

**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. 18/2017
in
Cr. PLA No. 24/2017.**

Sanaullah son of Kamal R/O Juglote, Tangir District Diamer at present confined in District Jail Ghizer

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Rai Muhammad Nawaz Kharal Advocate alongwith Mr. Shakoor Khan Advocate and Muhammad Abbas Khan Advocate-on-Record for the petitioner.
2. The Advocate General Gilgit-Baltistan for the respondent.

DATE OF HEARING: - 19.09.2017

DATE OF DETAIL JUDGMENT: - 26.01.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has been directed against the impugned order dated 18.04.2017 in Cr. Appeal No. 46/2014 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 03.07.2017 issued notice to the respondent and the case was heard on 19.09.2017.

2. Briefly, the facts of the case are that an FIR No. 36/2011 under Sections 302/337/341/34 PPC was registered on 02.11.2011 at about 1800 hours at Police Station Tangir District Diamer on the

complaint of one Sardar Khan son of Lashkar Khan real brother of deceased Durash Khan. As per contents of said FIR, on the day of occurrence the inhabitants of pathan Muhallah Juglote Tangir were gathered there at the place occurrence in order to elect or select their members for the local Zakat Committee. At about 05:00 PM all of a sudden accused Sanaullah, Satbar Khan sons of Kamal, Irshad son of Noor Nabi and Sartaj son of Wali Muhammad resident of Pathan Muhallah resisted the process and assaulted the deceased Durash Khan while pelting the stones. As a result a stone hit the said Durash Khan and he fell on the ground unconscious. The motive behind the alleged occurrence was the dispute over the appointment of members of Zakat Committee. The complainant Sardar Khan real brother of deceased Durash Khan firstly lodged FIR under Sections 337-A /341/34 PPC secondly after the death of Durash Khan, the accused were charged for offence on Qatl-amd under Section 302 PPC.

3. After completion of the investigation, challan of the case against the petitioner was submitted in the learned Trial Court. The charge against the petitioner was framed on 11.04.2014 who did not plead not guilty and claimed for trial. The prosecution to prove its case against the petitioner/accused examined as many as 10 witnesses. The prosecution evidence was closed on 01.04.2014. The petitioner was examined under Section 342 Cr.PC on 06.11.2014. He neither opted to appear on oath nor produced any witness to defend 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 against the petitioner/accused, convicted him under Section 302 (b) PPC and he is sentenced to life imprisonment vide judgment dated 20.11.2014. The relevant portions of the said judgment are hereby reproduced as under:-

“Quote”

7. On the question of punishment this court is of the opinion that since the occurrence was in a sudden fight and occurrence was not a result of pre-planned therefore in view of the principle laid down by the Hon’ble Supreme Court in case cited “Allah Dawaya vs. The State” (PLD 1993 S.C Page 35) and Supreme Court Azad Jammu and Kashmir in the case cited “Raja Sarfraz Azam Khan’s Case” (2005 YLR page 584) accused Sanaullah s/o Kamal R/o Juglote Tangir District Diamer is convicted under section 302 (b) P.P.C. and is sentenced to life imprisonment. Benefit of section 382-B Cr.P.C shall be given to him. He shall pay Rs. 2,00,000/- as compensation under section 544-A Cr. P.C to the legal heirs of deceased Durash Khan s/o Lashkar Khan. In default of payment of compensation he shall undergo further simple imprisonment of six months.

8. After the period of appeal, weapon of offence be destroyed for otherwise disposed of.

9. Convict Sanaullah s/o Kamal in custody present. He be sent to judicial lock-up Chilas for serving out the remaining portion of imprisonment there. Warrant of commitment for life imprisonment he sent to Superintendant Judicial lock-up Chilas for execution of the same there.

10. Order announced in presence of counsel of complainant and the convict in open court.

11. File after due completion be consigned to record.

“Unquote”

5. The petitioner/accused being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal appeal No. 46/2014 in the learned Chief Court which upon hearing dismissed by maintaining the judgment of the learned Trial Court.

6. The learned counsel for the petitioner submits that four persons were equally charged for pelting stones at the deceased without any specification. He also submits that later on a modified story was charged to tight the rope around the neck of petitioner. Per learned counsel, the statements of the witnesses are not corroborative in nature rather the same are contradictory with one others. He further submits that the investigation of the case was conducted dishonestly and the main facts of the case have been intentionally twisted and tailored. He adds that there is no postmortem report of the deceased available on record and only an injury sheet is available on the case file which is not corroborative piece of evidence to convict the petitioner in commission of alleged offence. He reiterates that the blood stained stone which was recovered from the place of occurrence by the Investigation Officer (IO) was not sent to chemical expert opinion. He submits that all the prosecution witnesses are interested witnesses as closely related to the deceased. The evidence of such witnesses cannot be believed without independent corroboration. He further submits that the judgment of the learned Trial Court is devoid of any legal justification and basic principles governing dispensation of criminal

justice system. The prosecution has miserably failed to prove its case against the petitioner beyond reasonable doubts. Per learned counsel the learned Trial Court as well as the learned Chief Court fell in error in convicting the petitioner, hence, impugned order dated 18.04.2017 as well as the judgment of learned Trial Court are not sustainable. He prays that the said impugned order may graciously be set aside.

7. On the other hand, the learned Advocate General supports the impugned order as well as the judgment passed by the learned Trial Court. He contends that it was a day light occurrence which was seen by the eye witnesses. He also contends that the FIR lodger was not an eye witness and he received information from a boy of 12 years. The accused namely Sanaullah is directly charged in the promptly lodged FIR. The prosecution has proved its case beyond reasonable doubt which was corroborated by PW-7 Aslam Khan and PW-8 Nisar Ahmed who have specifically charged the petitioner for fatal injury caused to the deceased. Per learned Advocate General, the presence of deceased, PWs and the accused at the place of occurrence is admitted by defence. He submits that the learned Trial Court as well as the learned Chief Court have rightly convicted the petitioner, hence, impugned order dated 18.04.2017 as well as the judgment of learned Trial Court are well reasoned and well founded. He prays that the said impugned order may pleased be maintained.

8. We have heard the learned counsel for the respective parties at length, perused the material on record and gone through the impugned order as well as the judgment of the learned Trial. Admittedly, the occurrence took place on 12.11.2011 and the accused was nominated in the promptly lodged FIR, attributing him a specific role in commission of the offence. The petitioner alongwith the co-accused remained proclaimed absconder till his arrest on 05.03.2013. The period of absconson remained unexplained which is corroborative piece of evidence. The eye witnesses namely Aslam Khan (PW-7) and Nisar Ahmed (PW-8) have directly charged the petitioner in committing the crime. The said eye witnesses remained consistent and corroborated each other. Mere relation of the witnesses with the deceased is having no ground to discard their testimony. The learned Courts below have rightly appreciated the evidence on record being inspiring confidence while convicting the petitioner. The learned counsel for the petitioner failed to point out any infirmity or illegality in the impugned order/judgment, therefore, we are not inclined to interfere into the concurrent findings of the learned Courts below.

9. In view of the above discussions, we converted this Criminal Petition into an appeal and the same was dismissed vide our short order dated 19.09.2017. Consequently, the impugned order dated 18.04.2017 in Criminal Appeal No. 46/2014 passed by the learned Chief Court was maintained. These were the reasons of our said short order.

10. The appeal is dismissed in above terms.

Chief Judge.

Judge.