JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 236 of 2021

AND

Jail Appeal No.171 of 2021

Arshad Abbas

Versus

The State and another

Date of Hearing	:	07.03.2023.
Appellant by	:	Ch. Qaisar Mushtaq and Raja Usama Raza, Advocates
State by	:	Mian Zain-ul-Abidin Qureshi, State Counsel with Asif Khan S.I.

ARBAB MUHAMMAD TAHIR, J. Through the listed appeals in terms of Section 410 Cr.P.C., appellant, namely, *Arshad Abbas*, impugns judgment dated 08/11/2021 passed by the learned Additional Sessions Judge Islamabad (West) whereby he was convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life as Tazir with compensation of Rs.100,000/- under Section 544-A Cr.P.C to the legal heirs of deceased and in case of failure to undergo S.I. for six months in FIR No.519 dated 05.12.2020 registered under Section 302 of the Pakistan Penal Code, 1860 ("hereinafter referred to as "**PPC**") at Police Station Ramna, Islamabad. Benefit of Section 382-B, Cr.P.C. was also extended in favour of the appellant.

2- The appellant faced the trial on the charge of commission of murder of his spouse namely Mst. Fatima Bibi, aged about 33 years. The occurrence in the present case as per complaint Ex.PO, FIR Ex.PA allegedly took place at midnight time on 4/5.12.2020, within the area of Mehrabadi, Sector G-11, Islamabad. The complainant namely Muhammad Aslam is real brother of deceased Mst. Fatima Bibi on whose statement the subject FIR stood registered. The statement of the complainant had been to the effect that his younger sister (deceased) aged about 33 years, was married with the appellant about four years back and the couple was blessed with a son namely Nasir Abbas aged

about 3 years; that the appellant had been living with Mst. Fatima Bibi for the last two years in Mehrabadi near Shoukat Market Sector G-12 Islamabad in a rented house; that on 05.12.2020 on receiving information about death of his sister, the complainant alongwith his relatives went to the PIMS Hospital where he identified the dead body of Mst. Fatima Bibi, lying in Emergency Ward; that at the relevant time, he had also witnessed a mark of stimulation on the neck of her sister; that her sister often informed him through telephone that her husband i.e. the appellant had been in-habit of giving her beating; that the appellant had also extended threats to kill her on the allegation that she had illicit relations with somebody; that today i.e. 05.12.2020, his brother-in-law/appellant had committed murder of his sister Mst. Fatima Bibi by stimulating her in a residential quarter. After due investigation, challan was submitted against the appellant to face the trial.

3- The prosecution in order to substantiate the charge produced 10 witnesses in all.

PW-1 Muhammad Asghar Naz S.I. On 05.12.2020 drafted formal FIR Ex.PA on the basis of complaint sent by Muhammad Asif S.I.

PW-2 Noor Nabi Constable. On 08.12.2020 joined the investigation of this case, attested the recovery memo Ex.PC whereby Asif Khan S.I./I.O. took in his possession the call data record of the appellant, comprising 15 pages Ex.PB/1-15. The witness also deposed to prove the disclosure made by the appellant on 10.12.2020 regarding the place of occurrence and on 11.12.2020 regarding the recovery of intoxicant tablets and Dupatta which the appellant got recovered on the same day. The witness attested the recovery memo Ex.PD, whereby the Dupatta P1 and tablets P2 were taken in possession. The witness on 16.12.2020 attested the recovery memo Ex.PE whereby the I.O. took into possession the USB containing confessional statement of the appellant before News Channel.

PW-3 Ajmal Hussain Shah deposed to prove the recovery of stamp-paper dated 12.09.2019 Mark-A, which S.I./I.O. took in his possession through recovery memo Ex.PF.

PW-4 Mohsin Azad. On 05.12.2020 witnessed the recovery of last worn clothes of the deceased by the S.I./I.O. through recovery memo Ex.PG. The witness also testified the memo of identification of the dead body Ex.PH and the receipt of dead body by the complainant Ex.PJ.

PW-5 Dr. Khadija MLO, PIMS Hospital, Islamabad. On 05.12.2020 conducted post mortem examination of the dead body of Mst. Fatima Bibi, wife of the appellant. As per statement of the said witness, on internal examination, neck, skin, subcutaneous tissue and mussels were found damaged at and below the ligature mark. Thyroid membrane ruptured, larynx blood stained, trachea secretroa stained. The medical officer opined that the deceased died due to strangulation (asphyxia) all the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

PW-6 Aamir Shahzad Draftsman prepared sealed site plan Ex.PK of the place of occurrence.

PW-7 Zahid Khan deposed to prove the maltreatment by the appellant to his wife/deceased particularly an incident that took place a day before the alleged occurrence on 04.12.2020. the witness also deposed to prove the fact that on the day of occurrence, he visited the house of appellant, found it locked from the inside, opened by the appellant who was then found very confused. On inquiry by the witness about the deceased, the appellant told the witness that she had been sleeping on a mattress inside. The witness went inside and called upon her but she did not respond and found dead.

PW-8 Asif Khan S.I is the Investigating Officer of the case who deposed to prove the details of investigation conducted by him

that includes drafting of complaint Ex.PO, inspection of the place of occurrence, arrest of the appellant, recovery of tablets and Dupatta on the pointation of the appellant.

PW-9 Shan Muhammad A.S.I kept the case property of this case in Malkhana and on 01.02.2021 sent USB to the office of FIA/HQ Cyber Crime Cell, Islamabad for its forensic analysis through Khaista Khan Constable.

PW-10 Muhammad Aslam is the complainant who deposed to prove the maltreatment to the deceased by the appellant, the Iqrarnama Ex.P5, memo of identification Ex.PH and receipt of the dead body Ex.PJ.

4- After the recording of above prosecution evidence, the learned ADPP tendered the report of Forensic Toxicology analysis report Ex.PV and closed the prosecution evidence. The appellant in his statement under Section 342 Cr.P.C. denied the prosecution evidence and has taken the plea that "*I have not murdered Mst. Fatima Bibi (my wife). Brother of deceased falsely deposed against me. It was a blind incident and the deceased has committed suicide.*" The appellant opted not to make statement on oath under Section 340(2) Cr.P.C or to produce any defense evidence. The learned Trial Court after hearing the defense counsel and the Prosecutor, convicted and sentenced the appellant in terms noted in paragraph 1 above. Hence, instant appeal.

5- The learned counsel for the appellant argued that the prosecution evidence is highly discrepant, having material contradiction and flaws; that it was an unseen occurrence; that the evidence of last seen and the alleged recoveries on the pointation of the appellant retains no legal worth; that the allegation of maltreatment and assault by the appellant to his deceased wife remained unsubstantiated; that mere allegations without proof cannot be made basis to hold an accused guilty and that the prosecution has failed to substantiate the chain of events, therefore, impugned conviction and sentence are liable to be set-aside.

6- On the other hand, learned State counsel argued that the evidence on record establishes the guilt of the appellant as the deceased had been done to death in the house, the cause of death is undisputed while the independent witness substantiated the presence of the appellant in the house at the time when the said witness went there and had seen the dead body of the deceased. The learned State counsel further asserted that the chain of events sufficiently establishes the guilt of the appellant who has failed to substantiate his plea that it was a blind incident and that the deceased had committed suicide, therefore, appeal is liable to be dismissed.

7- Arguments heard, record perused.

8- It is a case of homicidal death of a wife in the house of her husband. The prosecution evidence rests upon the circumstantial evidence emerged through the statements of the complainant/brother of the deceased, PW-10, Zahid Khan PW-7, who visited the house of the appellant, the recovery witnesses, the Medico Legal Officer PW-5.

9- The evidence with regard to maltreatment afforded to the deceased by the appellant was put forth by the complainant/PW-10 and Zahid Khan PW-7. As per the statement of the complainant, the appellant had been in habit of treating the deceased with cruelty, once he took the deceased to his house due to ill attitude of the appellant and the matter was then reconciled through writing/Iqrar-nama Ex.PS. The statement of the complainant to that effect went un-rebutted as he was not subjected to cross-examination on this aspect like the other. Not a single question has been put to the witness/PW-7 in this respect.

10- The statement of PW-7 Zahid Khan is significant enough insofar as it directly connects the appellant with the commission of the alleged offence. It is, therefore, necessary to reproduce the important part of his statement together with the entire cross-examination made to said witness:-

> *"On next day, I again visited the house of Arshad Abbas, I knocked the door of their house but it was locked from inside. Accused Arshad Abbas opened the door and he was very*

confused. I inquired from him about the deceased Fatima Bibi, he told me that she was sleeping at a mattress inside. I went inside and called upon her but she did not respond and she found to be dead. I recorded my statement under Section 161 Cr.P.C to the I.O.
XXXX by the learned defense counsel for the accused.
I cannot tell what is written in my statement under Section 161 Cr.P.C, however, I have told the I.O. what I have seen. I had not seen accused Arshad Abbas committing murder of Fatima Bibi. However, I seen her dead inside her house. I had not given any other evidence except my oral statement to the I.O. that accused Arshad Abbas committed murder of Fatima Bibi. Fatima Bibi visited my house on 04.12.2020 at morning time on Friday. Nobody informed me that Fatima Bibi was murdered. We dropped Fatima Bibi in her house in the evening time at about 6/7:00 p.m. I stated before the I.O that we dropped Fatima Bibi in night. Volunteer that I meant by night as it was after Maghrib. It is incorrect to suggest that I am deposing falsely in order to extract money from the accused persons."

11- The cross-examination of the witness affirmed the facts that he had seen the deceased as dead in the house; that the deceased on 04.12.2020 at morning time on Friday, visited his house and that he dropped Fatima Bibi in the house at Maghrib time. The significant portion of statement of the said witness wherein he had given the account of his going to the house of the appellant, found the latter confused, inquiring him about the deceased, going inside the room and found the deceased dead, went un-rebutted and as highlighted, no significant or even remote question was put to the witness in this respect. There is no justification put forth by the defense which could be made basis to discard the statement of said witness particularly when no ill-will or animosity has even been alleged or put to cross-examination by the said witness.

12- From the statements of PW-7 and PW-10, the prosecution has successfully established maltreatment to the deceased by the appellant, his presence in the house at the time of visit of PW-7 when the latter found the deceased dead. The chain of events to have witnessed the appellant with the deceased in his house alone is established on record.

13- As per the statement of Dr. Khadija, MLO, the deceased died due to strangulation while the injuries sustained by the deceased, on examination found ante-mortem in nature and sufficient to cause death in the ordinary course of nature. The person who had seen the deceased

apart from the appellant, soon after the occurrence was PW-7 Zahid Khan, who had clearly stated that he went inside the room, called the deceased but she did not respond and she was found to be dead. The said witness, observed Mst. Fatima Bibi, as dead first time when she did not respond to his call. As per the statement of PW-5/MLO, the deceased died due to strangulation, is also admitted by the appellant but with variation that it was a blind incident and the deceased had committed suicide. Significant to note that no question in this regard was put to the MLO/PW-5 that it might be a case of suicide, as pleaded by the appellant.

14- The other incriminating piece of evidence i.e. recovery of Dupatta was established through the statement of PW-2 Noor Nabi Constable and the Investigating Officer Asif Khan S.I. Here again, the recovery witness was not subjected to cross-examination. The aspect of call data record, collected during the investigation also went un-rebutted.

15- The chain of events highlighted above lead to conclude that the prosecution has been able to discharge the legal burden of proof by establishing the elements of the offence which are sufficient to bring home the guilt of the appellant. In such eventuality, the evidential burden shifts to the appellant in terms of Article 122 of the Qanoon-e-Shahadat Order 1984 to produce evidence of the fact which are especially in his exclusive knowledge and practically impossible for the prosecution to prove, in order to avoid conviction, but the appellant has failed to discharge his obligation. Reliance is placed upon case of ***"Raja Khurram Ali Khan and others v. Tayyaba Bibi and others*** **(PLD 2020 SC 146)**, ***Nazir Ahmad v. the state*** (**2018 SCMR 787**) and ***Muhammad Kashif Iqbal v. the state (2021 YLR-N 102).***

16- The appellant had taken the defence plea that *it was blind incident and the deceased had committed suicide.* The defence plea, on the face of it, is self-contradictory as on the one hand, the appellant asserted that it was a blind incident while on the other hand, termed the same as "suicide". If the incident was blind, there is no explanation or justification as to how come the appellant came into the knowledge that the deceased had committed suicide. The defense plea was, therefore, nothing but a bald statement. The aspect of motive remained unsubstantiated and the

benefit of the same had already been extended to the appellant by deviating from imposing the normal penalty.

17- In view of above, it is held that the impugned conviction and sentence recorded by the trial court vide impugned judgment dated 08.11.2021 is in accordance with the evidence on record besides the law on the subject, therefore, the conclusion arrived at by the Trial Court to hold the appellant guilty for the offence charged and the punishment inflicted upon him do not call for any interference. Consequently, instant appeals fail and are accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____.04.2022.

JUDGE

A.R. Ansari