

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

Before:

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

**1. Cr. Appeal No. 09/2017
in
Cr. PLA No. 04/2017.**

The State **Petitioner.**
Versus
Ammar Zia **Respondent.**

**2. Cr. Appeal No.10/2017
in
Cr. PLA No. 36/2016.**

Ibadat Khan **Petitioner.**
Versus
Ammar Zia & another **Respondents.**

PRESENT:-

1. The Advocate General Gilgit-Baltistan for the petitioner/State in Cr. Appeal No. 09/2017.
2. Mr. Manzoor Ahmed Advocate for the petitioner in Cr. Appeal No. 10/2017.
3. Nemo for the respondent No. 01 in both the appeals.

DATE OF HEARING: - 04.07.2017.

DATE OF DETAIL JUDGMENT: - 13.07.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... The above Criminal Appeals have arisen out of the impugned judgment dated 28.10.2016 in Criminal Appeal No. 04/2015 passed by the learned Chief Court whereby the Criminal Appeal filed by the respondent accused namely Ammar Zia against the judgment dated 28.02.2015 passed by the learned Sessions Judge Gilgit was allowed by acquitting the accused from the charges leveled against him vide

FIR No. 93/99. Since, the Criminal Appeal No. 04/2015 was earlier heard by the Division Bench of the learned Chief Court wherein diversion findings were recorded by the learned Judges, therefore, the matter was placed before the Referee Judge who passed the impugned judgment dated 28.10.2016. The petitioner/State being aggrieved filed this petition for leave to appeal whereas the complainant has also moved petition for setting aside the impugned judgment and for enhancement of the conviction/sentence awarded by the learned Trail Court i.e. from life imprisonment to capital punishment. Since, the matters are connected with each other and have been directed out of the same impugned judgment, therefore, both the appeals were disposed of through our short order dated 04.07.2017. This court vide order dated 03.03.02017 issued notice to the respondent with the direction to submit solvent surety worth of Rs. 500,000/- to the satisfaction of the learned Registrar of this court but neither the respondent appeared nor he furnished the said solvent surety.

2. Briefly the facts of the case as spelt out in the FIR No. 93/1999 registered at Police Station City Gilgit under Section 302 PPC are that on 23.06.1999 at about 05:30 PM the accused namely Ammar Zia s/o Amin Zia r/o Old Polo Ground Gilgit committed the murder/Qatl-e-Amd of one Shahid Jan s/o Hajji Inayat Khan r/o of Old Polo Ground Gilgit. Per story of the prosecution, a day before of the occurrence i.e. on 22.06.1999 a scuffle took place between the deceased and the accused and their brothers at Old Polo Ground

Gilgit which was ended due to the intervention of the people present at the spot. On the very next day i.e. on 23.06.1999 the teenagers of the said Muhalla including the deceased and accused alongwith their brothers were again gathered at the same place. They started to play the cricket suddenly a quarrel was erupted between the parties. The father of the deceased separated his son and forced him to go to home. Meanwhile, the accused rushed towards his home and opened fire with a 30-bore pistol on the deceased from the street resultantly the deceased got injuries on the left side of his chest. The injured person was taken to hospital by the FIR lodger and other persons present at the spot. The injured person was succumbed to his injury and died. The complainant lodged the FIR in the Police Station City Gilgit. The prosecution started investigation of the case and 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 Ammar Zia was submitted in the learned Trial Court. The accused was formally charged on 24.02.2000 which is reproduced as under:-

"EXAMINATION OF ACCUSED NAMELY AMMAR ZIA U/S 342 CR.P.C."

DATED: 26-10-2013.

**Charge in the case State.....versus..... Ammar Zia son of Amin
Zia resident of Old
Polo Ground Tehsil &
District Gilgit.**

Accused.

Q. No. 1. It is in the evidence that on the day of 23-06-1999 you accused have committed murder of deceased Shahid Jan,

What do you say?

Ans. It is incorrect, I am innocent, the allegation is baseless. I know nothing about the occurrence.

Q. No. 2. Why the PWs deposed against you?

Ans. None of the PW deposed against me except PW. 2 who is biased and interested Prosecution witness and had falsely deposed against me.

Q. No. 3. What do you say about the post-mortem report of deceased, wherein cause of death is due to gunshot injury?

Ans. I know nothing about the occurrence and postmortem report is not against me.

Q. No. 4. What do you say about blood stained shirt, empty shell and one missed cartridge taken into custody by the Police?

Ans. I know nothing about the recoveries. Moreover, Prosecution witnesses did not support the version of Prosecution.

Q. No. 5. What do you say about recovery of weapon?

Ans. It is incorrect, the allegations are baseless, nothing was recovered from my possession or on my pointation. The recovery is fake and planted. Moreover, the prosecution witnesses did not support the Prosecution version regarding recovery of the weapon of offence.

Q. No. 6. Do you want to be examined on oath?

Ans. No.

Q. No. 7. Do you want to produce any DWs?

Ans. No I do not deem it necessary.

Q. No. 8. Do you want to say anything else in your defence?

Ans. I am innocent. The closed and related PWs of the deceased had falsely and malafiedly deposed against me. I have been falsely implicated in the instant case by the Police on connivance with the complainant party and request for acquittal.

Q. No. 9. Do you want to produce any DWs?

Ans. No I do not deem it necessary.

RO&AC

-Sd-

Additional Sessions Judge Gilgit.

ACCUSED.
Ammar Zia

Certified u-s 364 Cr. P.C.

-sd-
Additional Sessions Judge
Gilgit.

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 ten (10) PWs. Some of the said PWs became hostile whereas the complainant has passed away without deposing before the learned Trial Court while another eye witness namely Abdul Salam has been assassinated before recording of his statement in the Trial court. The prosecution mainly relied on the statement of PW. 02 exhibited documents, Post Mortem Report and recovery of weapon of offence etc.

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 life imprisonment vide judgment dated 28.02.2015. The operative part of the said judgment is hereby reproduced as under:-

Quote:-

“With the above observations, I am of the firm view that the prosecution through evidence of eyewitness and corroborated by post-mortem report has successfully proved the charge against the accused Ammar Zia. Keeping in view the above referred solitary evidence awarding life imprisonment has been held better by superior courts. The accused Ammar Zia s/o Amin Zia r/o Old Polo Ground Tehsil & District Gilgit has

murdered/committed Qatl-e-amd of Shahid s/o Haji Inayat Khan r/o Old Polo Ground Tehsil & District Gilgit therefore, convicted and sentenced to imprisonment for life under section- 302(b) P.P.C. Accused shall be entitled for the benefit of section-382-B Cr. P.C.

Case disposed of accordingly. File after due completion be consigned to record.

**Announced.”
28-02-2015**

Unquote:-

6. The petitioner/complainant being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal Appeal No. 03/2015 in the learned Chief Court for enhancement of the sentence/conviction awarded by the learned Trial Court whereas the respondent/accused also filed Criminal Appeal No. 04/2015 for setting aside the judgment of the learned Trial Court. Both the appeals were heard and decided by the Division Bench of the learned Chief Court wherein divergent findings were recorded by the learned Judges of the learned Chief Court, hence, the matter was placed before the learned Referee Judge. Upon hearing the learned Referee Judge of Chief Court accepted the appeal of the respondent by acquitting the respondent from the charges leveled against him. Consequently, the judgment of the learned Trial Court was set aside vide impugned judgment dated 28.10.2016, hence, this petition for leave to appeal.

7. The learned Advocate General appearing on behalf of the State and Mr. Manzoor Ahmed Advocate for the petitioner /complainant in Cr. Appeal No. 10/2017 submit that it was a day

light occurrence which was seen by the eye witnesses of the case. They also submit that the accused was nominated in the promptly registered FIR and he was attributed specific role by the prosecution witnesses. The complainant was the eye witness of the crime but he passed away before examining by the court. Per learned counsels PW-02 Jamil s/o Ali Khan is the eye witness who through his statement clearly implicated the accused in the commission of offence and his name is also mentioned in the FIR. They further submit that the statement of PW-02 could not be shattered by the defence counsel through cross-examination. They submit that conviction could be awarded on the evidence of solitary witness and mere relationship of the witness with the deceased party is no ground to discard the evidence under Article 17 of The Qanun-e-Shahadat Order, 1984. They reiterate that quality of evidence matters rather quantity of evidence. They add that there was no enmity between the deceased and accused party prior to the commission of alleged offence, hence, there is no possibility of any false involvement of the accused in the murder of deceased. Per learned counsels the Post Mortem Report, the site plan and recovery of the weapon of offence are corroborative pieces of evidence which connect the accused with the commission of the crime. They submit that the prosecution has successfully proved its case against the accused beyond any reasonable doubt but the learned Chief Court fell in error while passing the impugned judgment dated 28.10.2016 in Criminal Appeal No. 04/2015. Per

learned counsels the said impugned judgment is not tenable and liable to be set aside whereas the judgment dated 28.02.2015 passed by the learned Sessions Judge Gilgit is well reasoned and well founded. The learned Advocate General prays that the judgment dated 28.02.2015 passed by the learned Trial Court Gilgit may graciously be maintained whereas the learned counsel for the complainant prays that the conviction/sentences awarded by the learned Trial Court vide judgment dated 28.02.2015 may pleased be enhanced into death sentence.

8. We have heard the learned counsels for the petitioners in both the connected appeals, perused the record of the case file and gone through the impugned judgment dated 28.10.2016 in Cr. Appeal No. 04/2015 passed by the learned Chief Court and the judgments of the Division Bench of the learned Chief Court as well as the judgment dated 28.02.2015 passed by the learned Trial Gilgit. The careful perusal of the record of the case reveals that the deceased and the accused parties had no enmity prior to the commission of the offence rather they had good relationships with each other. Admittedly, an altercation was happened between them on 22.06.1999 in the place of occurrence while playing cricket. On the very next day i.e. 23.06.1999 unfortunately both the parties again quarreled with each other which was ended with the intervention of the complainant and other people present in the place of occurrence. The accused in the meantime rushed towards his home and opened fire with a 30-bore revolver targeting the

deceased which landed on his left side of chest resultantly he died while on the way to hospital. Although the FIR lodger and Abdul Salam eye witnesses of the offence could not be examined due to their death before recording their statements. Similarly, the PW-01, 04 and 06 were abandoned and declared hostile on the request of the prosecution. The statement of PW-02 namely Jamil Khan s/o Ali Khan was examined in the court wherein he narrated the story and charged the accused directly giving him specific role with the commission of the murder of the deceased Shahid Jan. The statement of said PW is important which is reproduced as under:-

P.W-2. Jamil s/o Ali Khan

“Stated that on 22-6-99 at about 5 pm. I was present on the scene of occurrence that is old polo ground area whereas deceased Shahid and his brothers and the accused Ammar and his brothers were fighting. The father of deceased Hajji Inayat Khan separated the fighting parties, during that accused ran towards his house and from the entrance of his house he fired from his pistol towards the opponent party and the fire shot hit the deceased Shahid. After that deceased Shahid removed to the Hospital”.

9. The aforementioned statement of the eyewitness has been corroborated by the Post Mortem Report, the site plan and recovery of the weapon of offence. Moreover, the hostile witness is no witness in the eye of law, therefore, mere fact that PWs-01, 03 & 04 have turned hostile do not give any benefit to the respondent/accused.

10. In view of the above discussions, this petition was converted into an appeal and the same was allowed vide our short order dated 04.07.2017. The conviction and sentence(s) awarded to

the respondent Ammar Zia by the learned Trial Court vide its judgment dated 28.02.2016 in Session Case No. 112/2006 was maintained whereas the impugned judgment dated 28.10.2016 in Criminal Appeal No. 04/2015 passed by the learned Chief Court was set aside. Since, the respondent Ammar Zia son of Amin Zia was not in attendance in this court, he was required to surrender before the learned Trial Court to serve out his sentence(s).

11. The copy of this order be sent to the learned Trial Court/Additional Sessions Judge Gilgit for compliance in accordance with law. These were the reasons of our short order dated 04.07.2017.

12. The appeals were disposed off in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?