

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE SH. AZMAT SAEED  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE FAISAL ARAB

**CRIMINAL APPEAL NO. 93 OF 2013**

(On appeal against the judgment dated 19.11.2012  
passed by the High Court of Balochistan, Quetta in  
Criminal Jail Appeal No. 11/2012)

Muhammad Sadiq

... Appellant

**VERSUS**

The State

... Respondent

For the Appellant: Mr. Muhammad Amjad Iqbal Qureshi,  
ASC  
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Tahir Iqbal Khattak, Addl. P.G.  
Balochistan

Date of Hearing: 16.11.2016

**JUDGMENT**

**FAISAL ARAB, J.-** On 20.02.2000 at 11 a.m., one Lashkar Khan lodged an FIR under Section 302 PPC alleging that on the previous day i.e. 19.02.2000 at 7.15 a.m. the appellant committed murder of his cousin, Abdullah by firing at him with Kalashnikov. The appellant, who is a teacher by profession and nephew of the complainant, absconded. The trial nevertheless proceeded, the prosecution recorded its evidence and the appellant was convicted in absentia and sentenced to undergo life imprisonment. After about ten years of his conviction, the appellant surfaced and voluntarily surrendered. Then on his application, his conviction in absentia was set aside and *de novo* trial was ordered. After conclusion of the trial, the appellant was convicted and

sentenced to suffer life imprisonment, fined Rs.100,000/- and in default thereof was to undergo simple imprisonment for a further period of six months. The appellant preferred appeal against his conviction before the High Court which concurred with the trial court's decision and dismissed the same. The appellant then filed Jail Petition in this Court from which the present appeal has arisen.

2. Learned counsel for the appellant argued that the alleged incident, as reported in the FIR, took place on 19.02.2000 early in the morning at 7.15 a.m. yet no FIR was registered on that date. He submitted that it has come on the record that on the date of the incident, the deceased Abdullah was buried and it was only on the next day at 11 a.m. in the morning that PW-1 Lashkar Khan lodged FIR wherein he has only stated that the appellant committed murder of Abdullah by firing at him with a Kalashnikov. It was not mentioned in the FIR that anyone saw the murder taking place. He submitted that it was only at the stage of recording of the evidence that PW-1, Lashkar Khan in his deposition stated that on the day of the incident he heard gunshots and when we went to the place from where sound of the gunshots came, he saw that the appellant had a fight with the deceased Abdullah on account of a dispute over disconnection of water and on account of such dispute the appellant murdered Abdullah by firing at him with his Kalashnikov. In his deposition PW-1, Lashkar Khan further stated that when he reached the place of occurrence PW-2, Anees-ur-Rehaman was already present there, he then went to the Tehsilar of the area to lodge report of the incident. PW-2 Anees-ur-Rehman in his deposition had stated that when he reached the place of occurrence after hearing gunshots he saw the appellant near the mountain with a Kalashnikov in his hand. The learned counsel for the appellant further stated that not a semblance

of such assertions made by PW-1 and PW2 in their respective depositions find mention in the FIR as in the FIR it was simply stated by PW-1 that the appellant had committed murder of the deceased Abdullah with a Kalashnikov. Learned Counsel further submitted that in his cross-examination PW-1, Lashkar Khan, contrary to what he stated in his examination-in-chief about witnessing the incident, admitted that he had not seen for himself the murder taking place and it was PW-2, Anees-ur-Rehman, who had narrated to him that he saw the appellant near the mountain with a Kalashnikov. Learned Counsel lastly submitted that no medical examination was conducted on the deceased in order to ascertain the real cause of his death and merely on the assertion made in the deposition of PW-2 Anees-ur-Rehman that he saw the appellant near the mountain, which is at some distance from the place of alleged incident, with a Kalashnikov, that the appellant was found guilty of committing murder of Abdullah.

3. On the other hand, learned Additional Prosecutor General, Balochistan argued that both the courts below on the basis of circumstantial evidence that had come on the record implicated the accused with the commission of crime and that the abscondence of the appellant for a period of more than ten years also raises the presumption of guilt against him and mere absence of medical examination is of no help to the appellant in presence of statements of PWs, who had no enmity with him.

4. We have examined the evidence and the material that has come on the record. It is an admitted position that after the alleged incident had taken place at 7:15 a.m. in the morning of 19.02.2000, last rites of the deceased were performed and even thereafter the matter was not reported to Tehsildar for registration of FIR on that day. The Tehsildar, Mr.

Nazar Hussain, who was responsible to record FIR and act as investigating officer of the incident, had appeared as prosecution witness as PW-4. He deposed that it was on 20.2.2000, that PW-1, Lashkar Khan, came to his office at 11 a.m. and reported the incident of murder of Abdullah that had taken place the previous day. Tehsildar's statement that the incident was reported to him the next day was not rebutted by the complainant in any manner. It seems that the deceased was quietly buried on the date of the incident without the incident being reported to the Tehsildar for the registration of FIR. It was only on the next day after 28 hours of the occurrence of the incident that PW-1, Lashkar Khan reported the matter to the Tehsildar for the purposes of lodging FIR. Obviously, the Tehsildar, who was also investigating officer, could not see for himself that the deceased had sustained firearm injuries, as the deceased had already been buried the previous day. So when the investigating officer had not seen for himself the dead body, what to speak of sending it for the necessary medical examination for ascertaining the cause of death. Also, at no stage thereafter the dead body was sought to be exhumed for such purpose. This even makes the very cause of death of the deceased highly doubtful as the assertion of the prosecution that the deceased died of gunshot injuries would remain shrouded in mystery. Both PW-1 and PW-2 have also admitted in their respective cross-examinations that they were not eye-witnesses of the incident. The case of the prosecution was thus scaled down to the level of only seeing the appellant having a Kalashnikov in his hand from a considerable distance from the place of the incident. Furthermore, PW-1 Lashkar Khan had stated in his deposition that the distance between his house and the place of occurrence is about half a mile and from the sketch produced as Exhibit P/4-A between the two places there is plantation of Date trees. These two places and the foot of the

mountain from where the appellant was seen is further away. Hence coming out of one's house and then recognising someone from a distance of about one Kilometre at 7:15 a.m. in the morning of peak winter season is also not confidence inspiring piece of evidence, keeping in view that none of such vital aspects of the case have has been narrated in the FIR. In the evidence what prevailed with the trial court and the appellate court to convict / maintain conviction of the appellant was that the prosecution witness namely PW-2 Anees-ur-Rehman had deposed that soon after the incident he saw the appellant from a distance with a Kalashnikov in his hand. Once the version of PW-1 that he and PW-2 both were the eye witnesses of the incident stood demolished in cross-examination, the appellant's conviction based on another version of PW-2 Anees-ur-Rehman that after the incident had happened, he only saw the appellant from a distance having a Kalashnikov in his hand, was equally not reliable keeping in view that the second version, like the first one, is also not stated in the FIR and above all this, the absence of medical examination of the deceased, conviction of the appellant was not justified at all. We have also noted that no plausible explanation has come on the record as to why the FIR was lodged belatedly on the next day i.e. 28 hours after the incident, when it has come in the evidence that distance between the place of the incident and the office of the Tehsildar even on foot was of two hours.

5. Keeping in view the relationship of the complainant of the FIR with the deceased, who was his cousin and the appellant, who was his nephew and the fact that they all jointly owned undivided piece of agricultural land then in search of ascertaining motive for murder, wild imagination may spring several possibilities. However, conviction of an accused can only be based upon concrete evidence, which

beyond reasonable doubt leads the Court to the conclusion that the accused before it is guilty of committing the reported crime. Hence, in the circumstances of the case, reliance on the prosecution's story by the two Courts below, which was not even narrated in the FIR, was not justified at all. The fact that the appellant absconded and was not traceable for considerably long period of time could also not be made sole basis for his conviction when the other evidence of the prosecution is doubtful as it is riddled with contradictions. This being so, we are left with no other alternative but to hold that the prosecution had failed to establish beyond reasonable doubt that the deceased Abdullah died of gunshot injuries and that it was the appellant who had committed his murder.

6. From what has been discussed above, the impugned judgment is not sustainable in law. Consequently, this appeal is allowed and the impugned judgment is set aside. The appellant is acquitted of the charge of committing murder of Abdullah. He shall be released from jail forthwith unless required in any other criminal case.

JUDGE

JUDGE

JUDGE

Islamabad, the  
16<sup>th</sup> of November, 2016  
Approved For Reporting

**Khurram**