

maternal cousin Saleem son of Ali Bux alias Gul Baig and cousin Zaheer son of Ali Nawaz Khaskheli had gone towards Sehwan Sharif for Ziarat. While waiting for a boat at the western bank of River Sindh near "Pattan" of Syed Fida Hussain Shah at about 6:00 p.m., the accused Jawaid allegedly took out a pistol from the fold of his shalwar and while declaring Mst. Mehtab to be "**Kari**," fired two straight shots at her. As a result of the firearm injuries, she fell into the river water. Thereafter, the accused allegedly threw her dead body into the deep water of the river and threatened the complainant party not to come near him or raise any alarm. The complainant party remained there during the night due to fear and darkness. On the next morning, the complainant returned home and narrated the incident to her husband Muhammad Qasim, after which the FIR was lodged.

3. After registration of the case, the police conducted investigation and submitted challan against the accused for offences punishable under Sections 302 and 201 PPC. Consequently, charge was framed against the appellant, who pleaded not guilty and claimed to be tried. At the trial, the prosecution examined nine witnesses, including the complainant Mst. Ameena (PW-1), eyewitnesses Muhammad Saleem (PW-2) and Zaheer Ali (PW-3), mashirs of place of incident and recovery namely, Muhammad Rahim (PW-4) and Rustam (PW-5), the Investigating Officer SIP Muhammad Hussain (PW-6), Medical Officer Dr. Tahira Mahjabeen (PW-7), Supervising Tapedar namely Mushtaque Ali (PW-8) and PW-9 Mr. Abdul Haque Judicial Magistrate who recorded the confessional statement of the accused. The prosecution also produced documentary evidence including FIR, mashirnamas, inquest report, postmortem report, chemical examiner's report, ballistic expert report, sketch of place of incident and confessional statement of the accused. Thereafter, the learned ADPP closed the side of the prosecution through a statement recorded at Ex.16.

4. Statement of the appellant/accused was recorded under Section 342 Cr.P.C. wherein he denied the allegations and claimed innocence.

5. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant through impugned judgment. Hence, the appellant against the said judgment has firstly preferred Criminal Jail Appeal No.S-34 of 2016 through Senior Superintendent, Central Prison & Correctional Facility Hyderabad and then Criminal Appeal No.S-47 of 2016 through his private counsel.

6. Learned counsel for the appellant contended that the impugned judgment passed by the learned trial Court is contrary to law, facts and evidence available on record and the same is liable to be set aside. He contended that the conviction of the appellant has been recorded solely on the basis of an alleged confessional statement under Section 164 Cr.P.C., whereas admittedly all the ocular witnesses produced by the prosecution, including complainant Mst. Ameena (PW-1), Muhammad Saleem (PW-2) and Zaheer Ali (PW-3), did not support the prosecution case before the trial Court and categorically failed to identify the appellant as the perpetrator of the alleged offence. He contended that the learned trial Court itself acknowledged in the impugned judgment that none of the eyewitnesses implicated or identified the appellant during trial, yet despite such clear exculpatory evidence, the learned Court below illegally convicted the appellant on mere conjectures and surmises. He further contended that it is a settled principle of criminal jurisprudence that the prosecution is bound to prove its case beyond shadow of doubt through reliable, trustworthy and confidence-inspiring evidence and once the star witnesses of the prosecution resile from their earlier statements and fail to support the prosecution case, the entire structure of the prosecution case collapses. He further contended that the

learned trial Court gravely erred in placing reliance upon the statements recorded under Section 161 Cr.P.C., which are not substantive pieces of evidence, in preference to the sworn testimony of witnesses recorded before the Court. He contended that under the settled law, only evidence recorded before the Court has evidentiary value, whereas police statements can merely be used for contradiction and corroboration to a limited extent. He contended that the learned trial Court reversed the settled principles of evidence by treating previous police statements as substantive evidence against the appellant. Lastly, learned counsel prayed for acquittal of the appellant.

7. On the other hand, learned Deputy Prosecutor General Sindh strongly opposed the appeal and supported the impugned judgment passed by the learned trial Court. He contended that the prosecution had successfully proved its case against the appellant through reliable, trustworthy and legally admissible evidence and that the learned trial Court had rightly convicted the appellant after proper appraisal of the entire material available on record. He contended that the most crucial and an independent piece of evidence against the appellant is the judicial confession recorded under Section 164 Cr.P.C., wherein the appellant voluntarily admitted the commission of murder of his sister on the ground of "**Ghairat.**" He contended that the confessional statement was recorded by a competent Magistrate strictly in accordance with law after observing all mandatory legal formalities and after granting sufficient time for reflection to the appellant, thereby excluding any possibility of coercion, pressure or inducement. He further contended that the Magistrate who recorded the confession appeared before the trial Court and categorically deposed that the appellant was informed that he was not bound to confess and that any statement made by him could be used against him as evidence. According to him, the appellant voluntarily made the confession and the same was rightly relied upon by the learned trial Court. He further contended that merely because the complainant

being mother of appellant and other prosecution witnesses, who are close relatives of appellant, resiled from their previous statements during trial, the prosecution case cannot be discarded altogether, particularly when the witnesses are admittedly close relatives of the appellant. He contended that in cases involving honour killing, it is not uncommon for family members to turn hostile in order to save the accused from punishment. Learned Deputy Prosecutor General Sindh contended that the learned trial Court had rightly observed that the witnesses had apparently patched up with the appellant outside the Court and intentionally avoided to implicate him during trial. He contended that hostile testimony alone does not demolish the prosecution case when there exists independent incriminating evidence in the shape of a judicial confession connecting the accused with the offence.

8. Learned Deputy Prosecutor General Sindh further contended that the delay in recording the confessional statement was not fatal to the prosecution case in the circumstances of the present matter, particularly when no material had been produced by the defence to establish that the appellant was subjected to torture or coercion during custody. He contended that the medical evidence fully corroborated the prosecution case regarding homicidal death caused by firearm injuries, while the **motive** behind the occurrence had also been established from the prosecution evidence that the deceased had eloped with one Ghulam Mustafa alias Pappu Mahar and was subsequently declared "**Kari**" by the appellant. He lastly contended that the impugned judgment is a well-reasoned judgment based upon proper appreciation of evidence and settled principles of law and that no material illegality, misreading or non-reading of evidence had been pointed out warranting interference by this Court in appellate jurisdiction. He, therefore, prayed that the appeal being devoid of merits be dismissed and the conviction and sentence awarded to the appellant be maintained.

9. Learned counsel for the complainant supported the contentions as raised by learned counsel for the appellant and contended that the appellant is innocent.

10. Heard and perused the material available record including the cases cited at the bar.

11. After minutely reappraising the entire evidence available on record, I have carefully examined the impugned judgment passed by the learned trial Court. Admittedly, the complainant Mst. Ameena (mother of appellant), PW Muhammad Saleem, PW Zaheer Ali and mashirs Muhammad Rahim and Rustam Ali did not support the prosecution case during trial and were declared **hostile witnesses** by the prosecution. However, it is by now a well-settled principle of law that mere hostility of private witnesses is not always sufficient to demolish the prosecution case when there exists other independent, reliable and confidence-inspiring evidence connecting the accused with the commission of offence. In the instant matter, although the private witnesses attempted to resile from their earlier statements, yet the surrounding circumstances and their conduct itself speak volumes. **The complainant is admittedly the real mother of the appellant/accused as well as the deceased Mst. Mehtab, whereas the occurrence pertains to a case of so-called "Karo/Kari" wherein the appellant/accused allegedly committed murder of his own sister on the allegation of honour.** It is an irrefutable reality of our societal framework, particularly in rural areas, that in cases of honour-related crimes, close relatives and family members often refrain from disclosing the true facts before the Court due to familial pressure, social stigma, fear of ostracisation and emotional attachment with the accused. In many instances, witnesses deliberately attempt to shield the offender from penal consequences, particularly where the accused belongs to the same family. Such conduct, though unfortunate, is not uncommon in offences involving allegations of "**Karo-Kari**,"

which continue to persist despite being universally condemned by all civilized societies and being wholly against the fundamental principles of law, justice and Islamic injunctions safeguarding sanctity of human life. **Honour killing is one of the gravest forms of extra-judicial violence and cannot be justified under the guise of customs, traditions or societal notions of honour.** Therefore, the hostile attitude of the aforesaid witnesses cannot by itself be treated as sufficient to discard the entire prosecution case, particularly when the remaining evidence available on record, including medical evidence, recoveries, forensic reports, investigation conducted by the Investigating Officer and the voluntary judicial confession of the appellant/accused, firmly establishes his involvement in the commission of offence.

12. The evidence of PW SIP Muhammad Hussain, the Investigating Officer, is of considerable significance and inspires confidence. He categorically deposed that on 23.09.2011 complainant Mst. Ameena appeared before him at Police Station Mehrab Rahu and lodged FIR wherein she specifically nominated the appellant/accused and disclosed that the appellant had murdered his sister Mst. Mehtab by making straight fires upon her and thereafter threw her dead body into the river. The Investigating Officer further deposed that after registration of the FIR he visited the place of occurrence along with the complainant and witnesses; secured bloodstained earth from the place of vardat; recovered two empties of 30-bore pistol from the place of incident; prepared mashirnama of place of occurrence; recovered the dead body of deceased from the river through divers; prepared mashirnama of inspection of dead body and inquest report; and subsequently arrested the appellant/accused. The Investigating Officer further stated that during interrogation the appellant voluntarily disclosed the place where he had concealed the crime weapon and consequently led the police party towards sugarcane crop from where a 30-bore pistol along with live rounds was

recovered at his pointation. Such recovery was reduced into writing through mashirnama Ex.12/A.

13. It is pertinent to observe that although the mashirs attempted to retract from certain portions of their evidence during trial, yet they admitted their signatures and thumb impressions upon the mashirnamas prepared during investigation. More importantly, the recovery proceedings conducted by the Investigating Officer stood independently corroborated through scientific evidence. The Ballistic Expert Report Ex.12/C clearly reveals that the two crime empties secured from the place of incident had been fired from the same 30-bore pistol recovered at the pointation of the appellant/accused. Similarly, the Chemical Examiner's Report Ex.12/B also returned positive. The positive forensic and chemical reports constitute strong corroborative pieces of evidence which firmly connect the appellant/accused with the commission of offence. It is settled law that scientific evidence is independent in nature and carries great evidentiary value. The defence could not bring on record any material to discredit the said forensic reports nor any *mala fide* was attributed against the Investigating Officer regarding fabrication of such evidence.

14. Likewise, the medical evidence furnished by PW Dr.Tahira Mahjabeen fully supports the prosecution case regarding homicidal death of deceased Mst. Mehtab. The Medical Officer conducted postmortem examination on the dead body of deceased and found four firearm injuries on vital parts of the body, including wounds of entry and exit upon both sides of the chest. According to her opinion, the deceased died due to hemorrhage and shock caused by firearm injuries. The medical evidence thus conclusively establishes that the death of deceased was unnatural, homicidal and caused by firearm shots. The defence could not extract anything beneficial from the cross-examination of the Medical Officer to shatter her testimony. Even though the dead body was decomposed due to remaining in water,

the Medical Officer consistently maintained that the injuries were ante-mortem firearm injuries. Therefore, the medical evidence materially corroborates the ocular account furnished in the FIR as well as the confessional statement of the appellant/accused.

15. Further, the evidence of PW Mr. Abdul Haque, learned Judicial Magistrate, who recorded the **confessional statement under section 164 Cr.P.C.** of the appellant/accused, is also highly important and confidence-inspiring. The learned Magistrate categorically deposed that on 05.10.2011 the appellant/accused was produced before him for recording **confessional statement**; the police officials were directed to leave the Court premises; handcuffs of the accused were removed; and sufficient reflection time of four hours was granted to him. The learned Magistrate further deposed that before recording the statement, the appellant/accused was specifically warned that he was not bound to confess and that if he made any statement, the same could be used against him as evidence. After expiry of reflection time, the appellant voluntarily confessed that he committed murder of his sister Mst. Mehtab on the point of "Ghairat" as she had eloped with Ghulam Mustafa alias Pappu Mahar and due to such conduct he was unable to face society. The learned Magistrate further stated that the confession was read over and explained to the appellant in Sindhi language; the appellant admitted the same to be true and correct; thereafter he appended his signature and thumb impression thereon. The learned Magistrate also appended the requisite certificate in terms of Sections 164 and 364 Cr.P.C.

16. The confessional statement Ex.15/B appears to have been recorded strictly in accordance with law and the requirements envisaged under Sections 164 and 364 Cr.P.C. were substantially complied with by the learned Magistrate. Section 364 Cr.P.C. specifically requires that the statement of an accused shall be recorded in full; read over and explained to him; and thereafter signed by him as well as certified by the Magistrate. From the testimony of PW Mr. Abdul Haque and the contents of

Ex.15/B, it clearly transpires that all mandatory legal formalities were duly observed. **Nothing substantial could be elicited in the cross-examination of the learned Magistrate to show that the confession was the result of coercion, inducement or tutoring.** Mere fact that the accused remained in police custody for some days prior to recording of confession is not by itself sufficient to discard the confession when the Magistrate independently satisfied himself regarding its voluntariness and truthfulness. **It is also significant that the confessional statement finds strong corroboration from the medical evidence, recovery of crime weapon, ballistic report, chemical report and surrounding circumstances of the case.**

17. The defence has mainly relied upon the fact that the private witnesses turned hostile during trial. However, it is settled law that testimony of hostile witnesses is not to be discarded altogether and the portion thereof which finds corroboration from independent evidence can safely be relied upon. In the present case, despite their hostility, the complainant being mother of appellant and witnesses admitted their close relationship with the appellant/convict and the deceased. The FIR lodged promptly by complainant Mst. Ameena specifically nominated the appellant/convict and described the manner of occurrence in detail. **From the lodging of FIR till the recording of her evidence, she never approached any higher police authorities or any Court of law alleging false implication of appellant/convict in the murder case, therefore, the possibility that she resiled from her earlier stance with *mala fide* intention cannot be ruled out, rather, it appears that such deviation was made in an attempt to save the life of her murderous son (appellant).** The motive behind the occurrence also stood established from the prosecution evidence that the deceased had earlier eloped with one Ghulam Mustafa alias Pappu Mahar and had returned home shortly before the occurrence, where after the appellant/convict declared her "Kari" and committed her murder in the name of honour. Such motive is

further strengthened by the judicial confession of the appellant himself.

18. I am conscious of the settled principle that in criminal cases the prosecution must prove its case beyond reasonable doubt; however, the concept of benefit of doubt cannot be extended in a mechanical manner while ignoring trustworthy and legally admissible evidence available on record. **In the instant case, the prosecution has succeeded in establishing an unbroken chain of circumstances connecting the appellant/accused with the commission of offence. The medical evidence confirms homicidal death by firearm injuries; the Investigating Officer recovered empties from the place of occurrence and subsequently recovered the crime weapon at the pointation of the appellant; the Ballistic Expert Report confirmed that the recovered empties had been fired from the same recovered pistol; the Chemical Examiner's report returned positive; and above all, the appellant voluntarily confessed his guilt during recording statement under section 164 Cr.P.C. before the learned Magistrate. These circumstances, when read together, leave no room for doubt regarding the involvement of the appellant/accused in the commission of offence.** Moreover, the contention advanced by learned counsel for the complainant regarding the innocence of the appellant further reflects that the complainant, being the mother of the appellant, has attempted to weaken the prosecution case in order to save her son from penal consequences; however, such stance cannot be accepted in the presence of other reliable and corroborative evidence available on record connecting the appellant with the commission of the offence.

19. As regards sentence, the learned trial Court has already taken a lenient view by awarding imprisonment for life instead of capital punishment. The appellant/accused is a young person and the occurrence admittedly arose out of a question of

so-called honour within the family. Keeping in view the overall circumstances of the case and mitigating factors available on record, the learned trial Court rightly refrained from awarding death sentence and instead sentenced the appellant to imprisonment for life. As such, I do not find any legal infirmity or perversity in such exercise of discretion.

20. For what has been discussed above, I am of the considered view that the prosecution has successfully proved its case against the appellant/accused beyond reasonable doubt through trustworthy, corroborative and legally admissible evidence. The impugned judgment passed by the learned 2nd Additional Sessions Judge, Shaheed Benazirabad neither suffers from misreading or non-reading of evidence nor from any legal infirmity warranting interference by this Court in appellate jurisdiction. Consequently, the appeal being devoid of merit is hereby **dismissed**. The conviction and sentence awarded to the appellant/accused by the learned trial Court vide judgment dated 07.03.2016 are **maintained**. The appellant is present on bail. His bail bonds stand cancelled and the surety is discharged. He is taken into custody forthwith and remanded to jail to serve out the remaining sentence awarded to him.

Note: - In the event that the appellant fails to appear before the Court at the time of pronouncement of this judgment, a perpetual warrant of arrest shall be issued against him to ensure the execution and implementation of this judgment in accordance with law. Such warrant shall remain in force until duly executed and all legal mechanisms necessary for securing the apprehension of the appellant shall be employed without delay.

J U D G E

Approved for reporting

Abdullahchanna/PS