

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****WAJAHAT---Appellant****Versus****GUL DARAZ and another---Respondents**

Criminal Appeal No. 13-P of 2015, decided on 30th April, 2019.

(On appeal from the judgment dated 13.02.2013 passed by the Peshawar High Court, Mingora Bench in Criminal Appeal No. 97 of 2010)

(a) Penal Code (XLV of 1860)---

---S. 302(b)---Qatl-i-amd---Reappraisal of evidence---Accused was alleged to have murdered his wife in the matrimonial home---Trial Court convicted the accused under S. 302(b), P.P.C. and sentenced him to imprisonment for life, which sentence was affirmed by the High Court---Held, that the complainant, who was the deceased's father, had not himself witnessed the occurrence---Crime report was structured upon the complainant's strong belief that no one else other than the accused could be the possible assassin---Conviction of accused was based upon hearsay queries, most important being the one furnished by the complainant's second daughter, who was married in the same household---Said witness appeared in the witness box and pleaded ignorance about the culprit responsible for her sister's death, and merely deposed about the crime without reference to the assailant---Absconsion of accused and his belated plea of suicide even if rejected outrightly by themselves would not absolve the prosecution to drive home the charge on its own strength---Appeal was allowed and accused was acquitted of the charge of murder.

(b) Penal Code (XLV of 1860)---

---S. 302(b)---Qanun-e-Shahadat (10 of 1984), Art. 121---Qatl-i-amd of wife in matrimonial house---Reappraisal of evidence---Adverse presumption---Scope---Accused's reticence to satisfactorily explain as to what befell upon his wife in their matrimonial home, though somewhat intriguing, could not be equated to qualify as evidentiary certainty, essentially required in order to saddle him with corporal consequences---Failure to provide satisfactory explanation would not give rise to an adverse presumption within the contemplation of Art. 121 of the Qanun-e-Shahadat, 1984 and thus it would be grievously unsafe to maintain the conviction of murder against the accused---Appeal was allowed and accused was acquitted of the charge of murder.

Ansar Nawaz Mirza, Advocate Supreme Court for Appellant.

Abdul Munir Khan, Advocate Supreme Court for Respondent No.1.

Mujahid Ali Khan, Additional Advocate-General, Khyber Pakhtunkhwa for the State.

Date of hearing: 30th April, 2019.

ORDER

QAZI MUHAMMAD AMIN AHMED, J.---Touheed Begum met homicidal death in her home; Wajahat, appellant herein, was blamed for the crime by Gul Daraz, PW, no other than his father-in-law; domestic differences were cited as motive for the crime. The learned trial Court returned guilty verdict to the appellant; he was convicted under clause (b) of Section 302 of Pakistan Penal Code and sentenced to imprisonment for life along side direction for payment of diyat to the tune of rupees six lacs to the legal heirs with benefit of section 382-B of the Code of Criminal Procedure, 1898 vide impugned judgment dated 28.1.2010 affirmed by the learned Peshawar High Court vide judgment dated 13.2.2013, albeit with conversion of diyat into compensation.

2. Learned counsel for the appellant contends that judgments of the Courts below are erroneously premised on misconception of law inasmuch as in the absence of positive proof, the appellant could not have been convicted on the basis of presumptions or his failure to satisfactorily explain

circumstances leading towards his wife's death. Similarly, appellant's absence from law cannot be equated with his guilt, complained the learned counsel, positions vehemently contested by the learned Law Officer.

3. The complainant, though seemingly with no axe to grind, nonetheless has not himself witnessed the occurrence; crime report, is structured upon his strong belief that no one else other than the appellant could be the possible assassin, a conviction based upon hearsay queries, most important being one furnished by his second daughter Nazakat PW married in the same household; she appeared as PW-5 and in the witness box pleaded ignorance about the culprit, responsible for her sister's death. She merely deposed about crime without reference to the assailant. Her evidence is not of much benefit to the prosecution leaving in the field suspicion alone to sustain the charge. Appellant's belated plea of the suicide even if rejected outrightly by itself would not absolve the prosecution to drive home the charge, on its own strength and same goes for appellant's absconsion; people avoid to face process of law or their adversaries for a variety of reasons, not necessarily inclusive of their guilt; Appellant's reticence to satisfactorily explain as to what befell upon his better half under the same roof, though somewhat intriguing, however cannot be equated to qualify as evidentiary certainty, essentially required in order to saddle him with formidable corporal consequences; his failure would not give rise to an adverse presumption within the contemplation of Article 121 of the Qanun-e-Shahadat Order, 1984 and thus it would be grievously unsafe to maintain the conviction, without potential risk of error as well as diametrical departure from adversarial nature of criminal trial. The appeal is allowed, the impugned judgment is set aside and the appellant shall be set at liberty forthwith, if not required in any other case.

MWA/W-2/SC Appeal allowed.