

**IN THE SUPREME APPELLATE COURT, GILGIT-BALTISTAN,
GILGIT
Cr.P.L.A. No. 11/2011**

**Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Justice
Mr. Justice Syed Jaffar Shah, Judge.
Mr. Justice Muhammad Yaqoob Khan, Judge.**

The State through Advocate General, Gilgit-Baltistan.

Petitioner

Versus

Anwar s/o Kareem r/oKharkoo, Muhallah Tappari, Tehsil Daghoni,
District Ghanche.

Respondent

**CHARGE UNDER SECTION 302(B) P.P.C. VIDE F.I.R.5/08
DATED 02-12-2003, POLICE STATION THAGUS DISTRICT
GHANCHE.**

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60
OF (EMPOWERMENT & SELF GOVERNANCE) ORDER,
2009, AGAINST THE JUDGMENT/ ACQUITTAL OF
ACCUSED DATED 01-04-2011, PASSED BY THE LEARNED
CHIEF COURT, GILGIT- BALTISTAN.**

Present:- Advocate General, Gilgit Baltistan for petitioner.
Mr. Shoukat Al, Senior Advocate, for respondent/accused.

Date of Hearing:-19-09-2011

JUDGMENT

Syed Jaffar Shah, J----- This appeal by leave of this court is directed against judgment dated 01-04-211 passed by learned Chief Court, Gilgit- Baltistan, in Cr. Appeal No. 02/08, whereby the learned Chief Court, Gilgit- Baltistan, while setting aside the order dated 22-08-2008, passed by learned Additional Sessions Judge, Ghanche acquitted the respondent in a case registered under section 302 P.P.C vide F. I. R. No. 05/2008, at Police Station Thagus, District Ghanche.

The brief facts as contained in the F.I.R are that the F.I.R. lodger who happened to be S.H.O. Police Station Thagu, on receiving a spy information that a dead body is lying on a hill in thagus area proceeded to the place where the dead body was lying. According to the contents of F.I.R. when the S.H.O alongwith notables of the area reached near the place of occurrence found a dead body of a female in a decomposed condition lying between stones.

The dead body was shifted to D.H.Q. Khapulo for autopsy purpose where doctors conducted the post mortem of dead body and it was found that the deceased was Mst. Kulsoom d/o Hassan. During investigation under Section 174 Cr. P. C it transpired that deceased was married to respondent Anwar. After Completion of necessary investigation under Section 174 Cr.P.C. the police arrested the respondent/ accused as a suspect and registered F.I.R. No. 05/2003 and carried out further investigation. During the course of investigation it revealed that due to involvement of deceased in immoral activities, the respondent wanted to do away with the life of deceased and before the occurrence the respondent and the deceased were lastly seen by some PW's proceeding towards the place of Occurrence. It is also the case of the prosecution that after commission of offence accused hibernated himself for a considerable time.

The police after completion of necessary investigation submitted the report in terms of 173 Cr. P.C. before the Trial Court and the Trial Court framed charge against accused/ respondent, recorded statements of prosecution witnesses as well as the statement of accused under section 342 Cr. P.C. The Trial Court on assessment of evidence convicted the accused/respondent under section 302(b) P.P.C. and sentenced him to life imprisonment and also directed payment of compensation amounting to Rs. 50,000/- to the legal heirs of deceased as provided under section 544 (a) Cr.P.C.

Having been aggrieved and dissatisfied with the judgment passed by the Trial Court, the respondent filed criminal appeal against his conviction before the learned Chief Court, Gilgit-Baltistan, which was accepted vide order dated 22-08-2008 and consequently the conviction recorded by the Trial Court was set aside and the accused/respondent was acquitted as stated above.

We have heard the learned counsel for the parties at a considerable length, the learned Advocate General Gilgit- Baltistan, vehemently opposed the judgment recorded by the Chief Court, Gilgit- Baltistan, and contended that in view of confessional statement recorded by a Judicial Magistrate coupled with circumstantial evidence, the respondent was liable for conviction. He further went on saying that the accused/respondent had brutally killed his wife as such the Trial Court had rightly convicted the respondent but the learned Chief Court, Gilgit- Baltistan, in utter disregard of available material on record acquitted him merely on technical reason as such the impugned judgment is not warranted in the eyes of law. He also added that the acquittal order passed by learned Chief Court is result of misreading/ non-reading of the evidence and misinterpretation of relevant law as such not maintainable and under the circumstances it is fit case for interference of this court on the question of facts as well as law.

On the other hand Mr. Shoukat Ali, the learned counsel for the respondent/ accused controverted the above submissions of learned Advocate General and contended that the occurrence is an unseen occurrence, the motive for murder is not proved, the circumstantial evidence produced by the prosecution is of no worth credence, the so called retracted confessional statement attributed to the respondent/accused is of no value in the eyes of law having not been recorded in accordance with procedure laid down in Section 164 and 364 Cr. P.C. At the fag end of his arguments he submitted that the Chief Court keeping in view all legal and factual aspects of the case has rightly acquitted the respondent as such the impugned judgment is maintainable.

We have also perused the relevant record of the case with the able assistance of the learned counsel for both the parties and have also gone through the relevant law in the light of arguments advanced by the learned counsel for the parties. The prosecution has based its case mainly on confessional statement and last seen evidence. So far as confessional statement of accused/ respondent is concerned, no sanctity could be attached to it because methodly of recording confessional statement as laid down in Sec. 164 and 364 Cr.P.C has not been adopted by Magistrate. The learned Magistrate who had recorded confessional statement of accused / respondent has admitted course of cross examination by the defence counsel that he has not put any question to the defence counsel that he has not put any question to the statement maker regarding torture by police and it is also admitted by the Magistrate that confessional statement of the accused was recorded on oath moreover the accused/ respondent was not back to police lockup in case he declines to make confessional statement.

Non fulfillment of such requirements while recording confessional statement of the accused/ respondent will lead to an illegality not cureable u/s 537 Cr. P.C as provision of section 164 and 346 are mandatory in nature. It is settled law of land that confession not recorded in conformity with provision of section 164 Cr. P.C r/w Section 364 Cr. P.C will not be a judicial confession in the eyes of law and sentence could not be based on such confessional is under legal obligation to comply with the provision of law and any violation or departure to law would render the confessional statement as not admissible it is also obligatory for the magistrate to certify at the foot of the statement that he has fulfilled all the legal requirement while recording the statement which he has failed to do in the present case.

In the light of above discussion, we hold that this confessional statement cannot be a basis for conviction of the accused and learned Chief Court has rightly ruled it out of consideration so learned Chief Court has rightly ruled it out of consideration so far as the last seen evidence is concerned some impartial and dis-interested witnesses have deposed before the

Trial Court that they had seen the deceased and respondent while proceeding to the mountain where-from the dead body of the deceased was recovered. This piece of evidence is believable but it cannot be sufficient evidence for awarding major penalty as provided u/s 302 (b) P.P.C in absence of other corroborative evidence i.e. medical or other evidence. As according to postmortem report exhibit PW-9/A the death of deceased is not proved to be result of physical violence.

The doctor who conducted the postmortem of the dead body was examined by the Trial Court as PW-9 states that it could not be ascertained whether the death was caused due to physical violence, he is also of the opinion that death of deceased could be result of attack of some wild best.

In the attending circumstances and in the light of available record it cannot be said with certainty that death of deceased was caused as a result of physical violence and there is no evidence to connect the accused/respondent with an offence of Qatal-e-Ahmad. Qatal-e-Ahmad has been defined in Section 300 P. P.C as under:-

Section-30. Qatal-e-Ahmad whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, cause the death of such person, is said to commit qatal-e- ahmad.

And punishment for Qatal-e-Ahmad has been categorized in Section 302 in the three different categories i.e.

- (a) Death as a Qisas
- (b) Imprisonment for life as Tazir
- (c) Up to 25 years imprisonment where sub clause (a) and (b) are not attracted.

From perusal of available material on record no offence u/s 302 P.P.C is made out against the respondent/accused. However there is sufficient evidence to the effect that the deceased was lastly

seen in the company of Accused/ Respondent while proceeding towards the place of occurrence. This last seen evidence of disinterested and impartial witnesses could not be impeached by the defence during course of cross examination. According to this piece of evidence the accused/ respondent and deceased were seen while proceedings towards the place of occurrence. The place of occurrence admittedly is hilly area from where the dead body of the deceased was recovered. So this possibility cannot be ruled out that the accused/ respondent took the deceased in the mountain from a difficult terrain and left her over there and being a women folk she could not ascend from there and became prey of wild beast or due to some other accused/ respondent thereafter disappeared from the area for a considerable time and did not bother to inquire whereabouts of the deceased. Taking the deceased to a mountain and leaving her there amounts to cause of death of deceased within the mischief of Qatal-e-Sabab as defined in Section 321 of Pakistan Penal Court.

So in the light of above discussion we accept this appeal and convict the accused/ respondent u/s 322 P.P.C for committing Qatal-e- Bis- Sabab which provides payment of diyat, the accused/ respondent is directed to pay an amount of Rs. 280,000/- to the legal heirs of deceased Mst. Kulsoom d/o Hasan as diyat in 36 equal installments as provided in Section 331 P.P.C The amount of diyat so deposited by the convict Anwar in the Trial Court shall be disbursed among the legal heirs of deceased according to their shari-Shares. In case of non-deposit of amount of diyat within a period of three years by the convict Anwar the Trial Court shall proceed to recover the same as arrears of lan.

Appeal allowed

This case was heard on 19-09-2011 and Judgment was announced in open Court on the same day. The undersigned relinquished the office of Chief Judge Gilgit- Blatistan on 14.01.2011, whereas, the judgment has been sent for signature on 25.02.2012 with the delay of about more than 5 month. The proprietary would not permit the undersigned to put his signature on the judgment at this belated stage and re-hearing of the case is suggested in due course of time.

Chief Judge

Judge

Judge