

**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. 29/2017
In
Cr. PLA No. 32/2017.**

Hazrat Hussain

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. The Advocate General Gilgit-Baltistan for the respondent.

DATE OF HEARING: - 19.09.2017

DATE OF ANNOUNCEMENT OF JUDGMENT: - 12.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has been directed against the impugned judgment dated 04.04.2017 in Cr. Appeal No. 49/2014 passed by the learned Chief Court whereby the said Cr. Appeal filed by the petitioner was dismissed being meritless, hence, this petition for leave to appeal. This court vide order dated 28.08.2017 issued notice to the respondent and the case was heard on 19.09.2017.

2. Briefly, the facts of the case are that the complainant Naseemullah registered an FIR No. 17/2012 & FIR No.18/2012 under Sections 302 & 429 PPC and 13 Arms Ordinance respectively

at about 17:30 PM on 24.04.2012 at Police Station Gumari District Diamer stated about the occurrence with a specific motive of sodomy which was allegedly committed by the deceased Mehboobullah with the accused Hazrat Hussain. As per contents of the FIR, on the day of occurrence at about 1700 hours the deceased Mehboobullah after playing a Polo match at Gumari Polo ground was on his way ridding on his horse alongwith with his seven years son namely Majeedullah. When they reached at Gumari Bazaar, accused Hazrat Hussain who was already waiting for him opened fire with a gun indiscriminately over the said Mehboobullah resultantly both the riders and the horse fell down on the ground and died on the spot. The complainant also named one Zakir Hussain as an abettor for the alleged murder of his brother and nephew.

3. After completion of the investigation, challan of the case against petitioner Hazrat Hussain was submitted in the learned Trial Court on 23.02.2013. The charge sheet against the petitioner was filed under Section 302 and 439 PPC in the learned Trial Court. The petitioner/accused pleaded not guilty and claimed for trial. The prosecution to prove its case against the accused examined as many as 05 PWs. After the closing of the prosecution evidence, the petitioner was examined under Section 342 Cr.PC. He neither opted to appear on oath nor produced any witness in his defence as provided under Section 340(2) Cr.PC.

4. The learned Trial Court after appraising the prosecution evidence and other material on record, hearing both the learned counsels for the respective parties and on proven guilty, convicted the petitioner under Section 302 (b) PPC vide judgment dated 29.11.2014. The relevant portion of the said judgment at Para-10 is hereby reproduced as under:-

“Quote”

In view of the above deliberations, this court is of the opinion that prosecution has successfully proved the charges against the accused beyond reasonable doubt. Accused Hazrat Hussain S/o Muhammad Rawwan r/o Katukush Tehsil Darel is hereby convicted under section 302(b) P.P.C. for the Qatl-e-amd of deceased Mehboobullah S/o Barkati Khan and Majeedullah S/o Mehboobullah rs/o Kakukush Tehsil Darel. It is on record proved that convict Hazrat Hussain has in abuse of power has murdered an innocent boy Majeedullah s/o Mehboobullah age about seven years therefore convict deserves no leniency and he deserves death penalty but since he is a juvenile accused and under section 12 of Juvenile Justice System he can not be awarded death sentence therefore convict Hazrat Hussain is sentenced to life imprisonment. He is convicted under section 429 P.P.C for the murder of horse and is sentenced for five years imprisonment. He is convicted under section 13 Arms Ordinance and is sentenced to one year simple imprisonment. Sentences of imprisonment shall run concurrently and benefit of section 382-B Cr. PC shall be given to him. Convict Hazrat Hussain S/o Muhammad Rawwan shall pay Rs. 300,000/- compensation under section 544-A Cr. PC to the LRs of deceased Mehboobullah and Majeedullah. In default of payment he shall undergo further imprisonment of six months.

“Unquote”

5. The petitioner/accused being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed

Criminal appeal No. 49/2014 in the learned Chief Court. The learned Chief Court upon hearing dismissed the said Criminal Appeal by upholding the judgment of the learned Trial Court vide impugned judgment dated 29.11.2014. The operative part of the impugned judgment passed by the learned Chief Court for convenience is also hereby reproduced as under:-

“Quote”.

In the light of above discussion, we see no infirmity in the impugned judgment and the same is up held in toto. Resultantly, Cr. Appeal No. 49/2014 filed by the convict/appellant is dismissed being meritless.

“Unquote”

6. The petitioner/accused feeling aggrieved with the impugned judgment of the learned Chief Court filed Criminal petition for leave to appeal in this court for setting aside the said impugned judgment. The notice to the Advocate General Gilgit-Baltistan and to the complainant were issued on 28.08.2017. Consequently, the case was heard on 19.09.2017.

7. The learned counsel for the petitioner submits that the impugned judgment as well as the judgment of the learned Trial Court are the result of misreading and non-appreciation of the prosecution evidence and other material on record. He also submits that there is no credible and inspiring confidence evidence on the record to connect the petitioner with the alleged offence. Per learned counsel, the learned Trial Court did not consider that the

postmortem of deceased was not conducted and the crime weapon was also not sent for forensic laboratories for expert opinion. He submits that the conviction has been based on the statement of complainant and PW-02 namely Umer Farooq which are contradictory in nature. He further submits that the FIR was registered after preliminary investigation and after due deliberation & consideration. He adds that the PWs are close relatives of the deceased and it is evident from the prosecution case that the occurrence took place in a busy market. Despite of availability of witnesses of locality, they associated interested witnesses. The complainant's evidence was not corroborated by any independent witness. The recovery of crime weapon and recovery of empty shells were not proved. He submits that both the learned Courts failed to apply their judicial minds while passing the impugned judgments, therefore, the same are not sustainable which may graciously be set aside.

8. Conversely, the learned Advocate General supports the concurrent findings of the two Courts below. He submits that it was a daylight occurrence and the FIR of same has lodged without any delay. The name of the petitioner and names of two eye-witnesses have also been mentioned in the said FIR. The petitioner was attributed a specific role in commission of crime. The weapon of offence has also been recovered from the possession of the petitioner in presence of the independent witnesses. He contends

that the said concurrent findings of the two Courts below are well reasoned and well founded which may pleased be maintained.

9. We have heard the learned counsel for the respective parties at length, perused the material on record and gone through the impugned judgment dated 04.04.2017 passed in Cr. Appeal No. 49/2014 by the learned Chief Court. In our considered view, the prosecution has successfully proved its case beyond reasonable doubts against the petitioner/convict through unrebuttable and credible evidence which have rightly been appreciated by the learned Courts below. The FIR of the offence was promptly lodged by the complainant namely Naseemullah (the real brother of the deceased Mehboobullah and the real uncle of minor Majeedullah). The accused was directly charged for double murder. The place and time of occurrence and the presence of the petitioner at the place of occurrence has not been challenged by the defence rather it was admitted. The eye witnesses i.e. Naseemullah PW-01 and Umar Farooq PW-02 corroborated each others and the defence counsel in their cross examinations had badly failed to shatter their statements. The relationship of eye witnesses with the deceased is not a ground to discard their testimony. The ocular testimony corroborates the medical evidence. No infirmity and illegality is pointed out by the learned counsel for the learned counsel for the petitioner in both the well reasoned judgments passed by the two Courts below, hence, no indulgence is warranted into its by this court.

10. In view of the above discussions, this appeal is dismissed by affirming the concurrent findings of the learned courts below i.e. the impugned judgment dated 04.04.2017 in Cr. Appeal No. 49/2014 passed by the learned Chief Court as well as the judgment dated 29.11.2014 passed by the learned Trial Court at Diamer.

11. The aforesaid appeal is dismissed in above terms.

Chief Judge.

Judge.