

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.338 of 2011

Present:

Mr. Justice Nazar Akbar

Appellant : Mst. Shumaila D/o Umeruddin through
M/s. Mehmood Akhtar Qureshi &
Jamshed Iqbal, Advocates.

Respondents : The State through Mr. Zafar Ahmed
Khan, Addl: Prosecutor General Sindh

Complainant Muhammad Hanif Rajput
through Mr. Ammar Yasser, Advocate

Date of Hearing : **28.10.2015**

J U D G M E N T

NAZAR AKBAR, J.--- Appellant Mst. Shumaila has preferred this appeal against the judgment dated 27.-7.2011 delivered by learned District & Sessions Judge, Malir, Karachi in Sessions Case No.491 of 2004 whereby the appellant was convicted and sentenced to undergo life imprisonment and two co-accused Shahid Ali and Muhammad Akbar were acquitted. Benefit of section 382-B was also extended to the appellant/accused.

2. Brief facts of the prosecution case leading to the appeal are that younger brother of complainant, namely, Maqsood Ali, aged about 27 years, a constable in Rangers was married to Mst. Shumaila one year before the incident. There was no issue from the wedlock. Relationship between the spouses were strained therefore Mst. Shumaila started living in her parents' home situated in Bhains Colony. On **11.10.2004** complainant's brother was on leave for one day and he visited his wife in Bahis Colony. On **12.10.2004** at about 07:30 a.m. brother-in-law of Maqsood, namely, Shahid informed the complainant on telephone that Maqsood is not well. Complainant and his family rushed to the house of Maqsood where he noticed that many people were gathered and dead body of Maqsood was lying on a cot inside the house. The dead body was shifted by the complainant to his house at Orangi Town. Incident was communicated to Rangers. Some of the officers of Rangers visited the house of the

complainant, they noticed marks of rope on the neck of dead body of deceased and with their help dead body was shifted to Jinnah Hospital for postmortem examination. Therefore an FIR was registered against Mst. Shumaila, Shahid and another for having committed murder of Maqsood by strangulating him with rope. The accused were arrested and after completion of investigation challan was submitted against all of them under **section 302 PPC**. Charge was framed by trial Court against three accused Shahid Ali, Muhammad Akbar and Mst. Shumaila. They pleaded not guilty to the charge and claimed to be tried.

3. In order to substantiate the charge against the accused persons, prosecution has examined the following witnesses at trial:

1. PW-1/Complainant Muhammad Hanif at Ex-6
2. PW-2 Hashmat Ali at Ex-7
3. PW-3 Mehmood Khan at Ex-8
4. PW-4 SIP Muhammad Aslam at Ex-11
5. PW-5 Abdul Hakeem at Ex-12.
6. PW-6 SIP Muhamamd Hanif at Ex-13
7. PW-7 Dr. Abdul Razzak at Ex-14.
8. PW-8 SIP/IO Sajjad Ali at Ex-15.
9. PW-9 Dr. Naseem Ahmed at Ex-16
10. Court Witness-1 Dr. Farhat Hussain at Ex-19
11. Court Witness-2 Dr. Imtiaz at Ex-20

Thereafter, learned District Attorney closed the prosecution side vide his statement at Ex.16 and statements of accused/appellant Mst. Shumaila and co-accused were recorded under section 342 Cr.PC. They all claimed false implication in the case and denied the prosecution allegations. She examined herself on oath. In her defence she also examined three DWs Abul Hassan (DW-1), Habibullah (DW-2) and Mian Khan (DW-3).

4. Learned trial Court after hearing the learned counsel for the parties and on the basis of medical evidence and circumstantial evidence convicted only the appellant and acquitted the co-accused by impugned judgment dated **27.07.2011**.

5. The sole point for determination in this appeal is that whether the appellant has been rightly convicted by the trial Court for the offence with which she was charged alongwith two others. The trial Court after framing charge against all the three accused and recording evidence of both, the

prosecution and the defense, set for itself three points for determination in the judgment:-

- (i) Whether deceased Maqsood died un-natural death due to strangulation of his neck?
- (ii) Whether during the intervening night of 11th and 12th October 2004, inside the house bearing No.415, situated at Block-D Muslim League Colony Road No.9, Bhains Colony Karachi, accused Shahid Ali, Mohammad Akbar and Mst. Shumaila committed Qatl-e-Amd of deceased Maqsood Ali by strangulation?
- (iii) What offence, if any has been committed by the accused?

6. Mr. Mehmood Akhtar Qureshi, learned counsel for the appellant/accused contended that all the PWs were interested and hostile witnesses, the prosecution has failed to establish motive initially attributed to the appellant for committing murder of the deceased. The medical evidence was defective one as Dr. Abdul Rasheed Khokhar, who conducted the postmortem examination of the deceased was not examined by the prosecution. PW-7 Dr. Abdul Razzak, who produced postmortem report and final medical report has also not been examined on oath. He further argued that Special Medical Board was constituted in this case and the Board did not support the opinion of the doctor who had conducted the postmortem and concluded that postmortem report was substandard and no conclusive result could be revealed from it. He contended that the trial Court has relied on a defective and doubtful postmortem report to connect the appellant with the crime. He further argued that statements of appellant/accused recorded under **sections 340(2) and 342 Cr.PC** as well as evidence of defence witnesses have not been taken into consideration in the case of the appellant whereas on the same set of evidence, co-accused Shahid Ali and Muhammad Akbar have been acquitted of the charge. He finally argued that it is well settled principle of law that when two co-accused in a murder case are acquitted by the trial Court by holding that they have been falsely implicated is enough ground for this Court for setting aside the conviction and sentence recorded against the appellant under section 302 PPC. In support of his contentions, he has placed reliance on the following case law:

- (i) Muhammad Saleem V. M. Azan & other (2010 SCJ 672)
- (ii) Atta Muhammad and another vs. The State (1995 SCMR 599)

(iii) Akhtar Ali and others v. The State (2008 SCMR 6)

7. Mr. Zafar Ahmed Khan, Additional Prosecutor General, assisted by Mr. Ammar Yasir, learned counsel for the complainant, contended that the deceased was a Rangers' personnel, he was a fit and healthy person, having no health issue. Present appellant/accused was married to deceased but there were no issue from the wedlock. The relation between the spouses were strained and she left her matrimonial home and used to stay with her parents. He further contended that deceased on the date of incident was with the appellant/accused, who was his legally wedded wife, and it was her legal as well as moral obligation to take the deceased in emergency to a hospital for immediate medical treatment but the same was not done. The complainant on receiving phone call about ailment of his brother rushed to the house of appellant/accused where he saw that his brother was lying dead. He took the dead body to his home and informed the Rangers accordingly. In the meanwhile, they noticed signs of rope on the neck of deceased. Rangers personnel also carefully observed the marks of rope around the neck of deceased, as such, it was a murder case and not a case of natural death. Medico Legal Officer, who conducted postmortem examination, had opined that it was an unnatural death as a result of asphyxia due to strangulation. He lastly argued that deceased died unnatural death, the prosecution has fully proved its case against the present appellant/accused and the learned trial Court has rightly convicted the appellant.

8. I have carefully heard the arguments advanced by the learned counsel for the parties and perused the entire evidence placed on record.

9. The prosecution has examined as many as 11 witnesses in this case of unnatural death of deceased Maqsood Ali who happened to be husband of the appellant. Out of 11 prosecution witnesses, 03 were real brothers of deceased including the complainant and their main emphasis was on the motive of accused / appellant to kill their brother. They alleged unfortunate illicit relation between the appellant and co-accused Muhammad Akbar. Obviously they were not witness to any physical effort for causing **Asphyxia** (the cause of death) as stated in the postmortem report. Their claim was limited to have seen a mark of rope around the

neck of their deceased brother when they have already brought the dead body from the place of incident at Bhains Colony to Orangi Town, the place of residence of the complainant and private witnesses. Out of remaining eight witnesses, 04 were police officers/officials, three of them I.Os and one Mushir of arrest of co-accused Muhammad Akbar, other 04 PWs were doctors. PW-7 Dr. Abdul Razzak was formal as he produced postmortem report conducted by Dr. Abdul Rasheed Khokar, who was not examined. PW-9 Dr. Naseem Ahmed was a Pathologist and his report was very material since the findings on the initial postmortem report were reserved till report of Pathologist. Remaining 02 doctors were the Court witnesses namely Dr. Farhat Hussain (CW-1) and Dr. Imtiaz (CW-2), they were very material witnesses as they have been thoroughly cross-examined on the point of strangulation as alleged by the complainant as a cause of death.

10. The findings of learned trial Court on Point No.2 for determination i.e. offense of Qatl-e-Amd by three accused by strangulation, was in negative. The co-accused Shahid and Muhammad Akbar had been acquitted by the trial Court on the ground that “the prosecution has no legal or credible evidence regarding their presence/participation either conspirers or abettors to connect them with the commission or murder of the deceased.” The precise meaning of the above findings in favour of co-accused was that the only motive attributed to the appellant that she had illicit relation with co-accused Muhammad Akbar and because of such relation she has causing death / murder of her husband deceased Maqsood Ali was not established. Therefore, there was no motive for committing the crime by the appellant. The story of estranged relation between the appellant and her husband, the victim, also washed away when it came on the record that the victim had come to live with his wife and they had enjoyed their matrimonial life before his death. Such statement of the appellant has not been contested nor it can be doubted as the deceased was otherwise healthy person. The complainant has also attempted to prove estranged relation between the appellant and the victim on the ground that they had no issue from the wedlock also has no weight since admittedly the marriage was solemnized hardly one year before the date of incident and, therefore, the issue of not having the children was quite premature to

below it to the level of enmity for killing the husband. When Point No.2 was decided in favour of two co-accused Shahid Ali and Muhammad Akbar then obviously as natural consequences it could not be alleged that Shumaila (the appellant) alone has committed Qatl-e-Amd of deceased Maqsood Ali by strangulation on the basis of mere probability since the “unnatural death” of her husband took place in their bedroom.

11. The perusal of impugned conviction order shows that the learned trial Court had very badly misapplied the dictum laid down by the Hon’ble Supreme Court of Pakistan in a case reported in **PLD 1966 SC 664** (State v. Manzoor Ahmad) to support the conviction awarded to the appellant. The trial Court has quoted out of context following passage from the placitum:

“(g) Criminal trial – (Evidence)—Lack of direct evidence connecting accused or any other person with murder—Does not mean that guilt cannot be fixed—Court to examine probabilities in light of circumstances of case.”

The above plasitam was derived by the editor of the Law Journal from the side note ‘H’ at page 681 of the citation. It is reproduced below:-

“Even in a case of this kind where there is no direct evidence to show as to in what precise manner the victim came to be killed the Court has yet to discharge its onerous duty of determining whether the death was caused by the felonious act of some other person and, if so, what offence, if any, has been committed by such a person. *It is not sufficient in such a case to say that since there is no direct evidence to connect any one with the felonious act the guilt cannot be fixed.* It is precisely in such cases that *I conceive it to be duty of the Court to examine the probabilities in the light of the indirect evidence of the injuries on the deceased, the nature and condition of the place where the incident took place the articles found there, the motive for the crime and the other surrounding circumstances proved.*” (emphasis provided)

12. The trial Court, I believe, has not read the entire citation and even the side note ‘H’. The above observation of the Hon’ble Supreme Court does not mean that in every case when there is no direct evidence to connect anyone, one should be connected, with felonious act by the Court merely on the basis of probabilities. The Hon’ble Supreme Court in the above quoted passage has laid down guideline for the Court to examine the “probabilities” in the light of the indirect evidence and these probabilities are (1) the injuries on the deceased; (2) the nature and conditions of the

place where incident took place; (3) the articles found there, (4) the motive for the crime; and (5) other surrounding circumstances.

13. It is settled principle of law that each precedent enumerates principles which are based on the circumstances of the case being examined by the Court. The facts of the case relied upon by the learned trial Court (PLD 1966 SC 664) were entirely different and clearly distinguishable from the circumstances and the facts of the case in hand. None of the probabilities discussed by the Hon'ble Supreme Court in the citation were available in the case against the appellant. Neither the injuries to the victim in the case in hand were proved to have been caused by the appellant nor strangulation was proved by medical reports as the postmortem report was declared "substandard" by the medical board constituted by the trial Court. Except her natural presence at the scene of incident being wife nothing else was before the Court to be treated as circumstantial evidence connecting the appellant with the offense. Even the alleged rope said to have been used for strangulation was not recovered by the prosecution.

14. The learned trial Court has not discussed the medical evidence available on record and enlarged the effect of word "**Asphyxia**" to strangulation. The learned trial Court neither examined the ordinary dictionary or medical dictionary to appreciate the meaning of the word **Asphyxia** nor examined medical evidence which clearly indicates that it was not a case of "**strangulation**" to death at all. The learned trial Court failed to appreciate the following pieces of evidence from the testimony of the doctors:-

"Dr. Naseem PW-9 deposed in his cross-examination that:-

"It is correct to suggest that no mark of trauma indentified on gross examination of skin. It is correct to suggest that the skin revealing intact and epidermis and dermis and congested blood based on finding of heart no active pathology seen and mild atherosclerotic changes in anterior descending artery. **I did not find any injury on the skin under the ligature mark, nor any organ of neck damaged,** only 3x3 c.m of neck skin was sent to me for histopathology. I have got about 10 years experience in pathology. It is correct to suggest that ligature mark completely encircles the neck in case of strangulation. What I have stated in examination in chief is correct."

Dr. Farhat Hussain was examined as Court witness (CW-1). According to him, **special medical board** had given its opinion after considering the (i) postmortem report (ii) chemical examination report (iii) Histopathologist (iv) Final opinion given by medico legal officer Dr. Abdul Rasheed Khokhar. He further deposed that members of the medical board were **unanimously agreed that the postmortem report prepared by the medico legal officer (MLO) was substandard to reveal any conclusive.**

He further admitted that it is mentioned in column No.13 of the postmortem report that ligature mark **not fully encircling around the neck**, grooved in nature width 01.5 to 02 c.m over right side neck, **postmortem of neck seen, while anterior of neck and left side antero-lateral aspect does not contain ligature mark.** He further admitted that it is mentioned in postmortem report that **no any other mark of injury seen all over the body.** He admitted that it is mentioned in the report of pathologist that mild atherosclerotic changes in anterior descending artery of the heart. He admitted that it is correct that according to medical jurisprudence as opined by various jurists **signs and symptoms of strangulation would be the tong may be swollen, bruised bitten by teeth and protruded. Bleeding from the ears due to rupture of blood vessels of tympanum** may be seen. (Emphasis supplied)

It is unbelievable that a woman can cause murder of a young and healthy person by strangulating him to death independently without even any resistance. The trial Court in the impugned conviction order has already held that the prosecution have failed to prove motive as discussed in para-10 above. The medical evidence did not prove strangulation, the appellant had no reason/motive to kill, then what else was required to disbelieve the prosecution story.

15. The burden was on the prosecution to prove her involvement and particularly her criminal role in the “**unnatural death**” of her husband to be treated as murder. The learned trial Court instead of following the cardinal principle of burden of proving the charge beyond iota of doubt by prosecution shifted the burden on the appellant by holding that the appellant “**Mst. Shumaila has failed to furnish any explanation regarding the unnatural death of her husband**”. I am unable to appreciate that what explanation was expected by the trial Court from an ordinary woman about unnatural death of her husband and how an “**unnatural death**” can be treated as murder simply because the complainant party has found a “ligature mark” of hardly **01.5 to 02 c.m.** on

the right side of the neck of their deceased brother. Admittedly as discussed above in the evidence of doctors no sign and symptoms of strangulation at all were found by the doctors on medical examination of the dead body of the deceased. The ligature mark was not encircling the neck of the deceased. Mere unnatural death without any corroborating piece of evidence in the shape of medical reports cannot be treated as murder on suspicion alone. The death is never “unnatural”. A natural death when challenges the wisdom of medical science, the medical scientist calls it “unnatural death” as they could not find a cause of death in the realm of their knowledge. We have seen and do come across cases of silent death or passing away of a normal healthy person without showing symptoms to attract attention of others for medical aid for him before death. The case of the appellant has reminded me an incident of death of a senior lawyer, Mr. Imdad Ali Awan during the lawyers’ movement for restoration of judiciary in 2008. Mr. Imdad Awan was fit and healthy person. He was driving or sitting in the vehicle of the then deposed Chief Justice and died in the said vehicle in such a way that other occupants of the vehicle did not notice his death. Nobody offered him any medicine and the moment it transpired that he is un-usually silent it was too late to provide him medical aid.

16. It appears that the learned trial Court convicted the appellant on the sole presumption that **“the sudden death of deceased in short span of time without any clinical cause and reason”** has surprised him as unusual and since the death took **“place inside the house of the lady accused in the night hours”**, her failure to provide necessary treatment was willful, though it was not the case of prosecution that the deceased suffered death as medical aid was denied to him. With these presumptions in mind, the medical evidence discussed above was out rightly rejected or ignored by the learned trial Court while holding that in the circumstances **“the lady accused (appellant) had a clear involvement in the murder of her husband.”** Since this is the case of life imprisonment awarded to the appellant I have examined each and every case law referred by learned trial Court and I am surprised that by ignoring the evidence on record, the learned trial Court wrongly applied several legal principles enumerated in various case laws to convict the appellant. The learned trial Court relied on

the **principle of circumstantial evidence** to bring the guilt of appellant home in support its presumptions. Unfortunately the learned trial Court like PLD 1966 SC 664 also misapplied the citations on the point of circumstantial evidence. The learned Judge while relying on the circumstantial evidence mentioned following case law in the conviction order without examining them:-

- i. M. Arshad v. The State (1992 SCMR 1187)
- ii. The State v. Habib ur Rehman (PLD 1983 SC 286)
- iii. M. Aslam v. M. Zafar and 2 others (PLD 1992 SC 1)
- iv. Akbar Ali v. The State (2007 SCMR 486)
- v. Israr Ali v. The State (2007 SCMR 525)

None of these citations are relevant in the light of the prosecution evidence in the case in hand to support reasoning of the learned Judge for conviction. It was merely a case of “unnatural death” as opined by postmortem report and it was not a case of murder. Another set of (3) three reported judgments referred by the trial Court were on the concept of **last seen evidence**. The citations are:-

- i. Muhammad Asif v. The State (PLD 1991 SC 170)
- ii. Muhammad Asif v. The State (PLJ 1991 SC 361)
- iii. (NLR 1991 SC 65) Wrong Citation

These citations were also totally out of context of the case in hand. Not only out of context, citation NLR 1991 SC 65 is even wrong citation. The presence of wife in her bedroom was natural. She never left the scene of incident nor had any reason / motive to kill her husband.

17. In the same fashion the treatment of “motive” in criminal cases by the trial Court was misconceived. The trial Court has misunderstood the place and value of “motive” in the criminal cases. The trial Court has declared that motive in a criminal case is of no consequence. Its existence and nonexistence by itself neither proves nor disproves commission of a crime. To come to this conclusion the trial Court has referred the following six reported cases.

- i. KAK @ Abdul Razzak v. The State (PLD 1965 Karachi 31)
- ii. Umar Jehan v. The State (1979 SCMR 186)
- iii. Mst. Farah Naz ..Vs.. The State & others (1984 SCMR 646)

- iv. Aftab Iqbal v. Manzoor Ahmed & another (1985 SCMR 269)
- v. Imtiaz Ahmed v. The State (2001 SCMR 1334)
- vi. (PLJ 2001 SCJ 870) WRONG CITATION

Amongst the above six citations the last one is again a wrong citation. No case law on the question of motive was found in PLD 2001 SCJ 870. I have also gone through above mentioned judgments and found that neither the total sum of the findings supports the view of the learned trial Court that existence or nonexistence of motive in commission of crime is of no consequence nor importance of motive of accessed can be totally thrown out of the administration of criminal justice system in Pakistan. Learned Judge was unable to understand from the cited judgments that the motive has been discussed by superior Court with reference to its evidenciary value in presence of other strong and reliable evidence. A full bench of the Supreme Court comprising five Judges in the case at Sr.No.3 above has held that motive is always relevant but extent to which it is relevant depends upon the circumstances of each cases. Three small passages from the citation are very material which the trial Court should have read and understand before commenting on the importance of “**motive**” in criminal case and recording of conviction of the appellant.

Page 655-side note.I

On the other hand **it is well-known that in all criminal cases to start with, the machinery of law whether at the investigation stage or during inquiry and trial, tries to discover the motive. Thus, it is always relevant. But the extent to which it would be relevant depends upon the circumstances of each case.**

Page 657- side note.J

As already discussed it is not always necessary that the failure of motive must adversely re-act on the other remaining prosecution case. **It might however effect the process of reasoning, regarding individual items of material/evidence against the accused;** when considering their reliability or force in connection with the determination of the question of guilt and/or enormity of the offence.

Page 661- side note.X

The law does not place any invariable duty on the prosecution to prove motive and its **failure to do so would be immaterial if direct and reliable inculpatory evidence is otherwise available.**

In case law at serial No.V above the Hon'ble Supreme Court has observed that **weakness of the motive would not come in the way of prosecution case in presence of strong and reliable evidence** (2001 SCMR 646).

18. Six more judgments have been mentioned by the learned trial Court in the concluding para of findings of Point No.2 for acquitting the co-accused Shahid Ali & Muhammad Akbar by observing that law requires strong evidence for proving the guilt of accused and resolving any slight doubt in favour of the accused. These citations are:-

- i. Wazir Muhammad v. The State (1992 SCMR 1134)
- ii. Ashiq Hussain v. The State (1993 SCMR 417)
- iii. Tariq Pervez v. The State (1995 SCMR 1345)
- iv. Vijant Kumar & 4 others v. State through Chief Ehtesab Commissioner, Islamabad and Others (PLD 2003 SC 56)
- v. (PLD 2005 SC 64) WRONG CITATION
- vi. (PLD 2002 SC 463) WRONG CITATION

Again my feeling is that the learned trial Court has not examined any of these case laws. Two of the above six citations at serial No.5 and 6 are wrong citations. Had the learned trial Court examined only **1995 SCMR 1346**, at serial No.(iii) above alongwith **PLD 1966 SC 664** supra, the Court should have acquitted the appellant instead of convicting her as the case of prosecution was not only full of doubts rather it was a case of no evidence of murder at all.

19. In the case of Manzoor (supra) the Hon'ble Supreme Court on the same page No.681 has also observed the importance of resolving genuine and reasonable doubts in favour of accused in the following terms:-

“Learned counsel appearing for the respondent has further suggested that in evaluating these circumstances the Court must strain as much as possible in favour of the accused. **Straining of the evidence either in favour of the prosecution or in favour of the accused is a practice that I would deprecate but I would undoubtedly, in accordance with the established principles of administration of criminal justice in our Courts, be prepared to resolve all genuine and reasonable doubts, if**

any, arising in favour of the accused persons. It is always dangerous to indulge in the straining of evidence, for, once the process of straining begins there is no knowing where it will end.”

In another judgment reported in 1995 SCMR 1345 and mentioned at serial No.3 above, the Hon’ble Supreme Court has further strengthened the importance of doubt for the benefit of accused person in the following terms at page 1347.

The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. **If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.**

20. I am surprised that trial Court from the evidence on record failed to appreciate even a slightest doubt in the prosecution story. The prosecution story begun from the FIR in which complainants have alleged that they found mark of rope on the neck of the deceased and therefore, they took the body of deceased to hospital on the advised of Rangers as they have also seen marks of rope on the neck of the deceased. The prosecution failed to recover even **rope** from the place of incident; none of the Rangers personnel was named as witness, the medical report did not corroborate that it was mark of rope on the neck of the deceased. The mark on the neck was not encircling the neck. The medical report established that it was not a case of strangulation to death. Even the motive attributed to her was disproved and the co-accused were released. The trial Courts not only failed to appreciate the evidence in its correct prospectus but also did not apply judicial mind to the numerous case law cited in the conviction orders. As discussed above the trial Court seems to have not even read a single judgment as is apparent from the findings. I must mention that out of several case laws cited by the trial Court in the conviction order four of them were even wrong citations which strengthens my believe that the trial Court has not even checked the title of the cases relied upon by it. Such casual behaviour in criminal case resulted in miscarriage of justice of such a high magnitude that an innocent woman was awarded life imprisonment. It is a very serious breach of judicial duty. The trial Court should at least mention title of the case law when referring to the judgments of superior Courts to give an impression of having really laid their hand to it.

21. It is settled principle of law that since the principles enumerated by the Superior Courts in criminal cases are based on the circumstances of the case being examined by them are not applicable to any other case unless

the fact of the case are similar to the facts of the case from where the trial Court attempts to rely and follow the principle of law enumerated in the precedents. It seldomly happens, therefore, it is never safe to convict an accused person merely by referring to the principles of law such as “circumstantial evidence”, “last seen person” and “motive on its absence” etc. In fact the superior Courts have repeatedly warned criminal Courts to be vigilant in applying precedents in criminal cases. In this context I would refer to the following these reported judgments:-

- i. Allah Wadhayo and another v. The State (2001 SCMR 25)
- ii. Tariq Mehmood and another v. The State (2002 SCMR 32)
- iii. Imtiaz Ahmed v. The State (2001 SCMR 1334)

I have purposely quoted 2001 SCMR 1334 because it has been mentioned by learned trial Court in the conviction order while denying benefit of doubt to the appellant on failure of the prosecution to prove motive of appellant in commission of offence. Side note ‘D’ and ‘E’ at page 1338 are reproduced below.

Reference may be made to Talib Hussain v. State (1995 SCMR 1776), so also **even in case of weak motive when there has been otherwise strong and reliable evidence, motive would not come in the way of the case of prosecution.** Reference may be made to State v. Sobharo 1993 SCMR 585. It may also be observed that **each criminal case is to be decided on its own peculiar facts and circumstances, as such the rule laid down in the earlier cases cannot be applied in the subsequent cases in the omnibus manner.** Reference may be made to (i) Muhammad Nawaz Khan v. Mubarak Ali 2000 SCMR 1582 to 1585

In 2001 SCMR, the Hon’ble Supreme Court at page-30 has held as follows:-

Heavy reliance was placed on the case reported as Aminullah v. State (PLD 1976 SC 629) but **as affirmed from time to time verdict given in a criminal case generally must be confined to the facts of the reported case and cannot be universally applied to all cases.** Reference may, however, be made to cases reported as Safdar Ali v. Crown (PLD 1953 FC 93) and Abdul Majid v. State (1983 SCMR 310). (Emphasis supplied).

In 2002 SCMR the Hon’ble Supreme Court has referred to the application of precedents in criminal cases in the following terms;-

This argument would not prevail as **it is by now settled position that a rule laid down in a certain criminal case cannot be applied universally as every case proceeds on its own facts and circumstances which would hardly resemble with the diverse facts of the precedent case in which the dictum is laid down.** Moreover, some foundation must be laid down in the case for the application of the dictum in the earlier decided case. (Emphasis supplied).

22. I have already discussed in para-17 above that the learned Judge in the trial Court (Mr. Imdad Hussain Khoso) has failed to properly appreciate the correct place of motive in criminal cases as propounded by the superior courts. From the judgment in Imtiaz case (supra) on the same page where the motive has been discussed, the Supreme Court has also pointed out the value of precedent in criminal cases. The learned Judge failed to follow the dictate of Supreme Court about the use of precedent in criminal cases that “*Rule laid down in earlier cases cannot be applied in subsequent cases in the omnibus manner*” and yet in total disregard of the mandate issued by Supreme Court, the learned Judge convicted a woman for life imprisonment by referring to case laws only, that too which were not remotely applicable to the facts of the case against the appellant. Such appreciation of case law only leads to believe that Mr. Imdad Hussain Khoso has not even read it. The judicial officers must not lose sight of Muslim belief that like anyone else all the judges are answerable to GOD. Their particular place in the hierarchy of judiciary is irrelevant. Any mistake or lapse on the part of a judge in releasing or not convicting an offender may **not** be a miscarriage of justice, but convicting an innocent without applying judicial mind to the facts, evidence and even case law shall make the author judge of such convictions answerable to GOD. But for this reason, the criminal justice system lays heavy responsibility on the prosecution to prove both, “mensrea” the guilty mind and the guilty beyond iota of doubts.

The above are the reasons for the short order dated 28.10.2015 whereby the judgment was set aside and the appellant was acquitted of the charge.

Karachi

Dated:02.01.2016

J U D G E

AyazPS