

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

BEFORE:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 12/2017

In

Cr. PLA No. 13-14/ 2017.

Nasir Iqbal

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Jahanzaib Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Amjad Hussain Advocate for complainant.
3. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General for the respondent/State.

DATE OF HEARING/SHORT ORDER: - 09.08.2017.

DATE OF DETAILED JUDGMENT: - 26. 01. 2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has been directed against the consolidated impugned judgment dated 20.03.2017 in Cr. Appeals No. 55/2016, 56/2016Cr. Revision No. 19/2016 passed by the learned Chief Court whereby the Cr. Appeal No. 55/2016 and 56/2016 filed by the petitioner were dismissed whereas the Cr. Appeal filed by the State/ complainant was accepted by enhancing the sentence of life imprisonment into death. The other sentences, however, awarded by the learned Trial Court are maintained. The petitioner being

aggrieved by and dissatisfied with the said consolidated impugned judgment filed the above two Cr. Petition for leave to appeals separately against the conviction under Section 302(b) PPC and under Section 13 Arm Ordinance which have been heard together on 09.08.2017 and the same were decided through this common judgment vide short order.

2. Briefly, the facts of the case are that an FIR No. 25/2014 under section 302/34 PPC was lodged at police station, Gilgit on the written application of complainant Rehmat Azeem son of Khawaja Khan resident of Gulaper District Gilgit presently resident at Konodass Gilgit. As per contents of the said FIR that on 28.03.2014 after offering juma payers at Tablighi Center Konodass Gilgit, the complainant when came out from Tablighi Markaz, he received information that his son namely Anas was murdered while returning from Read Foundation School after appearing in examination at 01:30 PM alongwith his friend namely Asif S/o Akhtar Jan Residence of Konodass. The complainant further stated that they have no enmity with anyone. The accused namely Nasir Iqbal son of Muhammad Zaman immediately after the occurrence surrendered himself before the CID police Gilgit alongwith weapon of offence i.e. a 30-bore pistol. The accused also stated before the police that he murdered as the deceased Anas has illicit relation with his cousin Mst. Munira. The accused was brought to the Police Station City from CID where he was formally arrested and the weapon of offence was also recovered in presence of witnesses.

After registration of the said FIR under Section 302 PPC at police Station City Gilgit, the SIP namely Shams-ur-Rehman started investigation and per the available record. Consequently, he prepared site plan of occurrence. He collected blood stained earth from the place of occurrence and prepared memo. He also took two empty shell into his custody from the crime scene and accordingly prepared memo in presence of the witnesses. Whereafter he conducted the identification parade of the accused in presence of Inayatullah Magistrate 2nd class on 05.04.2014 and in presence of the witnesses.

3. After completion of the investigation, the challan of the case was submitted on 27.05.2014 in the Court of learned Sessions Judge Gilgit. The trial of the case commenced on 03.06.2014. He was directed to appoint his counsel but he could not engage his lawyer. He was again directed to appoint his defence counsel as he could not appoint his counsel on many dates of hearings which caused delay in framing the charge. Meanwhile the accused submitted an application on 28.10.2014 contending therein that he is a minor. Consequently he was referred to the medical Superintendent D.H.Q. Gilgit for determination of his age. After necessary tests/examination of the accused the Medical Board determined his age round about 18 years. The charge was framed on 08.04.2015 against the accused treating him as Juvenile offender. He pleaded not guilty and opted to contest the case. The prosecution to prove its case against the accused produced and

examined as many as eight (08) witnesses. After closing of Prosecution evidence, the statement of the accused under section 342 Cr.P.C. was recorded on 07.10.2016. The arguments of both the parties were finally heard on 12.11.2016 by the Trial Court. after hearing the learned counsels for the respective parties, perusing the evidence & material on record and on proving guilty, the accused was convicted and sentenced for life imprisonment with a fine of Rs.3,000,00/- He was also convicted for imprisonment of five years R.I with a fine of Rs.10,000/- under section 13 Arms Ordinance. The benefits of section 382(b) Cr.P.C. were extended to him in both cases vide judgment dated 26.11.2016. The operative part of the said judgment is hereby reproduced as under:-

“Quote”

In the light of above discussion, I am of the firm opinion that the prosecution through ocular evidence, medical evidence, recovery of weapon of offence from the accused and other incriminating material has successfully brought home the charge against the accused namely Nasir Iqbal son of Muhammad Zaman. Hence, the accused namely Nasir Iqbal son of Muhammad Zaman is convicted under section 302(b) PPC and sentenced to undergo imprisonment for life. Under section 544-A Cr.P.C. the accused is also fined Rs.3,000, 00/= (Three Lac) or in default whereof to suffer one year SI. The amount of fine if recovered shall be paid to the legal heirs of the deceased Anas according to their Personal Law of Inheritance. Benefit of section 382(b) Cr.P.C. is also extended in favour of the accused. The accused is also convicted under section 13 of the Pakistan Arms Ordinance XX of 1965 and sentenced to rigorous imprisonment for five years with fine of Rs.10,000=/. The sentences awarded to the accused shall run consecutively.

Nevertheless, as far as quantum of sentence is concerned, there are two mitigating circumstances in this case. Firstly, the accused is a young teenager boy. Secondly, there is no criminal record against the accused and neither the above named accused/convict is previous convict, therefore taking these circumstances into consideration lesser punishment of life imprisonment has been awarded to the convict namely Nasir Iqbal son of Muhammad Zaman.

Judgment pronounced in open court in presence of parties and certified true copy of judgment supplied to the convict free of cost as required under section 371 Cr.P.C. with the advice that he may prefer an appeal against his conviction in the Hon'ble Gilgit-Baltistan Chief Court Gilgit. The recovered 30 bore pistol is hereby confiscated in favour of the state. Certified true copy of this judgment be placed on the S.C. No. 40/2014 registered under section 13 Pakistan Arms Ordinance XX of 1965. File after due completion be consigned to record.

“Unquote”

4. The petitioner/convict being aggrieved by and dissatisfied with the above judgment of the learned trial Court filed two separate criminal appeals i.e. Cr. Appeal No. 55/2016 under section 302(b) PPC and Cr. Appeal No. 56/2016 under section 13 Pakistan Arms Ordinance XX of 1965 in the Learned Chief Court whereas the state/complainant also filed Cr. Revision No.19/2016 in the learned Chief Court for enhancement of the life imprisonment of the convict into capital punishment. The learned Chief Court upon hearing dismissed both the criminal Appeals filled by the petitioner/convict whereas the Cr. Appeal filed by the State/ complainant was accepted by enhancing the sentence of life imprisonment into death awarded by the learned Trial Court Gilgit, however, the other

sentences awarded by the learned Trial Court were maintained, hence, this petition for leave to appeal.

5. The learned counsel for the petitioner submits that there is no material evidence on record which connects the accused/petitioner with the commission of the alleged offence. Admittedly, there was no eye witness of the occurrence. PW-2 namely Asif son of Akhtar Jan purportedly shown present at the place of occurrence who admittedly has not seen firing first shot upon deceased which succumbed him to death. He later on arrived and seen the petitioner holding pistol in his hand who fired second shot upon deceased and he immediately left the place of occurrence being frightened. Per learned counsel, the statement of the said PW is contradictory in nature on each and every material point. The said PW is the sole “so called” eye witness who in his statement in Court has admitted that he remained in the custody of the police for 2/3 days soon after the occurrence, hence, it is sufficient to believe that his evidence could not be relied upon. The statement of the said witness is liable to be discarded which has not been considered either by the learned Trial Court or by the learned 1st Appellate Court. The learned counsel for the petitioner submits that the story of the prosecution is false, fabricated and bogus which has been tailored and twisted by the prosecution just to make the convict as an escapegoat. The story of the prosecution i.e. the voluntary surrendering of the convict/petitioner before the police is also false and artificial one as the FIR No. 33/2016 registered under section

13 Arms Ordinance 1965 on 03.04.2014 whereas the memo for recovery of the weapon of offence was prepared on 28.03.2014 for which no explanation is available on record. He submits that the PW-6 Ali Ambar has stated that the convict/petitioner brought by the CID police at 11:30 a.m. at Police Station whereas the occurrence has been shown to have taken place at 13:30 hours which is contradictory with the story of the prosecution. Per learned counsel, there is no corroborative evidence on record which connects the convict/petitioner in committing the murder of the deceased Anas. The police have tailored the story in order to save the real culprits with the collusion of the complainant. The allegations of the murder of Mst. Munira maternal cousin of the petitioner by the petitioner is also false. The petitioner was charged of her murder but later-on he was exonerated. One Mehfooz-ur-Rehman was booked in the charges of her murder who was later-on released/acquitted on the basis of compromise. He contends that the prosecution has failed to prove its case beyond shadow of doubts. The learned Courts bellow have failed to apply their judicial mind by misreading and non-appreciating the prosecution evidence and other material on record. Per learned counsel for the petitioner/convict the learned Chief Court has not applied its judicial mind to the fact that the Juvenile offender/convict can not be sentenced to death under any law of the land and/or any other law of any country of the world. The petitioner is entitled for the benefit of doubt and he be acquitted for giving such benefit. While

saying so he relied upon the case laws reported as 2010 GBLR 249, 2016 MLD 01, 2016 MLD 1107, 1960 PLD Peshawar 74, 2016 PCr.LJ Note 17 and 2005 PLJ Quetta 253.

6. On the other hand the learned counsel for the complainant and the learned Advocate General support the impugned judgment passed by the learned Chief Court. They contend that the petitioner has committed the brutal murder of the deceased Anas which was witnessed by PW-2 namely Asif son of Akhtar Jan. The said PW directly charged the petitioner attributing him a specific role in commission of the offence. The motive of the murder is that the deceased has illicit relations with Mst. Munira, the cousin of the petitioner/convict who has also been murdered by one Mehfooz-ur-Rehman which proves the motive behind the occurrence. Per learned counsels, the petitioner/convict has voluntarily surrendered himself before the police alongwith a 30 bore pistol. The said weapon of offence was sent for Ballistic opinion and the report received was in positive. Similarly empty shells were also recovered which matched with the said recovered weapon. The medical evidence corroborates the ocular testimony. The eye witness has identified the petitioner/convict during the identification parade in presence of the Magistrate and Prosecution witnesses. The prosecution has proved its case through credible, tangible and inspiring confidence evidence which have correctly been appreciated by both the Courts below. Per learned counsels, the petitioner/convict was awarded lesser punishment by the trial

court which has rightly been enhanced by the learned Chief Court through its impugned judgment. They contend that the impugned judgment is well reasoned and well founded which may graciously be maintained.

7. We have heard the learned counsels for the respective parties, perused the material on record, gone through the impugned judgment passed by the learned Chief Court and the judgment of the learned Trial Court as well the case laws cited by the learned counsel for the petitioner. Admittedly, there is no eye-witness of the occurrence. PW-I Rehmat Azeem father of the deceased who registered the FIR has not nominated any accused. Admittedly, after registration of the FIR, he again returned to City Hospital Gilgit and by that time post-mortem examination of the deceased Anas was over. The SP FIU present in Hospital informed the complainant and disclosed the name of the petitioner/convict as Nasir Iqbal who has committed the murder of his son. Admittedly he has not added/nominated the name of the petitioner by giving his further statement to the police. He, however, in the cross-examination has admitted that his application Exh. PW-I/A has not disclosed the name of the convict/petitioner and the person who informed him about the murder of his son. He also admitted that the SP FIU has written the name of the accused on the paper/chit which received he from him. Neither he recorded before the police his further statement that SP FIU has disclosed the name of the murderer nor he stated and produced the said paper/chit in Court.

Although the petitioner/convict also surrendered himself alongwith the weapon of offence before the police by admitting the commission of the murder of the deceased Anas before registration of the FIR in the said police Station yet the name of the convict/petitioner has not been mentioned/nominated in the FIR. The said complainant has also deposed that he reached Police Station around 4 PM (1600 hours) and moved an application Exh. PW-1/A for registration of the FIR. He also stated that the said application was written by his cousin whose name he does not remember whereas the FIR was registered at 1400/1500 hours on 28.03.2014 and the occurrence is shown at 1300 hours which creates serious doubts about the time of alleged occurrence and the presence of the eye-witness. PW-II Asif deposed that the occurrence took place at 11/12 noon on 28.03.2014 but he has not seen the accused firing at the deceased. He narrates the story that the petitioner/convict paid salam to us and inquired from Anas about the paper whereafter we all three (03) moved ahead on Domial road. After a while he received a call while attending the said call he went ahead from deceased Anas and petitioner/convict meanwhile he heard a fire shot. When he returned back he saw that his friend Anas was lying in the ground and the present petitioner/convict was sitting holding a pistol in his hand. After seeing him he opened another fire on my friend Anas whereafter he got frightened and run away towards ahle-sunnat Masjid Gilgit from where he went to City Police Station and by then the petitioner/convict was already surrendered/arrested. He

identified the petitioner in the police station. In his cross examination he admitted that he was detained in police station for one or two days for interrogation/inquiry in the said case and he was not produced in any court of law. During his detention he admitted that he has not stated before the police regarding going to the Jamia masjid soon after the occurrence as well as going towards the Police station. He admitted that the Identification Memo does not contain his signature, date and the signature of other private witnesses of the identification proceeding. He also admitted that during the identification parade he was in police custody. The credibility of the witnesses & his presence at the crime scene seems doubtful. The perusal of the statements of both the witnesses i.e. the PW-1 the complainant and the PW-2, the so called eye-witness are contradictory in nature. Admittedly the said witness remained in police custody for 2/3 days and his neutrality as independent witness is questionable. Similarly, there is no corroborative piece of evidence available on record which connects the petitioner with the commission of the alleged crime. The prosecution has to stand on its own legs and prove its case beyond reasonable doubts. The evidence brought on record of case should be unambiguous and inspiring confidence. No legal evidence is available on record to convict the petitioner. The Courts of law are bound to administer justice according to law or not according to their moral conviction, however, strong that may be. The crime is to be proved through cogent, tangible and strong evidence which in this case prime facie

is lacking/missing. The prosecution has failed to establish its case against the petitioner beyond reasonable doubts. The concept of benefit of doubt is deep rooted. For giving benefit of doubt is not necessary that there should be many circumstance creating doubts, if a slightest doubt arises the benefit of such doubt must be given to the accused. In our considered view, the judgments of both the learned Courts below are the result of misreading, non-reading and mis-appreciation of the prosecution evidence and material on record, hence, the conviction(s) awarded to the petitioner are not sustainable.

8. In view of the above discussion, we converted both the petitions into appeals and the same were allowed vide our short order dated 09.08.2017. Consequently, the petitioner was acquitted from all the charges by giving him the benefit of doubt. The conviction(s) and sentence(s) awarded to him was/were set-aside. Consequent thereto, the common impugned judgment dated 20.03.2017 in Cr. Appeals No. 55/2016, 56/2016 and Cr. Revision No. 19/2016 passed by the learned Chief Court Gilgit-Baltistan and the judgment dated 26.11.2016 in Session Case No. 41/2014 & 40/2014 passed by learned Sessions Judge Gilgit were set-aside. It was ordered that the petitioner namely Nasir Iqbal son of Muhammad Zaman resident of Damote Juglote, Tehsil & District Gilgit be set at liberty forthwith, if he was not required in any other case. These were the reasons for our said short order.

9. The appeals are allowed in above terms.

Chief Judge.

Judge.