

**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. 02/2015

in

Cr.PLA No. 06/2013.

Sher Wali

Petitioner.

Versus

Sakhawat Dar & others

Respondents.

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith the Deputy Advocate General Gilgit-Baltistan for proforma respondent.
2. Mr. Amjad Hussain Advocate for complainant.
3. Non present for the respondent No. 01, Sakhawat Dar son of Dilawar Khan R/O Jagir Basin Gilgit.
4. Mr. Manzoor Ahmed alongwith Mr. Rehmat Ali Advocate-on-Record on behalf of the respondent No. 02, Nawab Khan son of Mir Ghazi R/O Kargah Tehsil Gilgit.

DATE OF HEARING: - 03.07.2017.

DATE OF DETAIL JUDGMENT: - 09.09.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ.... This Criminal Appeal has arisen out of the impugned judgment dated 15.05.2013 in Criminal Appeal No. 32/2010 passed by the learned Chief Court whereby the learned Chief Court accepted the said Criminal appeal of the respondents and acquitted them by setting aside the judgment/order of the learned Trial Court, hence, this petition for leave to appeal. This court vide order dated 03.09.2015 granted leave to appeal. Notices were accordingly issued to the respondents and the case was heard on 03.07.2017.

2. Briefly, the facts of the case are that on 12.07.2008 an FIR No. 135/2008 was registered under Section 302/34 PPC at

Police Station City Gilgit on the application of the complainant namely Sher Wali real brother of deceased Sher Alam. The complainant contended in his application that his brother is missing for about ten (10) days prior to Eid-ul-Fitr. The deceased had gone to Azad Kashmir on account of earning livelihood. The FIR lodger went to Azad Kashmir to search and find out his brother but in vain. He requested to interrogate/investigate about missing of his real brother. The police initiated the investigation and on 06.08.2008 the dead body of the deceased was recovered, whereafter his body sent for Postmortem. Prior to the missing of the deceased Sher Alam, Mst. Jahan Begum wife of deceased gave her younger daughter of 08 years in the wedlock of one Sakhawat Dar resident of Tangir whereafter she went with the said convict and started living together. The FIR was accordingly registered by the police. The police had arrested the said Sakhawat Dar and he was released after a period of one month. It was also reported that accused Mst. Jahan Begum wife of deceased had earlier attempted to murder her deceased husband by giving him poison. She also opened fire on her deceased husband but the same was missed fortunately. The deceased, however, forgave the lady on the request of local jirga. The complainant further alleged that his deceased brother has been murdered by Mst. Jahan Begum, her paramour i.e. Sakhawat Dar and his young brother and his dead body has been buried somewhere. Per version of FIR lodger the deceased had

an amount of Rs. 400,000/- at the time of the said murder which was also taken away by the respondents/accused.

3. During the investigation, the dead body of deceased was recovered by the police on the pointation of accused Mst. Jahan Begum. The said accused narrated the true story of the case while recording her statement under Section 164 Cr. PC before the Judicial Magistrate at Gilgit. She and her co-accused Sakhawat Dar and Nawab Khan committed the offence of the murder of deceased in a pre-planned manner. The City Police also arrested the co-accused and their statements under Section 164 Cr. PC were also recorded wherein they also confessed the committing of offence of murder. The weapon of offence i.e. a stone and an axe were also recovered on the pointation of the respondents/accused.

4. After completion of the investigation, challan of the case was submitted in the learned Trial Court. The respondents/accused were formally charged on 10.06.2010 whereby the accused pleaded not guilty and claimed for trial. The prosecution in order to prove its case produced and examined as many as 13 PWs during the trial. The respondents/accused were examined under Section 342 Cr. PC on 04.11.2010. They neither produced any defence witness/evidence nor opted to depose on oath as provide u/s 340 (2) Cr. PC. The accused namely Mst. Jahan Begum was murdered during pendency of the case in the learned Trial Court.

5. The learned Trial Court after appraising the evidence, material on record, hearing the learned counsels for the respective parties and upon proven guilty convicted & sentenced the respondents/accused Sakhawat Dar to death under Section 302 (B) PPC alongwith fine of Rs. 100,000/- in case of default, he was ordered to undergo for six months R.I respondents/accused Nawab Khan was also convicted/sentenced for 14 years Rigorous Imprisonment (R.I) under Section 302 (C) PPC as he was juvenile at the time of occurrence. The said convict being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal Appeal No. 32/2010 in the learned Chief Court. Upon hearing, the learned Chief Court accepted the said appeal of the respondents and acquitted them from all charges. The murder reference No. 07/2010 sent by the learned Trial Court was answered in negative. Consequently, the judgment of the learned Trial Court was set aside, hence, this petition for leave to appeal.

6. The learned Advocate General appearing on behalf of the State and Mr. Amjad Hussain Advocate for complainant submit that accused namely Sakhawat Dar and Mst. Jahan Begum have been directly charged in the FIR. The motive behind the occurrence has been disclosed in the FIR which was proved by the prosecution. They also submit that PW namely Farooq Alam who is natural witness of the occurrence has witnessed the occurrence. Per learned counsels weapons of offence i.e. stone and an axe have been recovered by the police on the pointation of

respondents/accused. They further submit that statements of accused namely Nawab Khan and Mst. Jahan Begum have been voluntarily recorded under Section 164 Cr. PC by the learned Judicial Magistrate. They have narrated the true story of the occurrence and admitted this guilt. The Postmortem of dead body of the deceased was conducted. The medico-legal report also supports the prosecution's version. They submit that all PWs are natural witnesses and despite of lengthy cross examination by the defence counsel, their testimonies could not be shattered. The prosecution has successfully proved its case against the respondents beyond any shadow of doubt. The learned Trial Court has rightly convicted both the respondents/accused and sentenced them in accordance with law which was subsequently set aside by the learned Chief Court by acquitting the accused. They submit that the learned Chief Court fell in error and misread the material evidence on record while passing the impugned judgment. They pray that the impugned judgment be set aside and judgment of the learned Trial Court be maintained.

7. On the other hand, the learned counsel for the respondent No. 02 (namely Nawab Khan) supports the impugned judgment dated 15.05.2013 in Criminal Appeal No. 32/2010, passed by the learned Chief Court. He contends that co-accused Nawab Khan has not been nominated in the FIR. Neither prosecution witnesses have attributed any role to respondent Nawab Khan nor any other material on record available to connect

him in the commission of the alleged offence. He was juvenile at the time of the occurrence and admittedly no separate trial has been conducted under the Juvenile Law which is against the principle of criminal justice system. Per learned counsel, the learned Trial Court has wrongly convicted/sentenced the respondent No. 02 which has rightly been acquitted by the learned Chief Court. He contends that the impugned judgment is well reasoned and well founded and no interference is warranted into it.

8. We have heard the learned counsels for the respective parties at length, appraised the prosecution evidence, perused the material on record of the case file and gone through the impugned judgment as well as judgment passed by the learned Trial Court. The perusal of the materials available on record proves that the deceased was murdered by the respondents & wife of the deceased in pre-planned manners. The confessions of the both respondents recorded under Section 164 Cr. PC are inculpatory in nature. The respondents were attributed specific role in the commission of the murder of deceased (Sher Alam). The dead body of the deceased and the crime weapon i.e. stone and an axe, were recovered on the pointation of the respondents/accused which is admissible in evidence as provided under Article 40 of the Qanoon-e-Shahadat order 1984. The prosecution evidence produced in court is inspiring confidence. In our considered view, the prosecution has successfully proved its case against the respondents beyond any shadow of doubt. Admittedly, the respondent No. 02 namely Nawab

Khan son of Mir Ghazi resident of Kargah Gilgit was minor/juvenile at the time of the commission of the murder of the deceased. No separate trial of the respondent was carried out in line with the Juvenile Law who has already suffered agony of protracted trial with the criminals.

9. In view of the above discussions, this appeal was allowed to the extent of respondent No. 01 namely Sakhawat Dar son of Dilawar Khan resident of Tangir, District Diamer vide our short order dated 03.07.2017. Consequently, the conviction and sentence(s) awarded by the learned Trial Court vide judgment dated 15.12.2010 in Session Case No. 57/2009 to respondent Sakhawat Dar was maintained, however, the death sentence awarded to him was withheld and the same was converted into life imprisonment. The impugned judgment dated 15.05.2013 in Criminal Appeal No. 32/2010 passed by the learned Chief Court was set aside to the extent of respondent Sakhawat Dar. As regards, respondent No. 02 i.e. Nawab Khan son of Mir Ghazi was admittedly juvenile at the time of occurrence. Since, no trial was separately conducted against him under the juvenile law, therefore, his acquittal order vide impugned judgment dated 15.05.2013 in Criminal Appeal No. 29/2012 passed by the learned Chief Court was maintained by our said short order dated 03.07.2017.

10. The copy of this order be sent to the learned Trial Court forthwith for compliance in accordance with law. In case, convict Sakhawat Dar son of Dilawar Khan, resident of Tangir, District

Diamer and presently residing at Jagir Basin Gilgit, surrenders himself before the learned Trial Court, he be sent into prison to serve out his sentence(s) accordingly. In case the said convict does not surrender then the learned Trial Court may adopt all measures for his arrest in order to serve sentence in accordance with law. These were the reasons of our short order dated 03.07.2017.

11. The appeal is disposed off in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?