motive had not been seriously disputed by the defence, therefore, it was rightly believed by the courts below. So far as the recovery of weapon of offence i.e. churries from the petitioners is concerned, the same has rightly been held inconsequential by the learned Trial Court by holding that the occurrence took place on 09.04.2009 while the weapons were recovered on pointation of the petitioners from their house on 20.02.2011 i.e. after about two years. Admittedly, the said house was a joint house wherein the other members of the petitioners' family were also residing. During this period, the petitioners did not reside in their house. Furthermore, the churries were allegedly recovered on 20.02.2011 but the same were sent to office of Chemical Examiner on 29.09.2011 i.e. after elapse of seven months for which no explanation has been given. In these circumstances, it can safely be said that the prosecution has brought on record reliable evidence to sustain the conviction of the petitioners. However, so far as the quantum of punishment is concerned, we are of the view that the occurrence took place at the spur of the moment and there was no pre-meditation on the part of the petitioners. Admittedly, the occurrence took place in the house of the petitioners where the complainant party had brought a jirga for return of Mst. Shakeela, niece of the complainant, who was married with petitioner Muhammad

Nawaz against the will of her parents. A bare perusal of the record reveals that something happened immediately before the occurrence, which provoked the petitioners and they caused churri blows on the person of the deceased. On our specific query, learned Law Officer and learned counsel for the complainant could not deny the fact that the occurrence took place at the spur of the moment. Admittedly, both the petitioners did not repeat their act. There was no deep rooted enmity between the parties. In these circumstances, the learned High Court ought to have taken a lenient view. Consequently, we convict the petitioners under section 302(c), P.P.C. and sentence them to fourteen years RI each. The amount of fine and the sentence in default whereof shall remain intact”

20. In light of the above discussion and keeping in view of the facts and circumstances of the case in hand the death reference No.19 of 2020 under Section 374 Cr.P.C is answered in negative. We convert the conviction and sentence of the appellant from under section 302(b) to 302(c) P.P.C. and sentence him to fourteen years R.I. However the amount of compensation u/s 544-A Cr.P.C and sentence in default whereof shall remain intact. Accordingly, this appeal is partly allowed to the extent of modification and reduction in sentence and the impugned judgment is modified as stated above and so also the death reference which is disposed of accordingly, with benefit of Section 382-B Cr.P.C.

The appeal is accordingly disposed of.

JUDGE

JUDGE