

IN THE COURT OF MALIK MUHAMMAD ZIA UL TARIQ KHOKHAR,
ADDL: SESSIONS JUDGE,
KHUSHAB

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██████████ s/o ██████████, aged 50 years, caste ██████████, cultivator by profession, r/o Chak No.27/DB, Tehsil & District Mianwali.

(Complainant)

Versus

- (i) ██████████ s/o ██████████, caste ██████████, aged 32 years, r/o ██████████, ██████████, Tehsil & District ██████████ & ██████████
- (ii) Mst. ██████████ w/o ██████████, caste ██████████, aged 56 years, r/o ██████████, ██████████, Tehsil & District ██████████.

(Accused persons)

Sessions complaint case No.64 of 2017 & 08 of 2019.
Offences u/s 302/34 PPC.
P.S. City ██████████ District ██████████.

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2. The State through ██████████ s/o ██████████, aged 50 years, caste ██████████, cultivator by profession, r/o Chak No.27/DB, Tehsil & District ██████████.

(Complainant)

Versus

- (i) ██████████ s/o ██████████, caste ██████████, aged 32 years, r/o ██████████, ██████████, Tehsil & District ██████████ & ██████████
- (ii) Mst. ██████████ w/o ██████████, caste ██████████, aged 56 years, r/o ██████████, ██████████, Tehsil & District ██████████.

(Accused persons)

Sessions case No.24 of 2017 & 07 of 2019.
Sessions Trial No.01 of 2019.

FIR No.522 dated 27.11.2015.
Offence u/s 302/34 PPC
Police Station City ██████████, District ██████████.

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

Date of Decision: 13.07.2019

*Ch. Qasim Hussain Advocate, learned counsel for the complainant.
 Muhammad Ramzan Advocate, learned defence counsel.
 Mr. Naveed I qbal, learned ADPP for the State.*

JUDGMENT:

Initially the complainant ██████████ (PW-1) got registered F.I.R No.522 dated 27.11.2015 (Ex.CW2/B) for the offence u/s 302/34 PPC with police station City ██████████ against the accused persons ██████████ (32 years) and Mst. ██████████ (56 years) and police prepared cancellation report which was disagreed by the learned Area Magistrate and sent up to this court for trial for the charge of murder of Mst. ██████████ daughter of the complainant.

2. *Being aggrieved by the conduct of police since lodging of the F.I.R till the final result of investigation, complainant, ██████████ (PW-1) has preferred instant private complaint (Ex.PA). As per contents of the private complaint in hand Ex. PA on 20.11.2011, daughter of the complainant Mst. ██████████ was married with ██████████, accused and her rukhsati was taken place on the same day. The behavior of ██████████ accused remained very cruel with Mst. ██████████. He deserted her many time but by the intervention of respectable, the complainant made her abad with the accused again and she started to live with the accused. Three children namely ██████████, ██████████ and ██████████ were born out of their wedlock. ██████████ accused on the instigation of his mother Mst ██████████ accused expelled his wife Mst. ██████████ (since deceased) from his house after snatching the custody of above named minor children upon which she came to the house of*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

complainant at Mianwali. A litigation started between the parties and during the proceedings of said family litigation, upon the insistence of [REDACTED] (since deceased) accused [REDACTED] managed to get a five marlas plot of his mother Mst. [REDACTED] [REDACTED] accused transferred in her name and handed over its possession to her which nurtured sever grudge in their hearts. The accused persons had been making repeated demands of return of said plot from her and upon her refusal to do so, they planned to kill Mst. [REDACTED], take possession of the said plot and snatch her children. Anticipating danger to her life, she conveyed message to him through her uncle [REDACTED] on 26.11.2015 who also warned the accused persons to refrain from killing her and snatching her children from her and also desisted from taking back said plot from her but they were adamant to kill her. Upon receiving the message of his daughter through [REDACTED], the complainant (PW-1) on 27.11.2015 reached [REDACTED] along with his brother [REDACTED] (PW-2) and there he came to know that accused persons after killing his daughter Mst [REDACTED] shifted her dead body to civil hospital after giving it a colour of suicide. They reached hospital where police upon his statement lodged the F.I.R No. 522/15 dated 27.11.15 u/s 302/34 PPC with Police station city [REDACTED] but without incorporating the true facts of the case alleged by him due to influence of the accused persons over the local police and also for said reason police prepared the cancellation report of the case. It was further alleged in the complaint Ex.PA that [REDACTED] and [REDACTED] (PWs) alongwith other persons reached the hospital after coming to know the occurrence and met him at hospital. [REDACTED] [REDACTED] (PW) runs a widespread business of shopping bags and he

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

alongwith [REDACTED] (PW-3) came at [REDACTED] in connection with his business. They informed the complainant (PW-1) that on the same day, at about 12.00 p.m., they were passing in the street, where the house of the accused was situated. They heard the crying voices of Mst. [REDACTED]. She was known to them previously. On hearing her crying voices, they entered in the house and saw [REDACTED] and Mst. [REDACTED] accused were coming out from the room situated on the eastern side of house with worried faces. On their inquiry, the accused persons told them that Mst. [REDACTED] wanted to leave the home along with baggage. Due to this, they admonished and tortured her. They noticed that her two children were weeping outside at that time. They requested the accused to let them to meet with Mst. [REDACTED] but they refused and expelled them from their house by saying that it was their home affair. Thereafter, [REDACTED] and [REDACTED], both came at hospital and informed the complainant all these facts who produced these pws to police but being in league with the accused persons the I.O did not record their true statements and so also to faour the accused and in order to suppress the occurrence of murder and in order to give this occurrence a colour of suicide police recorded his statement as well as of his other witnesses according to its own choice. The police assured the complainant that the statements of the witnesses had been recorded correctly but in fact the police did not record their statements correctly and recommended the cancellation of case FIR No.522/2015.

It was further alleged in the complaint Ex.PA that on 13.12.2015 at about 10.00 a.m., the accused [REDACTED] [REDACTED] and [REDACTED] went to [REDACTED] and [REDACTED] at [REDACTED], District [REDACTED] and told them that they had killed Mst. [REDACTED]

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

Bibi by strangulation but made up a story of committing suicide by hanging through the ceiling fan. They requested them to get a pardon for them from the complainant for the murder of Mst. [REDACTED] as they were ready to pay Rs.200,000/- to the complainant as compensation. They both came to him and explained the offer of the accused but he (the complainant) refused to pardon the accused persons. He produced these two witnesses before police for recording of their statements but police refused to record their statement. The complainant also filed application for transfer of investigation but could not succeed to get the investigation transferred due to which he was forced to bring this private complaint Ex. PA against the accused persons.

3. *On receiving information of the occurrence [REDACTED] SI (CW-2) alongwith other officials reached at Civil Hospital, [REDACTED] where complainant got recorded his "Fard Biayan" Ex.CW2/A which he sent through [REDACTED] 641/C to police station for registration of FIR, on the basis of which FIR Ex.CW2/B was registered. After that he prepared injury statement Ex.CW1/B, Inquest report Ex.CW1/C and handed over these relevant papers alongwith dead body of Mst. [REDACTED] Bibi to Robeena Shaheen 389/LC alongwith witnesses who identified the dead body.*

After that he alongwith complainant and PWs went to the place of occurrence. He visited the place of occurrence. He took into possession "Dopatta" C.1 which was hanging with the fan alongwith piece of cable of mobile charger C.2 vide recovery memo Ex.CW2/C attested by [REDACTED] complainant and [REDACTED] PW. After that he prepared rough site plan Ex.CW2/D. He also recorded the statement of [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

[REDACTED]. Zameer-ul-Hassan 641/C came there and handed over to him police file of this case upon the basis of which he completed the head notes of documents. He also interrogated some people at the spot.

After that in College Chowk, [REDACTED] 389/LC along with dead body identifying witnesses [REDACTED] and [REDACTED] appeared before the I.O. [REDACTED] 389/LC handed over to I.O. last worn clothes consisting of qameez P.1, shalwar P.2, dopatta (cloth) P.3, brazier P.4, seven sealed jars, one sealed envelope alongwith report of postmortem and relevant police papers. He took the above said articles into possession vide recovery memo Ex.PB attested by [REDACTED] 389/LC.

On 29.11.2015 he got visited place of occurrence to draftsman who took rough notes from the place of occurrence on the pointing of complainant and PWs. On 30.11.2015 he handed over the official camera to Tariq Mehmood 592/C to get the prints of photographs of place of occurrence and dead body of Mst. [REDACTED] Bibi who got printed the photographs total three in numbers C.3/1-3 and handed over to him. He took the same into possession vide recovery memo Ex.CW2/E attested by Tariq Mehmood 592/C and he recorded his statement u/s 161 Cr. P.C.

On 01.12.2015 Mirza Saeed Draftsman handed over to him scaled site plan in triplicate Ex.PD&Ex.PD/1. On 03.12.2015 Muhammad Javed 366/MHC handed over to him seven sealed jars alongwith envelope for onward transmission to the office of PFSA, Lahore intact. He deposited the said parcels in the said office on the same day, intact. On different dates, he arranged confronted meetings between both the parties and he kept the arrest of accused persons

██████████ Vs. ██████████ etc
Sessions complaint case No.64 of 2017 & 08 of 2019.
The State VS ██████████ etc.
Sessions case No.24/2017 & 07/2019

██████████ and Mst. ██████████ deferred. On 13.01.2016 on receiving report from PFSA, Lahore he obtained final opinion of doctor vide application Ex.CW1/E and doctor made her opinion on the same application.

On 18.01.2016 he got prepared report u/s 173 Cr. P. C. in the form of cancellation report while ignoring the medical evidence available on file as in case of hanging hyoid bone is broken and involvement of major vessels occurs which was missing in this case rather minor vessels of skin were involved and there was no deep sign of ligature. The investigator happened to ignore these aspects of the medical evidence while jumping to the above said conclusion and recommending the cancellation of the case but the learned area magistrate disagreed with this cancellation report while passing well-reasoned order and sent up the case for trial which was entrusted to the this court by the learned sessions judge Khushab and in the mean while the complainant being aggrieved of the findings of the police was forced to bring the private complainant in hand to seek the trial of the accused persons in attendance for the charge of murder of his daughter Mst ██████████ upon which learned predecessor court took the cognizance and after completing all legal and procedural formalities he summoned the accused persons in attendance to stand trial in the instant private complaint Ex. PA and they were charge sheeted u/s 302 read with section 34 of Pakistan Penal Code to which they pleaded not guilty and claimed trial. Therefore, prosecution evidence was summoned.

5. In order to prove the guilt of the accused persons, prosecution got examined as many as eleven witnesses.

██████████ Vs. ██████████ etc
Sessions complaint case No.64 of 2017 & 08 of 2019.
The State VS ██████████ etc.
Sessions case No.24/2017 & 07/2019

6. **PW-1 is** ██████████ *who is the complainant of this case whose evidence will be discussed in the later part of the judgment.*
7. **PW-2 is** ██████████ ██████████ *who is real brother of the complainant who visited the deceased lady one day prior to the occurrence and he also accompanied the complainant on the following day to the house of the accused. His evidence will also be discussed with the complainant later on.*
8. **PW-3 is** ██████████ *who is the witness of last seen and his evidence will also be discussed after discussing the above said two witnesses in the later part of the judgment.*
9. **PW-4 is** ██████████ *who is the witness of extra judicial confession of the accused persons. His evidence will also be discussed later on.*
10. **PW-5 is** ██████████ **389/LC** *who finally took the dead body of Mst. ██████████ deceased to DHQ Hospital, Jauharabad and to whom the Woman Medical officer handed over the last worn clothes of the deceased lady.*
11. **PW-6 is** ██████████ *who identified the dead body of Mst. ██████████ at the time of postmortem examination in DHQ Hospital, Jauharabad.*
12. **PW-7 is** ██████████ ██████████ ██████████ **Draftsman** *who prepared the scaled site plan of place of occurrence Ex.PD and Ex.PD/1.*
13. **PW-8 is** ██████████ ██████████ **592/C** *who got printed the photographs of the deceased from the memory card which was handed over by the I.O.*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

14. **CW-1** is Dr. [REDACTED] [REDACTED], WMO, who conducted the postmortem examination upon the dead body of Mst. [REDACTED] Bibi whose evidence will be discussed in later part of the judgment.

15. **CW-2** is [REDACTED] **SI** who is Investigating Officer of this case. His evidence has already been discussed in incipient paragraph of the judgment, hence, needs not to be discussed again.

16. **CW-3** [REDACTED] **Inspector/SHO** who is scribe of the FIR, Ex.CW2/B.

17. Learned counsel for the complainant vide its statement dated 03.07.2019 gave up PWs [REDACTED], [REDACTED] and [REDACTED] being unnecessary and closed the prosecution evidence.

18. In their statements recorded u/s 342 Cr. P. C, the accused persons in attendance namely [REDACTED] s/o [REDACTED] and Mst. [REDACTED] [REDACTED] w/o [REDACTED] [REDACTED] had controverted the allegations leveled against them by the prosecution and they had professed their innocence and to a specific question that why this case was against them and why the prosecution witnesses deposed against them, accused [REDACTED] replied as under:-

“Infact complainant is a greedy person as he took money for several time from me through deceased. A few days prior to this occurrence her brother came to my house and gave message to deceased ([REDACTED]) from his father that he demanded Rs.50,000/- more otherwise he will take her back to his house forever. On this deceased became disturbed and perturbed. Due to attitude of her father and demand of money she committed suicide. Complainant due to his greedy nature to blackmail me and to get desired demands filed this private complaint against me and my mother. PWs are close relative of complainant. They

[REDACTED] Vs. [REDACTED] etc
Sessions complaint case No.64 of 2017 & 08 of 2019.
The State VS [REDACTED] etc.
Sessions case No.24/2017 & 07/2019

deposed falsely against me and my mother on the asking of complainant due to his relationship which fact was also verified by the local police during investigation of this case and came to the conclusion that Mst. [REDACTED] committed suicide.”

Accused Mst. [REDACTED] replied as under:-

“Infact complainant is a greedy person as he took money for several time from my son (co-accused) through deceased. A few days prior to this occurrence her brother came to my house and gave message to deceased ([REDACTED]) from his father that he demanded Rs.50,000/- more otherwise he will take her back to his house forever. On this deceased became disturbed and perturbed. Due to attitude of her father and demand of money she committed suicide. Complainant due to his greedy nature to blackmail my son and to get desired demands filed this private complaint against me and my son. PWs are close relative of complainant. They deposed falsely against me and my son on the asking of complainant due to his relationship which fact was also verified by the local police during investigation of this case and came to the conclusion that Mst. [REDACTED] committed suicide”.

19. *The accused persons did not opt to record their statements as witness u/s 340(2) Cr. P.C. Accused [REDACTED] produced attested copy of judgment passed in application u/s 25 Guardian and Wards Act titled Mst. [REDACTED] Vs. [REDACTED] as Ex.DA, attested copy of suit for recovery dowry articles titled “[REDACTED] etc. Vs. [REDACTED] etc.” alongwith order dated 07.10.2017 as Ex.DB, attested copy of suit for restitution of conjugal rights filed by first husband of deceased Mst. [REDACTED] Bibi titled “[REDACTED] Vs. [REDACTED] Bibi” alongwith order dated 15.09.2010 passed by the then*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

Judge Family Court, Khushab as Ex.DC, original Nikah Nama as Ex.DD and attested copy of petition u/s 491 Cr. P.C. as Ex.DE in defence evidence while accused Mst. [REDACTED] did not opt to produce her defence evidence and she relied upon the same evidence.

20. *Arguments of learned counsel for the adversaries have been heard and record has been perused carefully.*

21. *The unnatural death of the deceased lady in the confines of house of the accused was not disputed, but, however, manner of death is disputed by both the parties. The prosecution version is that the death of deceased was unnatural and homicide, while on the other hand defense version is that the death was caused due to suicide. Be that as it may, I am supposed to "Sift the grain from Chaff". Admittedly, the occurrence is unseen and no ocular direct evidence is available on record to prove the case on ocular account. However, entire case of the prosecution rests upon the circumstantial as well as medical evidence. Direct evidence is not the only mode of proving a fact including a murder. The non-availability of direct evidence does not absolve the Court of its onerous obligation of determining whether the death of the deceased was the result of a felonious act and of its further duty to fix the guilt of the person responsible for the same. To resolve the moot question of cause of death and to fix the guilt of the person responsible for the same, I have to adjudge the conduct of the parties.*

PW-1 [REDACTED] s/o [REDACTED] is the father of deceased lady Mst. [REDACTED] Bibi, who stated in his private complaint Ex.PA that on 20.11.2011, his daughter Mst. [REDACTED] Bibi was married with [REDACTED], accused and her rukhsati was taken place on the same day. The behavior of [REDACTED] accused remained very cruel with

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

his daughter Mst. [REDACTED] Bibi. He also deserted her many times but by the intervention of respectable, she again started to live with him. Three children namely [REDACTED], [REDACTED] and [REDACTED] were born out of their wedlock. [REDACTED] after snatching the custody of above named minor children, expelled his wife Mst. [REDACTED] Bibi from his house. She came to his house at [REDACTED]. There she filed a family suit for dissolution of marriage and maintenance allowance. During the hearing of said family suit, a compromise was effected between Mst. [REDACTED] Bibi and [REDACTED] accused on the condition that he would pay Rs.500000/- to his wife in case he tortures her in future. A five marls residential plot owned by Mst. [REDACTED] accused, the mother of [REDACTED] accused was also transferred in the name of Mst. [REDACTED] Bibi deceased and possession of said plot was also transferred to her. He further promised to pay Rs.3000/- to 4000/- per child as maintenance. On the basis of above said conditions, the compromise was effected and Mst. [REDACTED] Bibi again started to live with her husband ([REDACTED] accused) at Jauharabad. The accused persons were not happy upon said compromise conditions and they bore grudge in their mind in this regard. They demanded the return of said residential plot from Mst. [REDACTED] but she refused to do so.

22. The PW-1 further maintained that on 26.11.2015, his brother [REDACTED] (PW-2) came to [REDACTED] to see Mst. [REDACTED] Bibi who disclosed to him that the accused were demanding the return of the above said five marlas residential plot and on her refusal, they used to torture her. [REDACTED] said to [REDACTED] Bibi and [REDACTED] accused that they had no right to torture Mst. [REDACTED] Bibi, for

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

this reason and he would inform this fact to him (the complainant) being father of [REDACTED] and they would come to settle the matter. [REDACTED] (PW-2) returned and informed all these facts to him. On 27.11.2015, he alongwith [REDACTED] came at [REDACTED] and reached at the house of accused at about 12.30/1.00 p.m and came to know that accused had committed the murder of Mst. [REDACTED] Bibi but by giving it the colour of suicide and had taken the dead body to DHQ Hospital [REDACTED]. On this, he alongwith [REDACTED] (PW-2) rushed to the hospital, where the dead body of Mst. [REDACTED] Bibi was lying. The police was also available at the hospital, but the police officials had joined the hands with the accused. Police recorded his statement and registered the FIR No.522/2015 u/s 302 PPC PS City [REDACTED].

23. He next deposed that [REDACTED] (since given up) and [REDACTED] (PW-3) met him at hospital. [REDACTED] (given up pw) deals with business of shopping bags and he along with [REDACTED] (PW-3) came at [REDACTED] in connection with his business. They informed him that on the same day, at about 12.00 p.m., they were passing in the street, where the house of the accused was situated. They heard the crying voices of Mst. [REDACTED] Bibi. She was known to them previously. On hearing her crying voices, they entered in the house and saw [REDACTED] and Mst. [REDACTED] Bibi accused were coming out from the room situated on the eastern side of house. On their inquiry, they told them that Mst. [REDACTED] Bibi (the daughter of the complainant) wanted to leave the home alongwith children. Due to this, they tortured her. They required the accused to let them to meet with Mst. [REDACTED] Bibi but they refused and expelled them from their house. According to him both [REDACTED] [REDACTED] and [REDACTED], came at

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

hospital and informed him (the complainant) all these facts. He took them to police. The police assured him that their statements had been recorded but in fact the police did not record their statements and recommended the cancellation of case FIR No.522/2015.

24. He next deposed that on 13.12.2015 at about 10.00 a.m., the accused [REDACTED] Bibi and [REDACTED] went to [REDACTED] [REDACTED] (since given up pw) and [REDACTED] (PW-3) at Chak No.25, District [REDACTED] and told them that they had killed Mst. [REDACTED] Bibi by strangulation. They requested them to manage their compromise with him (the complainant) for the murder of Mst. [REDACTED] Bibi as they are ready to pay Rs.200,000/- to him as compensation. They both came to him and explained the offer of the accused but he refused to pardon the accused persons.

25. While highlight the motive aspect of the case he deposed that the accused murdered Mst. [REDACTED] Bibi for the reason of said five marlas plot which was transferred in her favour during the reconciliation proceedings in family suit. He finally deposed that the police destroyed his case, therefore, being aggrieved, he filed his complaint Ex.PA, which is signed by him.

26. Learned defence counsel tried to discredit the statement of the complainant PW-1, firstly by saying that he is closely related to the deceased and being an interested witness his evidence is not worthy of credit until it receives independent corroboration. He further submitted that it was the complainant himself who made her life hell and she being frustrated from the behaviour of her father committed the suicide. He further submitted that on his own statement police chalked out the F.I.R but as result of investigation it was transpired that it was a case of

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

suicide and not the murder. Adverting to these contentions of leaned defence counsel qua relation- ship of the complainant with the deceased lady being her father it is observed that the relationship by itself is no disqualification for the prosecution. It has been the consistent view of the superior courts of the country that mere relationship of the witness with deceased would not discard his testimony if otherwise the same is trustworthy, confidence inspiring and appealing to reason while corroborated by independent circumstances as has happened in the case in hand. Respectful reliance in this regard is placed on the ratio decidendi of august Supreme Court of Pakistan in the cases of “**Ijaz Ahmad v. The State**” (2009 SCMR 99) and “**Talib Hussain and others v. The State and others**” (2009 SCMR 825).

27. The complainant being father of the unfortunate deceased lady did not claim to be an eye witness and he put-forward the above deposed details of the occurrence as it is, as were in his natural knowledge and he did not jump to any padding by becoming an eye witness of the occurrence rather he adopted the natural course in which events happened to occur. The record reveals that he was subjected to lengthy cross-examination, but he remained firm on all material counts. He confidently replied to the questions during the cross examination that he alongwith ██████████ (PW-2) reached at the house of ██████████ ██████████ accused where some male and female persons were standing at the house of ██████████ ██████████ accused who informed them regarding the shifting of ██████████ Bibi to hospital after being murdered. He further replied that they left ██████████ at about 10:00/10:30 a.m. and reached house of accused ██████████ ██████████ at about 12:00/12:30/1:00 p.m. and they reached at hospital after about 1:00

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

p.m. He replied to the suggestion that it is correct that they had got registered FIR No.522/2015 u/s 302/34 PPC P.S. City ██████████ regarding this occurrence and the same was registered on the basis of his statement (Fard Biyan) recorded by Kazim Hussain SI but he unequivocally explained that he filed this private complaint for the reason that the witnesses he had mentioned to the police at the time of launching of FIR were not mentioned therein by the police. He maintained that ██████████ (PW-3) and ██████████ (given up pw) had informed him at about 1:30 p.m. in hospital and during the entire investigation PWs ██████████ ██████████, ██████████ and ██████████ remained present in investigation proceedings but police did not record their version properly. Police had not recorded their two witnesses ██████████ and ██████████. He emphatically replied that the police did not write down the names of witnesses namely ██████████ ██████████, ██████████ and ██████████. He voluntarily explained in response to a stinging question that police prepared cancellation report with the connivance of accused party after joining hands with them. He categorically dismissed the suggestion that ██████████ Bibi deceased committed suicide due to his ill behaviour with her. Despite lengthy cross-examination defense has failed to shake his statement.

28. ██████████ s/o ██████████ (PW-2) corroborated the statement of complainant PW-1 with regard to the details of the occurrence and his visit to the house of the accused at ██████████ one day prior to the day of occurrence i.e. 26.11.2015 and his meeting with his unfortunate niece Mst. ██████████ Bibi and her telling to him that ██████████ accused and ██████████ Bibi accused were demanding the return of five marlas residential plot, which was transferred to her

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

earlier and her further disclosing to him that the accused persons wanted to snatch her children and also used to torture her and her requesting to him to convey these matters to her father [REDACTED]. He also deposed that he also met [REDACTED] and [REDACTED] Bibi accused and said them that they had no right to snatch the children from Mst. [REDACTED] Bibi and torture her. On such information, coming of the complainant (PW-1) along with him (PW-2) to the house of the accused [REDACTED] on next day i.e. 27.11.2015 where their coming to know that the accused persons had committed the murder of Mst. [REDACTED] Bibi and coloured it of suicide and had transmitted the dead body to DHQ Hospital [REDACTED] and the availability of the police already there at the hospital and reporting the occurrence to it by the complainant but Police's not recording their correct version was deposed by him in a straight forward and natural way in corroboration to the complainant. He denied the question put to him that due to ill-behaviour of her father (PW-1) Mst. [REDACTED] Bibi his niece has committed suicide. Despite lengthy cross-examination defense has failed to shake his statement except some variations as to time of their reaching to hospital etc which are insignificant and are bound to creep in the statement of a witness due to passage of time and short of memory etc.

29. PW-3 [REDACTED] s/o [REDACTED] is an independent witness of the episode of last seen who stated in his statement that he is shopping bag seller by profession and on 27.11.2015, he along with [REDACTED] (since given up pw) came at [REDACTED] in connection with selling the shopping bags and were passing in the street of [REDACTED], at about 12.00 p.m., where they heard the crying voices from the house of [REDACTED]

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

accused. On this, they entered in the house and saw that ██████████
 ██████████ and ██████████ accused were coming out from the room situated
 on the eastern north side of the house in puzzled condition. On their
 query, they told them that Mst. ██████████ Bibi wanted to go to her parents'
 house along with her children and they tortured her and did not allow
 her to leave the house. They required them to let them to meet her but
 they refused to allow them saying that it was their family matter.
 Thereafter they proceeded towards shops and agencies in connection
 with selling their shopping bags and after some time when they again
 passed in the said street, they noticed many people were gathering
 there. According to him the people told them that ██████████
 and ██████████ Bibi accused had committed the murder of Mst. ██████████ Bibi
 and her dead body was taken to hospital. On this, they went to
 hospital. ██████████ (the complainant) met them at hospital and
 they told him all the above stated facts. ██████████ ██████████ (the
 complainant) took them to police already available at hospital where
 they made their statements to the police.

30. Learned defence counsel tried to discredit the statement
 firstly by saying that the name of this witness as well his accompanying
 witness since give up were not mentioned in the F.I.R and as such he is
 lately introduced witness in re-shaped private complainant and the
 testimony of this belatedly introduced witness has no worth in the eye
 of law. I have perused the record as well as cross-examination, wherein
 ██████████ (PW-3) categorically stated that he joined investigation with
 ██████████ complainant about two times and Police recorded his statement as
 well as statement of PWs namely ██████████ and ██████████
 in the hospital. In reply to another question put to ██████████ (PW-3) that

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

police has recommended the cancellation of this case being a case of suicide, he categorically maintained that police has falsely declared this occurrence as of suicide case. He voluntarily replied that it was a murder case. He denied that [REDACTED] Bibi committed suicide because of ill-behaviour of her father with her. Not even a single suggestion was put to this important witness of last seen as to non-availability of the accused in his house at that point of time and non-seeing of him by this witness in his house. Record reveals that despite searching cross-examination defence has failed to jolt his statement. He denied that accused was implicated falsely.

31. Next important witness is [REDACTED] s/o [REDACTED] (PW-4) who is the witness of extra-judicial confession. He deposed in his statement that on 13.12.2015, Mst. [REDACTED] Bibi accused present before court and [REDACTED] accused came to his house at Chak [REDACTED]/MB. He alongwith [REDACTED] (since given up), his relative was sitting at his house. They told that they committed murder of Mst. [REDACTED] Bibi by strangulating her when she was sleeping and coloured the incident as suicide. They requested them to manage a compromise with the complainant party and they offered Rs.2,00,000/- as compensation to the complainant party. He narrated this matter to [REDACTED], complainant PW-1 but he was not agreed to enter into compromise. He was subjected to cross examination but nothing favourable to the defence could be got solicited from his mouth. Upon cross examination he stuck to his stance that accused persons namely [REDACTED] and [REDACTED] Bibi came to him on 13.12.2015 at about 10:00 a.m. and on next day, he told to [REDACTED] complainant regarding the confession of [REDACTED] and [REDACTED]. He dismissed

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

the suggestion that neither accused persons [REDACTED] and [REDACTED] Bibi came to him nor they confessed their guilt before them. As a whole, the defense has failed to put any question with regard to false implication of the accused.

32. *The next important witness which the prosecution has produced as CW-1 is Dr. [REDACTED] presently posted in Sindh Health Department at Karachi on deputation who conducted the autopsy upon the dead body of the deceased Mst. [REDACTED] Bibi. She deposed that on 27.11.2015, she was posted at DHQ hospital Jauharabad. On the same day, at about 7.00 p.m., she conducted postmortem examination of [REDACTED] Bibi brought by [REDACTED] 389/LC and Javed ASI. The dead body was identified by [REDACTED] (PW-6) and [REDACTED] [REDACTED] (since given up pw) at the time of her postmortem examination. She found sign of ligature mark present on left side of neck starting from the back (occipital bone) of neck, up to 2 cm away from hyoid bone which is about 5 cm in length. She also noted radish blue bruise present there and she found 1½ meter cloth around the neck with knot at opposite side which she handed over to police. According to her observations the ligature mark was horizontal.*

She further deposed that on dissection of neck it was found, bruising of soft tissue of neck was present. Hyoid bone and thyroid cartilage was not broken, visceral congestion present. Upon dissection of "Thorax" she found that Pericardium and heart had marked collection of blood present.

She obtained skin from effected side, stomach, hyoid bone, large and small intestine, spleen, liver, kidney and heart to send them as Specimens for expert opinion.

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

In her opinion, deceased [REDACTED] Bibi was subjected to Asphyxia before the death, however, initially she kept her final opinion in abeyance till the receipt of report of PFSA/Histopathology of the above said viscera. According to her, Asphyxia is sufficient to cause death in ordinary course of nature as it led to hypoxia of vital organs and shock. On receiving of PFSA report Ex.CW1/D I.O. moved application for final declaration. She made her final opinion Ex.CW1/E on the basis of report of PFSA, Lahore Ex.CW1/D as under:-

“No poison was detected, no ante-mortem injury of bone was seen”. So, in my final opinion death was caused due to Asphyxia as the skin from ligature side reveals blood hemorrhages suggesting ante-mortem nature of injury at the level of neck.”

According to her Ex.CW1/A is the correct carbon copy of postmortem examination report No.26/2015, Ex.CW1/A/1 is the sketches of injuries which were prepared and signed by her. She also endorsed injury statement Ex.CW1/B and inquest report Ex.CW1/C.

She estimated the probable time elapsed between injury and death was ten to fifteen minutes, while between death and postmortem was within six to seven hours approximately.

On cross-examination, CW-1/Dr. [REDACTED] stated that normally when the death occurs due to strangulation, eye balls and tongue protrude. She admitted it correct that in column of her opinion there is cutting on the word strangulation and she wrote down the word “Asphyxia”. She explained it by deposing that word strangulation was mentioned due to clerical mistake which was corrected by her at the spot. In a reply to a question she categorically deposed that in her opinion it was a case of homicidal. She deposed during cross

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

examination of learned defence counsel that there was no mark of violence on the whole body of deceased Mst. ██████████ Bibi except her neck and as per report of histopathologist it has been categorically opined that the bone of the neck was not broken prior to the postmortem examination. The skin of the ligature side reveals blood hemorrhages suggesting ante-mortem nature of injury at the level of neck. She firmly dismissed the suggestion that the injuries around the neck were caused due to her hanging by herself. She voluntarily explained that in case of suggested hanging the hyoid bone is broken and involvement of major vessels occurs which is missing in this case rather minor vessels of skin were involved and there was no deep sign of ligature. She further explained that as in this case ligature mark started from back side of the neck (occipital bone) towards hyoid bone 5 cm in size and 2 cm away from hyoid bone, hence, it is a case of homicide. She said in reply to a question of learned defence counsel that it is correct that no report regarding presence of finger print upon the neck of the deceased were mentioned but in the same breath she voluntarily explained that finger prints cannot be seen on skin. She categorically dismissed the bald suggestion that with the connivance of complainant she have issued false and fabricated postmortem report.

33. *Now adverting to statement of defense, the accused persons have not recorded their statement under section 340(2), Cr.P.C. and ██████████ accused in his statement recorded u/s 342 of Cr.P.C, in reply of question that why this case is against him and why the prosecution witnesses have deposed against him, he stated that infact complainant is greedy person who took money from him for several time through his deceased daughter Mst. ██████████ Bibi and a few*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

days prior to this occurrence brother of his deceased wife came to his house and gave a message of his father to deceased Mst. [REDACTED] Bibi that he (the complainant) demanded Rs 50,000/- more otherwise he would take her back to his house forever. On this the deceased became disturbed and perturbed. Due to attitude of her father and demand of money she committed suicide. The complainant due to his greedy nature to blackmail him and get desired demands filed this private complaint against him as well as his mother. The Pws are close relative of complainant. They deposed against him and his mother on the asking of the complainant due to his relationship which fact was also verified by the local police during investigation of this case and came to the conclusion that Mst. [REDACTED] Bibi committed suicide. He also produced the documents ranging from Ex.DA to Ex.DE in his defence evidence (the details of these documents have already been mentioned in paragraph no:19 of this judgment). Same defence plea was adopted by the co-accused Mst [REDACTED] Bibi in her statement u/s 342 of Cr.P.C.

34. *After thorough evaluation of evidence produced by the parties, the conduct of the accused [REDACTED] could be easily adjudged, the statements recorded by the blood relatives of the deceased lady i.e. real father PW-1 and real uncle PW-2 who are natural witnesses and entirely well aware with the overall situation of the home affairs of the couple from solemnization of marriage to till the incident, as such, their depositions with regard to home affairs and the unnatural death of the deceased relationship would be natural and reliable on all counts, and could not be thrown out from the consideration merely on the basis of unseen occurrence. Even otherwise, their testimonies were further corroborated by the statement of independent witness PW-3 who*

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

is the witness of last seen, has also corroborated the statements of PW-1 and PW-2 with regard to the ill-treatment of the accused towards deceased Mst. ██████████ Bibi.

35. *The defence during cross-examination mostly put the question to the witnesses that the complainant was a greedy person who demanded money from the accused through his daughter by threatening her to take her back in his home forever to her annoyance which perturbed and disturbed her and due to such reason the deceased suffers from depression and committed suicide. This defence plea just remained a bald version which was not only strongly dismissed by the pws to whom it was suggested through their cross examination and even otherwise it was a farfetched plea incompatible with common sense. How a father can take his daughter to that stage to mint money through her from his son-in law which caused such a huge depression forcing her to commit suicide and that too under the roof of her husband situated in other district. This plea is not only opposed to common sense and the ground realities but also completely negated by the medical evidence came through the testimony of the postmortem examiner CW-1 who testified that it was a case of homicide instead of suicide.*

36. *Now the next question arises that when the incident took place, the occurrence was unseen, but the same was occurred in the house of the accused ██████████ where the deceased lastly residing with him and accused neither in his statement under section 342, Cr.P.C. nor during cross examination upon the pws especially upon the witness of last seen, took the plea that he had left his house and was not present in his house at the time of the occurrence. He*

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

*specifically stated that his wife committed suicide due to depression on account of demanding money by her father through her from her husband, but the defense has failed to prove its version through any sort of evidence, which also could not be done in our traditional society while such version of the defense was negated by the medical evidence whereby it was found that the cause of death of deceased was Asphyxia (suffocation) and homicide instead of suicide. The claim made by PWs regarding ill-treatment and cruelty due to the motive transaction meted by the deceased was not challenged and all these circumstances mentioned above connects the accused ██████████ with the commission of offence because symptom and signs of case indicate that the death of deceased was not suicide, but was homicide. As per scaled site plan Ex.PD there was no single tool around the deceased to get support for hanging herself. Only bed under the ceiling fan from where she was shown hanging was mentioned and it is not possible for a lady to reach to the roof to hang by using the ceiling fan while standing on the bed without using any tool or chair onto it. It is also did not appealing to the prudent mind that without availability of such instruments near the dead body, she managed to hang herself with the roof of the residential room of the accused. Reliance in this regard is placed on the case of "**Saeed Ahmed v. The State**" reported in 2015 **SCMR 710**. Relevant portion whereof is reproduced as under:-*

"In view of the aforesaid it could be safely concluded that the deceased was strangled to death, which rules out the possibility of a natural death or of suicide."

--- The Appellant also elected not to give evidence on oath under section 340(2) of the Code. In his statement under section 342 of the Code he simply declared his innocence and

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

stated that PWs. 6 and 7 had testified against him due to the fact that they were not happy with the marriage of the deceased with him and that they were not present in the house on the fateful night."

It was further laid down in this case law that with regard to vulnerable members of society, such as children, women and the infirm, who were living with the accused or were last time in his company, the accused ought to offer some explanation of what happened to them. If instead he remains silent or offers a false explanation he casts a shadow upon himself. This does not mean that the burden of proof has shifted onto the accused as it is for the prosecution to prove its case, however, in respect of the helpless or the weak that require protection or care it would not be sufficient for the accused to stay silent in circumstances which tend to incriminate him, and if he elects to do so he lightens the burden of the prosecution. Article 122 of the Qanun-e-Shahadat Order, 1984 too stipulates that if a particular fact is especially within the knowledge of any person the burden of proving that fact is upon him.

37. *Since admittedly the deceased lady was lastly residing with the ██████████ accused and even otherwise he did not dispute the presence of his deceased wife in his house till the time of incident and nothing was brought by the accused on record that even at the last night or early morning any untoward situation was arisen between the parties which caused the death of deceased. Under the such circumstances the accused ██████████ could not be held innocent being the life partner and inmate of the deceased. Reliance in this regard is placed on the case of "**Muhammad Akhram v. The***

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

State" reported in **2003 SCMR 855** relevant portion whereof is reproduced as under:-

"Accused had neither denied his presence in his house on the day of occurrence nor offered any explanation as to how and under what circumstances his deceased wife while sleeping with him in a room of his house had sustained injuries with the sharp-edged weapon on the sensitive part of her body--- Bare denial of accused of knowledge of occurrence and not offering the required explanation had provided a strong corroboration to the eye-witness account to prove his guilt-- -Ocular testimony was further corroborated by medical evidence and the recovery of Chhuri at the instance of accused which was found stained with human blood---No direct or circumstantial evidence was available on record to suggest that the accused had acted under sudden provocation---Possibility of exchange of words between the deceased and accused as husband and wife on family affairs would not permit the accused to take such a cruel step of killing his wife---Accused has not even taken any such plea in his defense---No leniency could be given to accused in matter of sentence who on a very petty dispute had committed the murder of an innocent and helpless woman---Leave to appeal was declined to accused in circumstances.---

38. This entire chain of events imposes a duty upon the accused ██████████ to explain his position, especially when a vulnerable dependent i.e. Mst. ██████████ Bibi his wife, met with an unnatural death inside the confines of accused's house, he is then under heavy onus to explain as to how his wife Mst. ██████████ Bibi (deceased) met an unnatural death, though claimed by him a suicide while hanging through ceiling fan, which is otherwise contradicted as per medical and forensic reasons and was declared a homicidal death

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

and not the suicidal death. It was laid down in the case law reported as **PLD 2017 SC 681 (Asad Khan v. The State)** that:

"It had been held by this Court in the case of **Arshad Mehmood v. The State (2005 SCMR 1524)** that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the later case of **Saeed Ahmed v. The State (2015 SCMR 710)** the said legal position had been elaborated and it had been held that an accused person is under some kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the confines of his house. Reference can also be placed on case law reported as **2016 SCMR 1628 (Nazir Ahmad v. The State)** wherein it has been held that:--

"4. It may be true that when a vulnerable dependant is done to death inside the confines of a house, particularly during a night, there some part of the onus lies on the close relatives of the deceased to explain as to how their near one had met an unnatural death."

39. As per the proposition before this Court is regarding the murder of Mst. ██████████ Bibi (deceased) in the confines of a house of the accused where the accused person was available at that time and no other witness or person had seen the occurrence directly, therefore, in such type of cases the quantum of evidence is different as of normal cases, I have seen the medical evidence which corroborates the entire scenario that the death is not suicidal rather it is homicidal, but in order to connect ██████████ accused with the said incident of murder, this court has to see the entire case with reference to the Qanun-e-Shahadat Order, 1984, whereby Article 117 of the Order places a burden of proof upon a person who has to prove the existence of any fact. In such eventuality the prosecution is under heavy burden to

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

discharge its onus that Mst. ██████████ Bibi (deceased) was murdered by ██████████ accused but at the same time the provisions of Article 119 of the Qanun-e-Shahadat Order, 1984 also plays a significant role in this case when I consider the plea of accused who has taken the defence of a particular line from day one i.e. Mst. ██████████ Bibi (deceased) had committed suicide and the suggestion put forward by the accused in the trial is on the same line, even otherwise, accused has taken this specific stance in his statement under Section 342 Cr.P.C. therefore, a particular fact has to be proved by accused as to whether Mst. ██████████ Bibi (deceased) had committed suicide and this can only be proved by accused in terms of Article 119 of the Qanun-e-Shahadat Order, 1984 which read as under:

"119. Burden of proof as to particular fact: The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

Similarly, Article 122 of the Qanun-e-Shahadat Order, 1984 is also relevant in this regard which is as under:

"122. Burden of proving fact especially within knowledge: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

At the cost of repetition in this case ██████████ accused has taken the plea of suicide by his wife Mst. ██████████ Bibi (deceased) and in such situation he has to discharge the burden under the exception taken by the apex Court in **PLD 2017 SC 681 (Asad Khan v. The State)**, **2016 SCMR 1628 (Nazir Ahmad v. The State)** and **(Saeed Ahmad Vs. The State) 2015 SCMR 710**.

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

40. *The circumstances which stand proved on record and which rendered assistance in the determination of the question whether the death of the deceased was felonious and if so who was responsible for the same are, as under:-*

- (a)** *Mst. [REDACTED] Bibi (since deceased) was the wife of accused [REDACTED] who took him to family court to his annoyance and sought recovery of maintenance allowance, dowry articles and even dissolution of marriage;*
- (b)** *Mst. [REDACTED] Bibi was succeeded in securing five marla plot of his mother and getting it transferred in her name as result of said litigation in the family court;*
- (c)** *She was also succeeded in getting bound accused [REDACTED] to pay Rs 5 lakh in case he would torture her or desert her in future. Meaning thereby she remained subject to domestic violence at the hands of her husband.*
- (d)** *How these attainments on her part could be subsequently tolerated by her husband being member of the male dominating society which definitely kept on irking him;*
- (e)** *The deceased was living with [REDACTED] accused and had met her death in his house;*
- (f)** *The accused himself never reported the death of the deceased to the police rather someone else whose name was not remembered to the I.O CW-2, informed the police regarding the occurrence;*
- (g)** *The explanation offered by [REDACTED] accused for the death of the deceased being a case of suicide did not find support from the medical evidence and is in fact being belied by the same;*
- (h)** *The death of the deceased was a murder and was neither the result of an accident nor of suicide;*
- (i)** *The circumstance of last seen established by an independent witness PW-3 in a coherent manner;*
- (j)** *The circumstance of extra judicial confession brought on file through confidence inspiring testimony of PW-4;*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

(k) *Close relationship of the complainant with the accused being father in law having no axe to grind against him to choose to see the father of children of his beloved deceased daughter go to gallows.*

41. *The entire background of the case proves the chain of evidence against [REDACTED] accused if seen in the light of evidence of Dr. [REDACTED] CW-1 who unequivocally declared in her testimony that it was not a case of suicide but is a case of homicidal death. The circumstances enumerated above which do stand established on record beyond any reasonable doubt are a clear pointer towards the guilt of the accused [REDACTED] and they confirm the involvement and commission of offence leading towards [REDACTED] [REDACTED] accused. All these facts further confirmed from the statement of PW-3 who is independent witness of the chain of event and who had seen [REDACTED] accused at the place of occurrence last time in the manners already mentioned above whereas [REDACTED] accused [REDACTED] has failed to explain his stance of suicide of his wife Mst. [REDACTED] (deceased) in the room of his house as per his own plea. Since admittedly the deceased lady was lastly residing with the accused [REDACTED] and even otherwise he did not dispute the presence of his deceased wife in his house till the time of incident and nothing was brought by the accused on record that even at the last night or early morning any untoward situation was arisen between the parties which caused the death of deceased. Under the such circumstances the accused [REDACTED] [REDACTED] could not be held innocent being the life partner and inmate of the deceased therefore he is held responsible for the murder of his wife and he has done her to death. therefore, he is convicted u/s 302 (b) of Pakistan Penal Code*

[REDACTED] Vs. [REDACTED] etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS [REDACTED] etc.
 Sessions case No.24/2017 & 07/2019

1860. while co-accused Mst. [REDACTED] Bibi who is admittedly an old aged lady and infirm lady and being so was not capable of strangulating a young lady to death and even otherwise being mother she could not join her hands with her son to strangulate her own daughter in law to death and see her young son go to gallows. Being mother of the culprit she might have been dragged into the criminal vortex by throwing the net wide which practice is customary in our society, therefore, while resorting to the principle of sifting the grain from chaff enunciated in case laws **reported as 2019 SCMR 79, 2017 SCMR 1645 and PLD 2015 SC 145**, I hereby acquit the lady accused namely Mst. [REDACTED] wife of [REDACTED] of the charge while extending the benefit of doubt in her favour. She is on bail. Her surety is discharged from his liability.

42. As for as question of quantum of sentence to be awarded to the convict [REDACTED] is concerned, it also needs serious thought. It is an admitted fact that prosecution case hinges upon the circumstantial evidence and there was no eye-witness of the occurrence. It remained shrouded in mystery as to what actually happened between the husband and the wife soon before the occurrence which prompted the convict husband to strangulate his own wife to death. So treating all these facts as mitigating circumstances I proceed to award lesser penalty to the convict [REDACTED] s/o [REDACTED] and he is sentenced to life imprisonment u/s 302 (b) PPC with a benefit of section 382 (b) of Cr.P.C and with a direction to pay Rs 15 lac as compensation u/s 544-A of Cr.P.C to the legal heirs of the deceased Mst. [REDACTED] Bibi which shall be recovered as arrears of land revenue from the estate of the convict, if he has. In case of default in payment of this amount, the

██████████ Vs. ██████████ etc
 Sessions complaint case No.64 of 2017 & 08 of 2019.
 The State VS ██████████ etc.
 Sessions case No.24/2017 & 07/2019

convict will undergo 6 months simple imprisonment. He is on bail. His bail bonds are discharged. He is taken into custody and remitted to jail to undergo the sentences awarded to him through this judgment. Copy of this Judgment be delivered to him free of cost forthwith.

43. *last worn clothes of deceased Mst. ██████████ Bibi consisting upon qameez P.1, Shalwar P.2, Dopatta P.3, brazier P.4 and the piece of cloth which was around the neck P.5 ,piece of cable of mobile charger C.2 may be returned to her legal heirs. The disposal of the above said goods/articles shall be made to the above effect after final result of appeal/revision, if any. Copy of this Judgment be sent to the Incharge, Prosecution Branch, District ██████████ as required u/s 373 Cr.P.C. File be consigned to record room after its completion.*

Announced:
13.07.2019.

Malik Muhammad Zia-ul-Tariq Khokhar,
Addl: Sessions Judge,

██████████.

Certified that this judgment consists of 33 pages, which have been dictated, read, corrected and signed by me.

Dated:
13.07.2019.

Addl: Sessions Judge,

██████████.

██████████ Vs. ██████████ etc
Sessions complaint case No.64 of 2017 & 08 of 2019.
The State VS ██████████ etc.
Sessions case No.24/2017 & 07/2019