

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Jail Appeal No.D-18 of 2020
Cr. Acq. Appeal No.D-41 of 2020
Confirmation Case No.10 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(s)
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18-10-2023

Mr. Aslam Pervez Khan advocate for the appellant.

Mr. Meer Ahmed Mangrio advocate for complainant.

Mr. Shawak Rathore Deputy Prosecutor General.

In the appeal against conviction we have heard learned counsel for the appellant and learned DPG and learned counsel for complainant in reply. We have also heard learned counsel for complainant in the appeal against acquittal of Mst. Maryam. Reserved for judgment.

Conviction on Confession before police on video with
Stray corroborative evidence

**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

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Cr. Jail Appeal No.D-18 of 2020

Confirmation Case No.10 of 2020

[Saeed Muhammad versus The State]

Cr. Acquittal Appeal No.D-41 of 2020

[Salim Khan versus The State & another]

BEFORE:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Khadim Hussain Tunio

Appellant: Through Mr. Aslam Pervaiz, Advocate

Complainant: Through Mr. Meer Ahmed Mangrio, Advocate

State: Through Mr. Shawak Rathore, Deputy P.G.

Date of hearing: 18.10.2023

Date of Judgment: 24.10.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Appellant Saeed Muhammad alongwith co-accused Mst. Maryam (since acquitted) was tried by the Court of learned Additional District and Sessions Judge / Model Criminal Trial Court Jamshoro @ Kotri in Sessions Case No.271 of 2019 [The State versus Saeed Muhammad and another], outcome of Crime No.289 of 2019 registered at P.S Kotri under Section 302 and 34 PPC and after full dressed trial vide Judgment dated 21.02.2020 the appellant Saeed Muhammad was convicted and sentenced to death, subject to confirmation by this Court, with further directions to pay Rs.5,00,000/- as compensation to the legal heirs of deceased, whereas co-accused Mst. Maryam was acquitted of the charge, as such, appellant Saeed Muhammad challenged his conviction through Criminal Jail Appeal No.D-18 of 2020, whereas complainant has challenged the acquittal of co-accused / respondent Mst. Maryam through Criminal Acquittal Appeal No.D-41 of 2020.

2. The brief facts of the prosecution case, as per FIR lodged by Complainant Salim Khan on 20.09.2019 at 2030 hours are that his brother Umar Hayat aged about 28 years had solemnized second marriage with Mst; Maryam (acquitted accused); that his above brother had taken the house on rent in Miskeen

Colony Kotri and shifted there with his wife and brother-in-law (accused Saeed); that his brother was not coming to them as such he alongwith his cousin Abdul Qadir went to the house of his brother on motorcycle; that as soon as they entered in the house, they saw that dead body of his brother Umar Hayat was lying in the room on Kalen and the throat of deceased was cut and the blood had already oozed in huge quantity, while Mst. Maryam and Saeed Muhammad (accused persons) were standing there, who on seeing them tried to run away but they raised hue and cry, on which owner of the said house Syed Muhammad Shah and other neighbors gathered there and they apprehended both the accused persons and informed the police, then police came over there and arrested both the accused and after necessary formalities subject FIR bearing Crime No.289 of 2019 was lodged at P.S Kotri under Section 302 and 34 PPC.

3. After usual investigation the matter was challaned and the accused were sent up to face trial. Both the accused plead not guilty to the charge and claimed trial.

4. In order to prove its case, the prosecution examined seven (07) witnesses who exhibited various documents and other items. The accused in their S.342 Cr.PC statements denied the allegations leveled against them. However they did not give evidence on oath or call any witness in support of their defence case.

5. After hearing the parties and appreciating the evidence on record the trial Court convicted and sentenced appellant Saeed as mentioned earlier in this judgment and acquitted the respondent Mst. Maryam. Hence, the appellant has filed an appeal against his conviction and the complainant has filed an appeal against acquittal in respect of respondent Mst. Maryam.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment passed by the trial Court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant Saeed Muhammad argued that the charge is defective; that the accused is innocent and has falsely been implicated in this case by the complainant in order to usurp the shop of deceased Umar Hayat; that there is a delay in lodging the FIR; that there is no eye witness to the murder of Umar Hyat; that there are numerous contradictions in the evidence of prosecution witnesses who are all related but same have been ignored by the learned trial Court; that on the same set of evidence co-accused has been acquitted of the charge, as such appellant is also entitled for the same relief and that based on any or all of the above factors the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions, learned counsel has placed reliance on the case laws reported as **Munir Ahmed and**

another v. The State (2019 SCMR 79), Altaf Hussain v. The State (2019 SCMR 274), Abdul Jabbar and another v. The State (2019 SCMR 129), Qutib v. The State (2019 MLD 162), Muhammad Akram v. The State (2009 SCMR 230), Basharat Ali v. Muhammad Safdar and another (2017 SCMR 1601), Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others (2017 SCMR 1710), Nadeem Akhtar v. The State (2020 P.Cr.L.J 839) and Muhammad Saddique v. The State (2018 SCMR 71).

8. On the other hand learned D.P.G fully supported the impugned judgment. In particular he stressed that the appellant had been caught red handed on the spot where the dead body was found: that the appellant was living in that house: that all the witnesses gave reliable and confidence inspiring evidence: that the appellant lead the police to the murder weapon on their pointation and that the appellant had confessed to the crime which was captured on USB the motive being that the deceased had refused to pay 9 lacs which he had promised to pay him for allowing the deceased to marry his sister Maryam. Learned counsel for the complainant adopted the arguments of learned APG. In support of their contentions they placed reliance on the case of **Munir Ahmed v. The State** (2001 SCMR 241), **Muhammad Iqbal v. The State** (PLD 2001 Supreme Court 222), **Muhammad Mansha v. The State** (2016 SCMR 958), **Muhammad Mushtaq v. The State** (PLD 2001 Supreme Court 107), **Allah Bakhsh v. Ahmad Din and 2 others** (1971 SCMR 462) and **Muhammad Akbar v. The State** (1998 SCMR 2538) and **Zakir Khan and others v. The State** (1995 SCMR 1793).

9. With regard to the appeal against acquittal which had not as yet been admitted to regular hearing learned counsel for the complainant contended that since the appellant had been convicted on the same set of evidence the respondent too also must be convicted and hence he prayed for her conviction.

10. We have heard the arguments of the learned counsel for the appellant, learned Deputy Prosecutor General Sindh and learned counsel for the complainant and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar. This single judgment will decide the fate of both captioned appeals, which have been filed against conviction and acquittal of accused, respectively.

11. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports, recovery of bloodied churries and blood at the crime scene we find that the prosecution has proved beyond a reasonable doubt that Umar Hayat (the deceased) was murdered by having his throat cut on 20.09.2019 in the house situated in Miskeen Colony Kotri.

12. The only question left before us therefore is whether it was the appellant who murdered the deceased by cutting his throat at the said date and location?

13. At the outset we do not find the charge to be defective as it contains sufficient notice of the offence, date, location and brief facts of the murder which the appellant had to defend himself against. It is quite clear from the evidence that the appellant knew precisely the charge against him and what he had to defend himself against as is illustrated through his cross examination of the witnesses.

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) That the FIR was lodged with promptitude on the same day of the offence. Any slight delay in lodging the FIR was caused because the complainant was organizing taking the deceased to hospital, calling the police, waiting at the hospital for the post mortem to be completed and bringing the body home and thereafter he immediately lodged the FIR. In this case the appellant was arrested on the spot in the house where he was living with the dead body and as such there was no time to cook up a false case against the appellant and no prejudice has been caused to the appellant nor benefit gained by the complainant. Thus, we find that there has been hardly any delay in lodging the FIR and even such slight delay has been fully explained. In any event the accused is named in the FIR with a specific role as he was arrested on the spot and neither the prosecution has been benefited nor the accused prejudiced on account of such slight delay in lodging the FIR which based on the particular facts and circumstances of the case is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) That according to the evidence on record the respondent married the deceased about 7 days before his murder and the appellant (brother of the respondent), respondent and deceased were all living in the same property where the deceased was murdered.

(c) That according to the evidence of **PW 1 Salim** who was the brother of the deceased and also the complainant he had not seen the deceased for a few days. The deceased used to visit him regularly so out of concern he went to the house of the deceased with his cousin **PW 2 Abdul Qadir** where he found the dead body of the deceased lying in his house with his neck cut. He saw that blood had heavily oozed from his wound. He saw the appellant and the respondent present in the house who tried to run away. He raised cries and the neighbor **PW 3 Muhammed Shah** came to the house whose house was adjacent and whose uncle had let the house to the deceased. Many people gathered and the appellant was caught hold of along with the respondent. According to his evidence **PW 3 Muhammed Shah** called the police who reached the house and after completing the formalities sent the dead body to hospital. After the post mortem the complainant lodged the FIR naming the appellant and the respondent as the persons who had murdered his brother.

The complainant although related to the deceased had no ill will or enmity towards the appellant and had no reason to implicate him in a false case. He gave his evidence in a straightforward manner and his evidence was not dented during cross examination. He was not a chance witness as he

was searching for his brother who had failed to visit him. He lodged his FIR with promptitude nominating the appellant in the FIR with specific role and his evidence was not materially improved from his previously lodged FIR. We have no reason to disbelieve his evidence which we find to be reliable trust worthy and confidence inspiring and we believe the same and rely on his evidence.

(d) **PW 2 Abdul Qadir** corroborates the evidence of PW1 Salim in all material respects and gives evidence that the appellant and the respondent who were caught by the on lookers on the spot were also handed over to the police on their arrival at the spot. He is named in the promptly lodged FIR and his S.161 Cr.PC statement was made with promptitude and his evidence was not materially improved from his S.161 Cr.PC statement. Although related to the deceased once again he had no enmity or ill will with the appellant which could lead him to falsely implicate him in this case. As such we believe his evidence and the same considerations apply to him as to PW 1 Salim.

(e) **PW 3 Syed Muhammed Shah** is an independent witness whose uncle had rented out the house to the deceased. He lived adjacent to the house where the deceased was murdered. According to his evidence on hearing cries from the house of the deceased he went there where he found the complainant and PW 2 Abdul Qadir. He saw the dead body which had its throat cut and blood was oozing. The appellant and the respondent had been caught hold of by the Mohalla people. He called the police and the appellant and respondent were handed over to the police. According to his evidence the police interrogated the accused on the spot who lead them on his pointation to the 3 blood stained churries which had been hidden in a box in the house.

He is named in the FIR, he gave his S.161 Cr.PC statement with promptitude which was not materially improved during cross examination. He was an independent witness. He was not a chance witness as his uncle rented out the property to the deceased and he lived next door. He gave his evidence in a natural manner and was not dented during a lengthy cross examination. His evidence corroborates that of PW 1 Salim and PW 2 Abdul Qadir as to their discovery of the dead body and the capture of the appellant and the respondent on the spot. We believe his evidence and the same considerations apply to him as to PW 1 Salim and PW 2 Abdul Qadir.

(f) **PW 4 Noor Ali Khan.** He is a relative of the deceased and according to his evidence on 20.09.19 he was called by PW 2 Abdul Qadir and informed that the deceased had been murdered and told him to come to the house. He lived close by and came to the house. When he reached the house he saw PW 1 Salim, PW 2 Abdul Qadir and PW 3 Syed Muhammed Shah. He saw the dead body which had been cut at the neck and also had injuries to the abdomen and right wrist and other parts of the body from which blood was oozing. He also saw the appellant and the respondent who were arrested in his presence by the police and he became a witness of arrest and recovery. The appellant confessed before him and the police and took them on his pointation to a box in the house where three blood stained churries were recovered along with blood from the scene. According to his evidence on 30.09.2019 the accused gave a detailed confession to the police which was recorded on USB and also transcribed. Both the USB and transcripts were exhibited at trial. Once again his evidence corroborates the evidence of PW 1 Salim, PW 2 Abdul Qadir and PW 3 Syed Muhammed Shah. He had no reason to falsely implicate the appellant and the same considerations apply to his evidence to PW 1, 2 and 3 which is mentioned above.

(g) **PW 7 ASI Nasar Ahmed** was the IO in the case. According to his evidence on receipt of PW 3 Syed Muhammed Shah's phone call,

informing him about the murder on 20.09.2019 he immediately reached the house. On his arrival at the house he found PW 1 Salim, PW 2 Abdul Qadir and PW 3 Syed Muhammed Shah. He saw the dead body of the deceased whose throat had been cut and also had other injuries. PW 1 Salim informed him that the appellant and the respondent who they had caught hold of had murdered the deceased and as such he arrested both of them and prepared memo of arrest and recovery. The appellant Saeed confessed to the murder and on his pointation he recovered three blood stained churries. PW 4 Noor Ali acted as Mashir. He confirmed that PW 3 Syed Muhammed Shah's house was next door. He lodged the complainant Salim's FIR after returning from hospital where the dead body had been taken for post mortem. According to his evidence on 30.09.2019 the appellant confessed to the crime which he recorded on his mobile phone, transferred to USB which was exhibited along with the transcripts.

The confession before the police of the appellant and the respondent are reproduced below for ease of reference.

STATEMENT OF SAEED MUHAMMAD

Question	Now tell us the complete facts, why you committed the murder?
Answer	We had given the hand of my sister to Umer in lieu of Nine Lac Rupees, Umer said to us that I would give you an amount. When we solemnized Nikah and reached there, after that he was not providing the amount, due to that I had committed his murder. My sister is not guilty in this crime and there is no relation of my sister with this crime.
Question	When you came from Quetta?
Answer	Seven days has been passed and we are here. After seven days, I had committed his murder. My sister is not guilty in this crime and I am guilty in this crime completely.
Question	That is not her fault, this is completely your fault, but you tell us the complete and accurate facts that why you had committed his murder? Which crime he had committed and why you had committed his murder?
Answer	We had given the hand of my sister in lieu of Nine Lac Rupees to him, and he was not providing such amount to us. On such grounds, I had committed his murder.
Question	How much amount?
Answer	Nine Lac (Rs.900,000/-)
Question	Nine Lac of what? Which amount?
Answer	He had not provided the amount to us because we had given hand of my sister in lieu of Nine Lac Rupees.
Question	You had given the hand of your sister in lieu of amount?
Answer	Yes,
Question	How many days had been passed in marriage?
Answer	The Seven days had been passed in marriage.
Question	Where Nikah was performed? (Quetta)
Answer	Nikah was performed at Quetta.
Question	Where Nikah was written / performed?
Answer	The Nikah was written / performed in Mosque.
Question	At which village, the Nikah was performed, what is name of Village and what is the name of that city?
Answer	The Nikah was performed by Moulana and I do not know him.
Question	I am not talking about Moulana? Where Nikah was performed, either in village Quetta or in Chaman?
Answer	Hazar Ganji Quetta, Hazar Ganji,
Question	Quetta Hazar Ganji?
Answer	Yes, Quetta Hazar Ganji.
Question	He came there by himself or Umer brought him?
Answer	Yes yes, he came there, performed Nikah, after that he was not giving such amount, due to that I had committed his murder. My sister is not guilty in this crime, kindly leave my sister.
Question	At the time of Nikah, which persons were there and which persons were there with your sister?

Answer	The sons of my uncle.
Question	Tell their names?
Answer	Qasim, Naseem and Muhammad Karim.
Question	They were present there and where was your mother?
Answer	Yes, my mother was also there.
Question	Either she knew that the Umer had been died or not? Your mother has been passed away?
Answer	She is alive.
Question	Where your mother is now?
Answer	She is in Afghanistan.
Question	Afghanistan? At the time of Nikah, your mother was not there?
Answer	She was came there at Quetta.

STATEMENT OF MST. MARYAM

"My husband has been died, and he left with me one daughter. My family and relatives said to me that do not solemnize marriage with this person (Umer). I loved him. Three years before, I fell in love with him and he also fell in love with me. I solemnized marriage with him on love. He said to me that "I will sacrifice myself because of you. As I alive, I will bear all the hardships till my last breath and I only want to spend my life with you." Umer said to me that your brother can also live with us, but I did not want that my brother live us because he is until young and I feared about such things. When my younger daughter used to sleep with him in a room and I always being feared about such things, because that the brother of Nazia Iqbal (a famous Pashto singer) done with her niece and when my brother came together with me, my brother stand up and said to me that "Umer is by caste Masood and he is still young, he can divorce you tomorrow (at any time)." I told him that if he divorces me then I will clean up the gutter lines of Sindh and Punjab, but I will not leave this place and will reside here in the name of Umer." When Umer came in house, on that my brother locked me in the kitchen and he also closed the door after coming of Umer in the house, and I was hearing the sound of Umer, I was also hearing the cries of Umer and I was also making the sound, but it was out of my limit and after that he had committed the murder of my husband. He (my brother) closed the domestic things and ousted me from house and said to me that "if you not come together with me, then somebody will come behind you and they will kill you." After that I think that now where should I go, as I also denied residing with Sulleman Khel by caste Afghani, at where I also did the same thing, therefore, I reluctantly joined the hand of my brother. If I do not love with Umer, I would not left Afghanistan and came here".

Usually confessions before the police are inadmissible in evidence. However in this case the confession is recorded the recorder of the confession PW 7 ASI Nasir Ahmed exhibited it in USB form before the trial court along with translations. The confession is in line with the prosecution case and also discloses the appellant's motive for the murder. He also fully exonerates the respondent who in her own statement reproduced above corroborated the appellant's confession.

Thus, based on the particular facts and circumstances of this case we give **some weight** to the recorded confession when read in light with all the other evidence in a holistic manner.

PW 7 ASI Nasir Ahmed was a natural witness and no ill will or enmity has been suggested against him by the appellant and as such he had no reason to falsely implicate the appellant in this case, for instance, by foisting the churri on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness and as such we rely on the evidence of PW 7 ASI Nasir Ahmed who was the IO in the case. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).

(h) That the appellant has not denied that he was living in the house with the deceased and the respondent and that he was present with the body in the house at the time of his arrest. If he was innocent why had he not lodged the FIR. Instead he had no explanation as to how the deceased had been murdered in the house in which he was residing in the most brutal manner apart from saying that he had been falsely implicated.

(i) That the blood recovered at the scene, from the clothes of the appellant and the deceased and blood on the churries all lead to positive chemical reports. The appellant has offered no explanation as to how his clothes became blood stained.

(j) That the medical evidence is corroborative of the injuries which the deceased sustained which were caused by a sharp cutting instrument.

(k) That the bloodied churries were recovered on the pointation of the appellant on the spot in a secret place which only he knew about at the time of his arrest.

(l) The fact that the co-accused was acquitted is of no assistance to the appellant as the case against the co-accused is on a much weaker footing. Apart from her presence at the crime scene nothing was recovered on her pointation, there was no blood on her clothes, the appellant in his own confession exonerates her and she had no motive to kill the deceased who was her husband who she had only recently happily married.

(m) That all the PW's 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 the cases of **Zakir Khan v. State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the complainant and PW 2 Abdul Qadir reached the house of the deceased where they found him dead to the appellant and respondent both being present in the house and being caught by the mohalla people to the police arresting the appellant on the spot after the mohalla people handed him over to the appellant pointing out the murder weapon in a hidden place to the confession of the appellant and the respondent.

(n) The confession of the appellant provides his motive for the murder of the deceased. That is, the deceased failed to pay him the 9 lacs which he had promised to pay the appellant when the appellant agreed to the deceased marrying his sister (the respondent)

(o) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt and in this case there are no eye witnesses to the murder but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication simplicitor. The appellant did not give evidence on oath and did not call any DW in support of his defence case and cannot be believed in the face of the overwhelming circumstantial evidence mentioned above which fully links him to the murder and as such the defence case is disbelieved.

15. Thus, for the reasons mentioned above, we maintain the conviction of the appellant however since the case is based on circumstantial evidence by way of abundant caution we **reduce** the sentence of the appellant from the death penalty

to one of RI for life with further direction to pay Rs.5,00,000/- as compensation to the legal heirs of deceased.

16. With regard to the appeal against acquittal in respect of the respondent we find that the respondent's case as mentioned earlier in the judgment is on a much different footing to that of the appellant and the only evidence against her appears to be that she was present in the house at the time of the murder. Even then the appellant exonerates her and the respondent in her own confession states that she was locked in a separate room at the time of the murder of the deceased.

17. Even otherwise, as a matter of law the parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Supreme Court in the above referred judgment. The relevant para is reproduced hereunder:-

"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:

Bashir Ahmed v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 02 others (PLD 2009 SC 53), Farhat Azeem v. Asmat Ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr. LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals." (bold added)

18. When confronted by this court as to what was the evidence against the respondent the learned counsel for the complainant was only able to point out her presence in the house at the time of the murder and nothing more.

19. We have gone through the impugned judgment and find that there is no legal infirmity in respect of the same in acquitting the respondent keeping in view the law on appeals against acquittal and as such the appeal against acquittal is dismissed in limine.

CONCLUSION

1. The appeal against conviction is dismissed but the sentence is reduced from death to RI for life and the confirmation reference is answered in the negative.
2. The appeal against acquittal is **dismissed in limine**.

20. The appeals along with confirmation case stand disposed of in the above terms.