IN THE HIGH COURT OF SINDH KARACHI

Criminal Jail Appeal No.382 of 2018

Pauper appellant Ayyaz	:	through Mr. Salahuddin Chandio, Advocate.
State	:	through Mr. Khadim Hussain Khooharo, Addl. P.G, Sindh.
Complainant Abdul Sattar	:	through Mr. Asadullah Memon, Advocate.
Dates of hearing	:	01.03.2023
Date of Judgment	:	29.03.2023
Date of Announcement	:	05.04.2023

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Cr Jail. Appeal the appellant has assailed the Judgment dated 16.04.2018 passed by learned VIIIth Additional Sessions Judge, Karachi West in Session Case No. 1595 of 2015, being outcome of FIR No. 140 of 2015 U/s 324, 302 and 325 PPC registered at P.S. Gulshan-e-Maymar, Karachi whereby appellant was convicted as under:-

i. For causing Qatl-e-Amd of Mst. Hanifa under Section 302 (b) P.P.C. and sentenced to suffer imprisonment for life as Tazir and to pay fine of Rs.2,00,000/- (Rupees two lac only), as provided under section 544-A Cr. P.C. If the amount of fine is recovered, the same was ordered to be paid to the legal heirs of the deceased as per Shariah and in default to pay the fine, the accused shall was to undergo simple imprisonment for 6 months;

ii. For committing offence under section 324 P.P.C, to suffer simple imprisonment for period of 7 years and to pay fine of Rs.

50,000/- (Rupees fifty thousand only), as provided under Section 544-A Cr.P.C. If the amount of fine is recovered, the same was ordered to be paid to injured Mst. Hanifa and in default of payment of fine, the accused was to undergo simple imprisonment for 6 months.

iii. For committing offence under section 325 P.P.C., to undergo simple imprisonment for period of one year.

However, benefit under Section 382-B Cr.PC was extended to the accused.

2. Brief facts of the prosecution case are that complainant Abdul Sattar lodged FIR at P.S. Gulshan-e-Maymar vide his statement recorded under Section 154 Cr.P.C. alleging therein that he resides at Rahimyar Khan. In the year 2011 his sister Mst. Hanifa was married with accused Ayaz in *watta satta* marriage while niece of Ayaz was married with his brother in law Tariq. Ayaz was not happy with the marriage and he used to quarrel with complainant's sister and she used to come to stay at his house, while niece of accused also used to go to her parental home. After intervention of respectable persons, one and half (1 and 1/2) month ago, accused brought Mst. Hanifa at Karachi and started living at Al-Hamd Town, Gulshan-e-Maymar in a rented premises. Complainant further stated that accused Ayaz wanted to contract second marriage and used to maltreat his sister and she used to complain about the same but he and his family used to console her. On 11-07-2015 at night time, his cousin Haq Nawaz called him and disclosed that Ayaz had killed complainant's sister at home with knife blows and had also injured his *bhabbi* Mst.Zareena and thereafter he also tried to commit suicide by cutting his throat and now he is under treatment. So he came at Karachi on the next day and lodged FIR.

3. After usual investigation Investigating Officer submitted challan against accused Ayyaz S/o Bakhshan Khan showing him in custody.

4. A formal charge against above named accused was framed at Ex:3 to which he pleaded not guilty and claimed for trial vide his plea Ex:4.

5. In order to prove its case, the prosecution examined PW-1 ASI Mazahar-ul-Haq at Ex.5, who produced memo of dead body as Ex.6 and

inquest report as Ex.7. PW-2 Complainant Abdul Sattar was examined at Ex.8, who produced FlR as Ex.9 and memo of place of incident as Ex.10. PW-2 Haq Nawaz was examined at Ex.11, who produced memo of arrest of accused as Ex.12, receipt of dead body as Ex.13 and police letter to EDHI Centre as Ex.14. Learned ADPP filed Statement for giving up the PW Shahmeer as Ex.15. PW-4 HC Muhammad Suleman was examined at Ex.16. PW-5 Dr. Muhammad Nadeem-ud-Din was examined at Ex.17, who produced medical letter as Ex.18, MLC of Mst. Zareena as Ex.19, attested copy of MLC of Ayaz as Ex.20, copy of call letter of Mst. Zareena as Ex.21 and call letter of Ayaz as Ex.22. PW-6 Mst.Zareena was examined at Ex.23, wherreas PW-7, MLO Dr.Yasmeen Qamar was examined at Ex.24, who produced post mortem report as Ex.25, death certificate as Ex.26 and chemical examiner's report as Ex.27. PW-8 Inspector Ghulam Murtaza was examined at Ex.28, who produced roznamcha entry No.14 as Ex.29, letter to MLO for accused as Ex.30, letter to MLO for post mortem and inquest report as Ex.31 and entry No.22 as Ex.32. PW-8 I.O. DSP Wahid Bux was examined at Ex33, who produced roznamcha entry No.23 as Ex.34, photographs on 4 pages as Ex.35, site plan as Ex.36, letter to doctor as Ex.37, letter to learned Judicial Magistrate as Ex.38, letter to chemical examiner as Ex.39 and discharge card of accused Ayaz as Ex.40. Thereafter, learned DDPP closed prosecution side vide his statement Ex.41.

6. Statement of accused under Section 342 Cr. P.C was recorded vide Ex.17, wherein he denied the allegations of prosecution and claimed to be innocent and stated that he has falsely been implicated in this case. He further stated that actually deceased Mst. Hanifa had attacked him and inflicted injuries by firstly cutting his back of neck and then front of neck inside kitchen and when he regained his conscious, he came to know about her death. He further stated that P.W. Mst. Zareena has deposed falsely under pressure. However, neither he examined himself on oath as provided U/s 340(2) Cr.P.C. nor produced any witnesses in his defence.

7. Keeping in view circumstances of the case, the trial court called Dr.Saifullah and Dr.Abdul Qayyum as Court witnesses and thereafter, evidence of CW-1 Dr. Saifullah was recorded at Ex.43, who produced discharge card of accused Ayaz as Ex.44 which was verified by both the doctors.

8. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment dated 16.04.2018 convicted and sentenced, as stated above, which has been challenged by the appellant in instant appeal.

9. I have heard learned counsel for the parties and have perused the material available on the record.

10. Learned counsel for the appellant after reading over the evidence submitted that offence was unseen and the complainant at the time of offence was not present at the place of incident, therefore, his evidence cannot be taken into consideration to maintain the conviction against the appellant. He further submitted that Pw-3 Haq Nawaz, who intimated the complainant was also not an eye witness as he was informed by his nephew namely Fayyaz and said Fayyaz even was not an eye witness. He further argued that the appellant had also sustained a cut throat injury at the backside of his neck which cannot be caused by himself and submitted that, in fact, he was assaulted by his wife by knife and later she committed suicide. He, therefore, submitted that neither the appellant committed murder of Mst. Hanifa nor he attempted to commit suicide. He further submitted that even the alleged crime weapon i.e. knife was not secured from his exclusive possession nor on his pointation. He further submitted that no memo regarding seizure of knife was prepared by the I.O. He therefore, submitted that prosecution has failed to prove its charge against the appellant which creates doubt into the veracity of prosecution evidence, hence he is entitled to be acquitted by extending him benefit of doubt. He further submitted that injured P.W.6 Mst. Zarina, being resident of province of Punjab, has not established her presence at the spot, therefore, all these facts create serious doubts against the prosecution case. He lastly prayed for allowing the appeal and acquittal of the appellant from the charge. In support of his contentions, he relied upon the case laws reported in PLD 2019 Lahore 597 (re-Muhammad Islam alias Bolla v. The State and others), PLJ 2019 SSC (Cr.C.) 560 (re-Muhammad Ilyas and another v. Ameer Ali and another), 2018 SCMR 911 (re-Mst. Nazia Anwar v. The State and others), 2017 SCMR 596 (re-Mst. Rukhsana Begum and others v. Sajjad and others), PLD 2017 Supreme Court 681 (re-Asad Khan v. The State), PLJ 2019 Cr.C.1325 (DB) (re-Muhammad Rafique v. State and another) and 2018 SCMR 772 (re-Muhammad Mansha v. The State).

11. Mr. Khadim Hussain, Additional Prosecutor General Sindh Opposed the appeal on the ground that appellant is not only nominated in the FIR but has specifically been implicated by PW-6 Mst. Zarina who herself was injured, thus was a natural eye witness and no enmity or ill-will was alleged by the defence against her, therefore, her evidence being natural cannot be negated on the basis of plea taken by the appellant. He further submitted that PW-7 had categorically deposed before the trial Court that injuries sustained by deceased Mst. Hanifa were not self-suffered, hence the prosecution has proved its charge against the appellant and the impugned judgment does not suffer from any illegality or infirmity which requires interference by this Court.

12. Mr. Asadullah Memon, advocate for complainant, while adopting arguments of learned Additional P.G. Sindh, also opposed this appeal and submitted that no illegality or infirmity has been brought on record by the appellant which may shatter the evidence adduced by the prosecution, hence the appeal merits no consideration and prayed for its dismissal.

13. In instant case star witness is Mst. Zarina. In her evidence she deposed that about more than one year ago on the day of incident in between 6.30 to 7.00 p.m. when she was washing utensils at the home, she heard cries of Mst.Hanifa and went towards kitchen and found that Hanifa was lying on the floor. On this accused Ayaz also attacked her and inflicted injury on her left cheek with knife. She further deposed that thereafter she became unconscious and she regained her senses in the hospital and then police recorded her statement. She specifically claimed that accused Ayaz had killed his wife Hanifa with knife in kitchen. Although she does not claim that she had seen the accused while inflicting knife blows on the deceased; however, her evidence is confidence inspiring because she has specifically deposed that on hearing the cries of the deceased when she reached the kitchen she saw that deceased Mst.Hanifa was lying on the floor and not only this but the accused / appellant also attacked her and inflicted knife blow on her left cheek, thereafter she became unconscious. She being herself injured at the hands of the accused, is a natural witness, thus her evidence is unimpeachable, trustworthy and confidence inspiring. It does not appeal to the mind of a prudent person that as to why she would spare the real culprit and would involve an innocent person.

14. Evidence of Mst. Zarina is also corroborated by P.W.01 ASI Mazharul Haq, who deposed that on the day of incident while he was on patrolling duty, he received information about the alleged incident. When he reached at the place of incident, he saw in the kitchen dead body of a woman, another lady was also there having injury on her cheek, whereas another man was also lying there having sharp cutting injury on his neck. He then took the dead body of the lady to Abbasi Shaheed Hospital in Edhi Embulance, whereas two injured were taken to hospital in the mobile. His evidence also supports the ocular testimony of Mst. Zarina.

15. Medical evidence also corroborates the ocular testimony of Mst.Zarina. Dr. Yasmeen Qamar, who had conducted autopsy on the dead body of Mst.Hanifa, deposed that she received the dead body of Mst. Hanifa on 11.07.2015 at 2050 hours with history of cut throat by her husband. She conducted post mortem and found following injuries:

1. Incised wound over lateral aspect of neck measuring 15 cm x 2.5 cm x structural deep. Skin muscles, major blood vessels carotid and jugular vein upto trachea oesophagus partially in lower party of neck and horizontally in direction.

According to her, the duration between injury and death was instantaneous while duration between death and post mortem was 4 to 5 hours.

The cause of death of the deceased lady, as disclosed in the postmortem report, was **acute cut throat by sharp cutting weapon**.

16. It seems that all material events i.e. location of injury on the dead body, time of causing injury, time of death, time of receiving the dead body in the hospital and holding of postmortem examination given in the postmortem report match with the ocular testimony.

17. Likewise, the medical evidence in respect of injury received by P.W. Mst. Zarina also matches with ocular evidence on all material facts.

18. However, the medical evidence in respect of accused Ayaz shows **only one injury** on his neck. The I.O. DSP Wahid Bux Bozdar (PW-9) in his evidence had produced discharge card of accused vide Ex.40 which revealed

two injuries on his neck, whereas the accused too in his statement recorded under section 342 Cr.P.C. took specific plea that deceased Mst.Hanifa had caused him **two injuries** i.e. one on the back side of his neck and other on the front side of his neck. In such a situation, the trial Court was compelled to exercise its powers under section 540 Cr.P.C. to call two doctors who had conducted surgery upon the accused. The evidence of one of said doctors namely, Saifullah was recorded as CW-1. Vide Ex.43. The discharge card produced by I.O. P.W. Abdul Wahid revealed that accused had two cut injuries which version was also deposed by the accused in his statement under section 342 Cr.P.C but such fact of having two injuries was not deposed by M.L.O Dr.Nadeemuddin in his evidence, as the medical certificate of accused Ex.20 produced by the said doctor revealed **only one injury** on the front side of neck i.e. throat. However, from the evidence of Dr. Saifullah (CW-1), it was sufficiently proved that accused had two injuries. Of course, there seems to be contradiction in the prosecution case on this point, however, in view of strong, unimpeachable and trustworthy ocular account of injured witness, Mst. Zarina, such contradiction is ignorable as it does not affect prosecution case having such strong ocular testimony.

19. It is an admitted position that the accused had injuries and that too by sharp cutting weapon. Accused has not denied his presence at the place of incident and more interestingly, defence did not suggest that the knife (Article-B) produced before the trial Court was, in fact, not the same which was allegedly used in the commission of the offence but the same was a managed property. The version of accused that he was hit by deceased Mst.Hanifa seems to be unbelievable as Mst.Zareena had categorically deposed that she saw Mst. Hanifa lying down on the floor and accused was holding knife. Not only this, but she also deposed that apart from them (three persons), there was no other adult person in the home. According to Mst.Zareena, she was attacked by accused and she became unconscious. Now there remains only accused with the knife. So as per circumstantial evidence, it was the accused who was alone present there in his senses, thus it can safely be held that it was he who had caused injuries to himself.

20. The ocular testimony is further supported by securing of alleged crime weapon i.e. bloodstained knife, with which the accused had allegedly committed the offence, from the place of incident. In this connection, P.W.

Mazharul Haq deposed in his cross examination that he secured crime weapon i.e. knife from the spot. However, record further shows that crime weapon i.e. knife was recovered by I.O. in presence of complainant Abdul Sattar and private mashir Shahmeer. Such fact has also been deposed by I.O. and the complainant in their respective statements. There seems to be contradiction, inasmuch as ASI Mazharul Haq deposed that he had secured the knife from the spot whereas IO also claimed to have secured the same. However, even if it is held that recovery of knife is doubtful, the same does not affect the prosecution case which is based on unimpeachable, trustworthy and confidence inspiring ocular testimony corroborated by medical and circumstantial evidence. It is settled principle of law that even in absence of recovery, accused could be convicted. In this connection, reference may be made to the case of ***Muhammad Nadeem*** Vs. ***The State*** reported in **2011 SCMR 872**, wherein Apex Court held as under:

> ***"Even otherwise, the recovery of crime weapon in a criminal case is not at all material. It can only be a piece of supporting evidence. If other evidence goes to prove the case independently, the recovery is not essential at all."***

21. Admittedly, there is only one eye-witness viz. Mst. Zarina. However, now it is well settled that conviction can be based on the evidence of a **solitary witness** if he/she appears to be reliable and trustworthy. It is also a settled principle of law that it is the quality and not the quantity of the evidence which settles the guilt or innocence of accused. This point has elaborately been discussed by Honourable Supreme Court in the case of ***Mohammad Mansha*** Vs. ***The State*** reported in **2001 S C M R 199**, wherein it was held as under:

> ***"The question as formulated hereinabove as to whether conviction could have been awarded on the basis of solitary statement of a witness has been examined at first instance in the light of Article 17 of the Qanun-e?-Shahadat Order, 1984, (section 134 of. the Evidence Act, 1872). The said Article is reproduced hereinbelow for ready reference:--***
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> > ***"17.Competence and number of witnesses. ---(I) The competence of a person to testify and the number of witnesses required in any case shall be determined in accordance with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah,***
> >
> > ***(2) Unless otherwise provided in any law relating to the Enforcement of Hudood' or any other special law--***
> >
> > ***(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one tray remind the other, if necessary, and evidence shall be led accordingly; and***

(b) in all other matters, the Court may, accept, or act on, the testimony of one man or one woman, or such other evidence as the circumstances of the case may warrant."

7. A bare perusal would reveal that the language as employed in the 'said Article 17(1)(b) is free from any ambiguity and no scholarly interpretation is required. The provisions as reproduced hereinabove of the said Article would make it abundant clear that particular number of witnesses shall not be required for the proof of any fact meaning thereby that a fact can be proved only by a single witness "it is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality witnesses, case where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case, for the prosecution. The Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a facts". (Principles and Digest of the Law of Evidence by M. Monir, page 1458).

8. As mentioned hereinabove no yardstick can be fixed as to whether statement of a solitary witness must or must not be relied upon for the simple reason that each case has its own peculiar circumstances which shall play a significant role and is motivating factor to determine the reliability of a solitary witness as the said aspect of the matter is to be dilated upon in the light of surrounding circumstances which may be taken into consideration or otherwise. We may mention here that such circumstances also cannot be confined within a limited sphere of any definition because the same may be infinitely diversified by the situation and conduct of the parties concerned. "The only general rule that can be laid down is that the circumstances must be such as would lead the guarded decision of a reasonable and just man to the conclusion". We have also have the benefit of consulting C.D. Field on the Law of Evidence (page 4746) wherein it was observed as follows:--

"Thus evidence of a single witness is sufficient to sustain and may legally be made the sole basis for a conviction, the relevant section 134 having enshrined the well-recognised maxim that 'evidence has to be weighed and not counted'. Though the Legislature has placed no jurisdictional limitation on the power of a Judge to act on the sole testimony of a single witness, even though uncorroborated, the Judges themselves have from time to time evolved some rules and guidelines of circumspection as to when such evidence can be or cannot be acted upon without corroboration." (Pema Dukpa v. State Sikkim, 1981 Cr. LJ 276).

9.It may not be out of place to mention here that Law of Evidence (I of 1872) and Qanun-e-Shahadat Order, 1984, have excluded the well-

> ***entrenched principle remained applicable for decades that "unus nullus" (one is equal to none) and is no, more enforced hence cannot be taken into consideration. The only criterion which can be fixed seems to be that "in order that the sole testimony of a witness is made the foundation and the basis for finding a person guilty of the charge, the evidence must be clear, cogent and consistent and should be of an unimpeachable character." (1982) 53 Cut. LT 368 at p.370).***
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> ***10. The significance- of the statement of solitary witness has also been examined in numerous cases and a few important therefrom are mentioned as follows:--***
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> ***1980 PCr.LJ 898, PLD 1980 SC 225, 1971 SCMR 659, 1969 SCMR 76, 1998 PCr.LJ 1441, 1971 SCMR 273, 1971 SCMR 530, 1995 SCMR 1979, PLD 1980 SC 225, PLJ 1980 SC 492, 1993 SCMR 2405, NLR 1985 Cr. 501, AIR 1936 Lah. 778, PLD 1957 SC (Ind.) 525, 1971 SCMR 273 and 1972 SCMR 620.***
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> ***A careful examination of the dictums as laid down in the above referred authorities the consensus seems to be that conviction can be awarded on the basis of solitary statement of a witness if it is found worthy of credence, dependable and consistent.***

In this connection, reference can also be made to the case of ***Dildar Hussain*** Vs. ***Mohammad Afzaal and 3 others*** reported in ***PLD 2004 Supreme Court 663***, wherein it was held as under:

> ***"Careful close scrutiny of the evidence produced by PW-Muhammad Azam, persuades us to hold that he has fully supported the prosecution case qua accused Yahya Bakhtiar. The deposition furnished by him in examination-in-chief has not been shaken in the cross-examination as well, therefore, we are inclined to hold that in view of the facts and circumstances of the case solitary deposition of PW-Muhammad Azam had furnished trustworthy incriminating evidence against Yahya Bakhtiar (respondent No.3). Thus following the principle that in criminal cases it is the quality and not the quantity of the evidence, which settles the guilt or innocence of accused, we accept his evidence. In this behalf we are fortified by the judgment reported as Allah Bakhsh v. Shammi (PLD 1980 SC 225), wherein it has been held that conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable. Therefore, the evidence furnished by PW-Muhammad Azam can safely be relied upon for the purpose of recording conviction against respondent Yahya Bakhtiar.***

22. In view of above legal position, the evidence of sole eye witness, Mst. Zarina, which is also supported by medical evidence, recovery of alleged crime weapon from the spot and so also by circumstantial evidence, is worth reliance for the purpose of conviction of the accused.

23. The defence plea taken by the accused in his statement under section 342 Cr. P.C. was that deceased Hanifa while cooking the meal in the kitchen called the accused but he said that he cannot come as he was not well but on her insistence he went and sat inside the kitchen. Thereafter, deceased

Mst.Hanifa attacked him and first she gave him knife blow on the back of his neck and then on the front side of his neck and then she threw him outside the kitchen, then he became unconscious. The accused also claimed that thereafter deceased Mst. Hanifa caused injury on the cheek of P.W. Mst. Zarina and then she committed suicide. Such statement of the accused does not appeal to the mind of a prudent man for the reasons:

a) As per version of the accused himself, after receiving two knife injuries at the hands of deceased Mst. Hanifa, he became unconscious and that he does not know as to what happened thereafter. In this view of the matter, how can he claim that thereafter deceased Mst.Hanifa also inflicted knife injury to Mst. Zarina and then she committed sucide;

b) According to the accused himself, when he sat in the kitchen on the insistence of the deceased, she was cooking the meal, thus, he must be sitting on rear side of the deceased, despite that very strangely she allegedly gave first knife blow on the back side of the accused which is against the common sense. She was allegedly standing in front of the accused, therefore, first she would have given knife blow on the front side of his neck and not on the back side.

c) According to accused, after receiving two knife blows he became unconscious and then he did not know as to what had happened? Now question arises that when deceased Mst. Hanifa had allegedly caused two lacerated wounds to the accused and had thrown him out of kitchen, resultantly he had become unconscious, then what prevented the deceased to confirm his death by slaughtering him and as to why she spared him;

d) As to why after inflicting the accused two knife blows, the deceased committed suicide, when according to the accused himself, he was happy with the marriage with deceased Mst.Hanifa, as replied by him to a question put to him in his statement under section 342 Cr. P.C. that he was not happy with the marriage with the deceased.

e) The accused also stated in his statement that deceased Mst.Hanifa had also injured P.W. Mst. Zarina. However, he miserably failed to establish as to why the deceased would cause injury to Mst.Zarina, whereas Mst.Zarina herself has not leveled any such allegation against the deceased, on the contrary her claim was that it was the accused / appellant who had inflicted her knife blow.

f) It seems to be unrealistic that deceased, being a lady, would overpower the accused and then would inflict two injuries upon him. Even, if it is presumed that the deceased succeeded in inflicting first knife blow to the accused, there is less possibility of inflicting second blow.

g) In order to prove such fact which appears to be very important, so far as defence side is concerned, neither examined himself as a witness as provided under Section 340 (2) Cr. P.C. nor produced any other witness in order to substantiate such plea.

h) Although the accused has taken this plea in his statement under section 342 Cr. P.C., however now it is well settled that mere stating such important fact in his statement is not enough but in order to prove such stand / version, he is required to produce such evidence on oath.

24. The allegation of the accused made in his statement under Section 342 Cr. P.C. is that it was deceased Mst.Hanifa who first inflicted two injuries with sharp cutting knife to him and then she committed suicide. However, from the perusal of entire prosecution evidence, there is nothing to establish such fact. It is an admitted position that accused sustained injuries and that too by a sharp edged weapon and even accused has himself admitted such fact, however, his stand is that it was caused by deceased Mst. Hanifa. Now, again we would have to advert to the evidence of star witness Mst.Zarina, who has categorically deposed in her evidence that she was washing utensils when she was attracted by the cries of Mst.Hanifa and when she went there, she saw that Hanifa was lying on the floor and on seeing Mst.Zarina, the accused also inflicted knife injury on her left cheek, then she became unconscious and regained her conscious in the hospital. From the scrutiny of her evidence, it is apparent that she had seen deceased Mst.Hanifa lying on the floor of kitchen while accused was there with knife and then he also injured her with same knife. Nowhere in her evidence she deposed that accused was injured and deceased Mst.Hanifa was holding knife in her hand or at least that she also saw accused in injured condition. During her cross examination, the defence failed to shake / shatter her evidence. Even formal question that she was deposing falsely was not put to her. In her cross she categorically deposed that at the time of incident, no other adult person was available at the house except minor kids. Thus, it was only deceased Mst. Hanifa, P.W. Mst.Zarina and the accused / appellant who were present at home and accused has also not denied such fact. There seems to be no plausible reason for the injured witness Mst. Zarina to spare the real culprit and instead involve an innocent person. Such conduct is apparently against the natural reaction which a person, having suffered a loss, either physically, mentally or monitory at the hands of

a particular person, would develop. Now, after Mst.Zareena having become unconscious, there remains only accused with the knife. So as per circumstantial evidence, it is the accused who had caused these injuries to himself as well, thus, the offence under section 325 PPC also seems to be proved.

25. In his statement recorded under section 342 Cr. P.C. the accused stated that Mst. Zareena has deposed against him due to fear / pressure. However, neither any such suggestion was put to her during her cross examination nor, for that matter, any other material was produced by the defence in order to establish such allegation.

26. It is also noteworthy that the trial Court has not believed the motive and has given finding that prosecution has failed to prove motive. In this context, reference may be made to the case of ***CHANZEB AKHTAR*** Vs. ***THE STATE AND ANOTHER***, reported in **2020 Y LR 1972 [**Islamabad], wherein a Division Bench of Islamabad High Court, while dealing with this point, held as under:

> ***"Similarly, the motive has not been established in this case nor brought on record by any of the party; therefore, the appellant is the best man to justify his position as his wife was murdered in his room at odd hours of the night. In such circumstances, the absence of motive or lack of motive or the cases where motive has been shrouded in mystery is immaterial as it will not affect the case of prosecution…"***

27. So far as the evidence of the complainant is concerned, admittedly he is not an eye witness. According to him, his cousin Haq Nawaz had informed him about the alleged incident and in his evidence Haq Nawaz also supported this version of the complainant. Although FIR was lodged on the next day; however, keeping in view the facts and circumstances of the case, such delay does not seem to be unexplained or unjustified. In fact, the complainant was resident of Rahimyar Khan and after receiving the information about alleged incident, he came from there and lodged FIR on the next date, thus the delay appears to be justified. Even otherwise, keeping in view the provisions of Article 71 of the Qanoon-e-Shahadat Order, 1984, it was Mst. Zarina, being the sole eye-witness of the alleged incident, who should have been the complainant in instant case; however, she being seriously injured and having lost her conscious and being under treatment in the hospital, it was not possible for her to lodge the FIR, thus complainant Abdul Sattar lodged FIR on the next day after arriving from Rahimyar Khar. In such cases, the delay in

lodging the FIR is ignorable. In this connection, reference may be made to the case reported as ***Muhammad Nadeem*** Vs. ***The State*** (2011 SCMR 872), wherein Honourable Supreme Court held as under:

> "It is an established principle of law and practice that in criminal cases the delay, by itself, in lodging the F.I.R. is not material. The factors to be considered by the Courts are firstly, that such delay stands reasonably explained and secondly, that the prosecution has not derived any undue advantage through the delay involved."

28. Of course, there are certain discrepancies in the investigation / prosecution case, such as: motive is shrouded in mystery and the same has not been believed by the trial Court; according to MLO Nadimuddin there was only one injury on the body of the accused whereas as per evidence of the I.O. accused had sustained two injuries which fact was subsequently confirmed by CW Dr.Saifullah; P.W. Mazharul Haq claims to have secured the crime weapon i.e. knife from the spot whereas I.O. Abdul Wahid deposed that he had secured the same from the spot in presence of two mashris; P.W. Mst.Zarina in her evidence deposed that after receiving injury she went unconscious and regained her conscious in the hospital which fact is contradicted by P.W Mazharul Haq who, in his cross examination admitted that when he reached the place of incident, he saw deadbody of a lady and one man in injured condition, whereas another injured lady, Mst.Zarina, was also there who was in her senses.

29. Had there been a case of weak, impeachable and untrustworthy ocular evidence, such discrepancies and lacunas could surely have weakened the prosecution case and the same would have adversely affected on the conviction of the accused; however, in view of unimpeachable, trustworthy and confidence inspiring ocular testimony of Mst. Zarina corroborated by medical evidence, recovery of crime weapon and circumstantial evidence, such discrepancies and lacunas are ignorable. Even otherwise, any irregularity or illegality committed during the investigation in a case having unimpeachable and trustworthy evidence due to inefficiency of the police / Investigating Agency would not affect the trial. However, such discrepancies in the investigation and contradiction in the evidence could be treated as mitigating circumstances for reduction in the sentence awarded to the accused. In this connection, reference may be made to a decision given by Honourable Supreme Court in the case of ***GUL ZARIN and others*** Vs.

KAMAL-UD-DIN and others reported in **2022 S C M R 1085**, wherein it was held as under:

> ***"However, so far as the quantum of punishment is concerned, we are of the view that when the learned High Court itself has observed that the occurrence took place at the spur of the moment over the blockage of passage and there was no pre meditation on the part of the petitioner; the petitioner only fired single shot and did not repeat the same despite having ample opportunity to do so; no motive has been alleged by the prosecution for the commission of the crime and the recovery of the weapon is inconsequential, the sentence of imprisonment for life was not justified. In this view of the matter, we convict the petitioner Kamal-ud-Din under section 302(c), P.P.C. and sentence him to fourteen years' RI."***

30. In the case reported as ***Sajjan*** Vs. ***The State*** (2023 Y L R 461 [Sindh (Hyderabad Bench)], a Division Bench of this Court, while elaborately discussing the point of reduction in sentence, held as under:

> ***"At the cost repetition, it is mentioned that none had seen the appellant while committing the murder of his wife in the house but there is huge evidence as discussed above which clearly shows that appellant had committed the murder of his wife in the house and attempted to commit murder of PW Aijaz. It squarely constitutes "proof beyond doubt" admitting no hypothesis other than appellant's guilt. Father of Mst. Husna was also present at the door of the appellant when he committed the murder of his daughter but neither he rescued her daughter nor lodged FIR of the incident. PW Ali Hassan, brother of injured Aijaz was also present at the time of incident. He had also not lodged FIR to the police station. Prosecution had failed to prove the motive at trial. These are the mitigating circumstances in this case. Above mitigating circumstances and infirmities are sufficient to adopt the alter course by awarding life imprisonment instead of death sentence as held in the case of Ghulam Mohy-ud-Din alias Haji Babu and others v. The State (2014 SCMR 1034)."***

31. In the case of ***Manzoor Ahmad Malik, Syed SARWAR and another*** Vs. ***The STATE and others***, reported in **2020 S C M R 1250**, Honourable Supreme Court held as under:

> ***"8. Now we take up Criminal Petition No.1143-L of 2015, filed by the complainant. We have observed that there are certain circumstances in this case which persuaded the learned Lahore High Court for altering the sentence of death of Sarwar respondent No.1 to imprisonment for life inasmuch as recovery of .12 bore double barrel gun was not believed by both the learned courts below; motive behind the occurrence could not be proved and single fire shot on the person of deceased is attributed to the petitioner. In these circumstances, the alteration of the sentence of death to imprisonment for life by the learned appellate court is fully justified."***

32. In another case reported as ***AMANAT ALI*** Vs. ***The State*** **(2017 SCMR 1976)**, it was held as under:

> ***"But at the same time it is not a case of capital punishment because motive was not believed by the learned trial court whereas no findings qua motive were recorded by the learned appellate court. The alleged recovery of knife which was taken into possession vide recovery memo (Exh.PC) as well as the positive reports of Chemical Examiner and Serologist are inconsequential because the said recovery was effected more than one year and three months after the occurrence.***
>
> ***Therefore, taking these factors as mitigating circumstances, this appeal is partly allowed and the sentence of death awarded to Amanat Ali (appellant) is altered to imprisonment for life."***

33. The upshot of above discussion is that instant Criminal Appeal is dismissed. Accordingly, impugned judgment dated 16.04.2018 passed by learned trial Court / 8th Additional Sessions Judge, Karachi (West) in Sessions Case No. 1595 of 2015, being outcome of FIR No. 140 of 2015 under Sections 324, 302 and 325 PPC registered at P.S. Gulshan-e-Maymar, Karachi is hereby modified to the extent of quantum of sentence. Consequently, sentence awarded to the appellant for committing murder of Mst.Hanifa under Section 302 (b) PPC is hereby converted into section 302 (c) PPC and is reduced from life imprisonment to R.I. for fourteen (14) years; however, punishment of fine and sentence in default of payment of fine shall remain intact. Remaining sentences awarded to the appellant/convict for committing offences under Sections 324 and 325 PPC are hereby maintained.

Karachi JUDGE
Dated. 29th March, 2023

Zulfiqar/P.A