

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,

GILGIT.

Before:

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

**Cr. Appeal. No. 03/2018
in
Cr.PLA.No.33/2016.**

The State

Petitioner.

Versus

Naveed Akhtar Alias Jani s/o Abdullah Alias Abdulo r/o Lail Muhallah Amphari Gilgit. **Respondent.**

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Asadullah Khan Advocate for complainant.
3. Mr. Jahanzeb Khan Advocate for respondent.

DATE OF HEARING: - 05.04.2018.

DATE OF DETAILED JUDGMENT:- 09.04.2018.

JUDGMENT.

Mr. Justice Rana Muhammad Shamim, CJ..... This Criminal petition has arisen out of the impugned judgment dated 19.05.2016 in Cr. Appeal No. 25/2014 passed by the learned Chief Court whereby the said Cr. Appeal filed by the respondent/accused was accepted by setting aside the judgment dated 20.08.2014 in TC- No. 03/2013 passed by the learned Anti-Terrorism Court No. 1, at Gilgit. The petitioner being aggrieved by and dissatisfied with the said impugned judgment, filed this petition for leave appeal. This court vide order dated 17.04.2017 issued notice to the respondent and the case is heard today.

2. Briefly, the facts of the instant proceedings are that on 14.09.2012 at about 11:30 A.M an FIR No. 158/2012 was registered at Police Station City Gilgit on a written application of one Muhammadi (father of deceased) resident of Lali Muhallah Amphari Gilgit. As per contents of the said FIR, the complainant stated that he alongwith his family are residing in Muhallah Amphari Gilgit and earn his living as carpenter in a Karkhana situated near China Trade Center Gilgit. On the day of occurrence i.e. 11.09.2012, when he was busy in his routine work he was informed that his son Javed Hussain (deceased) is fired and who has been brought to DHQ Hospital Gilgit. Whereafter, he reached at DHQ Hospital where the complainant found his son at the gate of Operation Theater. On inquiry, his son told him that he had come to Lali Muhallah Dispensary area where the accused namely Naveed Akhtar Alias Jani with the intention of murder fired gunshots one after another and run away towards Lali Muhallah. The injured has been brought to DHQ Hospital by some persons of Khur Muhallah. The complainant further narrated that he and his son has no enmity in Gilgit, the accused has fired on his son just on the basis of sectarian terrorism. The prosecution started investigation of the case. During the investigation, the police took in possession two empty shells of 9mm pistol, blood stained earth and prepared site plan of the occurrence. Whereafter, the investigation of the case was entrusted to SIP Naseem Hussain, who arrested the accused/respondent from Thalichi Check Post on 27.04.2013.

According to the contents of the challan, accused Naveed Akhtar confessed the guilt before the Joint Investigation Team (JIT) that on the day of occurrence he alongwith a person named Nomi resident of Basin Khari inquired about identity to the deceased at the place of occurrence. He told them that he is resident of Nagar, on which he was murdered through repeated firing. After the occurrence, the accused/convict made their escape from place of occurrence. The statements of PWs were recorded under Section 161 Cr.PC. Charge sheet of the accused was conducted by the police.

3. After completion of the investigation, challan of the case against accused Naveed Akhtar alias Jani was submitted in the learned Trial Court. The accused was formally charged on 29.05.2014.

4. The accused pleaded not guilty and claimed for trial; however, he did not produce any defence witness. The prosecution in order to prove its case against the accused produced and examined as many as fourteen (14) PWs. After the close of the prosecution evidence the accused were examined under Section 342 Cr.PC. The accused had not opted to appear & record their statements under Section 340 (2) Cr.PC and they also did not produce any witnesses in support of his defence.

5. The learned Trial Court after appraising the evidence, hearing the learned counsels for the respective parties and upon proven guilty convicted/sentenced the accused to death vide

judgment dated 20.08.2014. The operative part of the said judgment is hereby reproduced as under:-

“Quote:-

In the light of the above discussion, I hold that the prosecution has proved guilt of accused of accused Naveed Akhtar alias Jani for the murder of deceased Javed Hussain, hence, I convict accused Naveed Akhtar alias Jani under section 302(b) PPC read with section 7(a) of the Anti-Terrorism Act, 1997 and sentenced him to death. He be hanged by his neck till he death. The accused to pay fine of Rs. 300000/- (Rupees three hundred thousand). The amount of fine shall be paid to LRs of deceased Javed Hussain under section 544-A Cr. PC. In default of the payment of fine the convict-accused shall undergo 2 years imprisonment.”

“Unquote”.

6. The accused/convicted being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal Appeal No. 25/2014 in the learned Chief Court which upon hearing was accepted by setting aside the judgment dated 20.08.2014 in TC- No. 03/2013 passed by the learned Anti-Terrorism Court No. 1, at Gilgit, hence, this petition for leave to appeal.

7. The learned Advocate General appearing on behalf of the State and Mr. Asadullah Khan appearing on behalf of the complainant submit that the convict/respondent is directly charged in a promptly lodged FIR for committing brutal murder of deceased namely Javed Hussain and he was attributed specific role by the prosecution witnesses. They submit that the dying declaration of the deceased made before PW-01 namely Muhammadi the father of deceased and PW-02 namely SIP Naseem Hussain are sufficient

evidence to prove the case against the respondent beyond the shadow of doubt. Per learned counsels, the respondent did not produce any witnesses in support of his defence rather he tried to shift the act of murder on one Shahzad alias Nomi. They reiterate that the dying declaration of deceased, circumstantial evidence, confessional statement of respondent, medical evidence and the abscondance of accused are the corroborative piece of evidence which connects the respondent with commission of offence of murder. They further submit that PW-01 and PW-02 corroborated each other and their evidence has not be shattered in their cross-examination. They add that there was no enmity between the deceased and accused party prior to the commission of the alleged offence rather he was murdered due to sectarian terrorism. They submit that the prosecution has successfully proved its case against the respondent beyond reasonable doubts. In support of dying declaration they relied upon the case laws reported as 2001 SCMR 1474 and PLD 2005 Peshawar 172. Per learned counsels, the impugned judgment dated 19.05.2016 in Cr. Appeal No. 25/2014 is the result of misreading and non-appreciation of prosecution evidence and other materials on record. They contend that the judgment dated 20.08.2014 passed by the learned Anti-Terrorism Court No. 1, at Gilgit is well reasoned and well founded. They pray that the conviction/sentences awarded by the learned Trial Court vide judgment dated 20.08.2014 may graciously be maintained and

the impugned judgment, passed by the learned Chief Court be set aside being not sustainable.

8. On the other hand, Mr. Jahanzaib Khan learned counsel for the respondent supports the impugned judgment passed by the learned Chief Court. He contends that the prosecution has miserably failed to prove the guilt of the respondent, hence, the judgment dated 20.08.2014 passed by the learned Anti-Terrorism Court is against the basic principles of law & criminal justice system. He also contends that the conviction/sentences awarded to the respondent have been totally based on highly interested, untrustworthy and incredible witnesses. Per learned counsel, no incriminating articles have been recovered from the possession or on pointation of the respondent. The medical report totally negates the whole prosecution story/version and the learned Trial Court failed to extend the benefit of doubts to the respondent. He reiterates that the most important piece of evidence i.e. Post Mortem Report/Medico Legal Report is totally contra and negates the whole prosecution versions. The depositions of so called prosecution witnesses are not inspiring confidence. Instead of quality, quantity of evidence has been considered which is not tenable in law. He contends that there is no eye witness of the alleged occurrence and no direct evidence and cogent evidence available on record against the respondent. The Prosecution has miserably failed to prove its case against the respondents beyond reasonable doubts. He reiterates that the learned Trial Court fell in

error by convicting the respondent which was rightly set aside by the learned Chief Court vide impugned judgment. He prays that the impugned judgment dated 19.05.2016 passed by the learned Chief Court may pleased be maintained.

9. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment passed by the learned Chief Court as well as the judgment dated 20.08.2014 in TC-03/2013 passed by the learned Anti-Terrorism Court No. 1, at Gilgit and the case laws cited by the learned counsel of the complainant. The careful perusal of prosecution evidence & other material on record, the learned Anti-Terrorism Court has rightly convicted the respondent. The respondent has brutally murdered the deceased namely Javed Hussain. The long absconson of the respondent, extra-judicial confession of the respondent, and dying declaration made by the deceased before the Pw-01 namely Muhammadi the father of deceased and corroborated by PW-02 namely SIP Naseem Hussain, circumstantial evidence, medical evidence and recovery of two empty shells of 9mm from the place of occurrence on pointation of respondent was sufficient material to prove the case against the respondent beyond any shadow of doubt. The case laws referred by the learned Advocates for the complainant are applicable.

10. In view of the above discussions, we converted this petition into an appeal and the same was allowed by our short order dated 05.04.2018. The judgment dated 20.08.2014 in TC-03/2013

passed by the learned Anti-Terrorism Court No. 1, at Gilgit was upheld whereas the impugned judgment dated 19.05.2016 in Criminal Appeal No. 25/2014 passed by Chief Court was set aside. The respondent/accused was taken into custody and he was sent to the District Jail Gilgit to serve upon his sentence(s) awarded to him by the learned Anti-Terrorism Court No. 1, at Gilgit. This order be sent to the learned Anti-Terrorism Court No. 1, at Gilgit for compliance.

11. In the light of aforementioned order, the learned Chief Court is required to answer the Murder Reference sent by the learned Anti-Terrorism Court No. 1, at Gilgit accordingly. The learned Anti-Terrorism Court No. 1, at Gilgit is required to execute its order dated 20.08.2014 in accordance with law. These were the reasons of our short order dated 05.04.2018.

12. The appeal was allowed in above terms.

Chief Judge.

Judge.