

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN.

**Cr. Appeal No.06/2008.
Cr. Appeal No.07/2008.**

**Before: - Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob, Judge.**

**1. Mirza Muhammad s/o Haji Hussain r/o Zokha Kachura,
Tehsil Skardu District Skardu.**

Petitioner.

Versus

The State

Respondent.

2. The State

Petitioner

Versus

**Muhammad Sadiq s/o Haji Hussain r/o Zokha Kachura,
Tehsil & District Skardu.**

Respondent

CHARGE UNDER SECTION 302/34 P.P.C.

PETITION FOR GRANT OF LEAVE TO APPEAL AGAINST THE JUDGMENT/ORDER DATED 11-11-2008, PASSED BY THE LEARNED DIVISION BENCH NORTHERN AREAS CHIEF COURT GILGIT, WHEREBY APPEAL OF CONVICT/PETITIONER WAS DISMISSED BY UPHOLDING THE JUDGMNET/ORDER DATED 18-12-2003 OF THE TRIAL COURT AND CONFIRMED THE MURDER REFERENCE.

**Present: - Advocate General Gilgit-Baltistan.
Haji Jamal Khan Advocate for respondents.**

Date of hearing :-03-08-2010.

JUDGEMENT:-

Mr. Justice Muhammad Yaqoob, J.....By this Single Judgment we intend to dispose of Cr.P.L.A No.07/2008, filed by the convict Mirza Muhammad and Cr.P.L.A No.06/2008 preferred by the state, as common question of facts and law is involved in both the matters.

Brief facts of the case as narrated in the FIR, are that Haji Muhammad (deceased) on 10-6-2000, at about 1630 hours went to his fields at Kachura along with his cows. Meanwhile accused Muhammad Sadiq and Mirza Muhammad suddenly appeared and started abusing the deceased. The accused were holding sticks and stones in their hands and both the accused attacked the deceased with stones/sticks. Resultantly, the deceased fell down and became unconscious. Deceased had received various injuries on his head and body. Blood was oozing from his head and other parts of the injured. However, on the interference of PW-4 Fida Hussain and PW-5 Syed Ahmed, the accused left the deceased and fled away from the scene of occurrence. The matter was reported by PW Muhammad Hassan son of Haji Ali r/o Kachura, in police station Kachura Skardu. On the same day, at about 1800 hours the police lodged the FIR, bearing No.4/2000, vide Ex.PW/4/A, under section 504/506/337-A P.P.C. The motive behind the offence as disclosed by the FIR lodger PW/4/A, in his written report dated 10-6-2000, is, that a civil litigation is sub-judice for adjudication before the civil court Skardu, between the parties. The deceased, however, passed away at DHQ Hospital on 13-6-2000, consequently the offences were changed into 302/34 P.P.C. Police arrested the accused and submitted the challan under section 173 Cr.P.C. before the learned Sessions Judge Skardu on completion of investigation.

The learned trial Court after conclusion of the trial convicted both the accused under section 302/34 P.P.C and sentence them to death for committing murder of Haji Mohammad. Accused/petitioner (Mirza Muhammad) also liable to pay a sum of Rs.3, 00,000/- as compensation to the legal heirs of the deceased and in default whereof to further undergo rigorous imprisonment for six months. Both the convicts preferred criminal appeal No.15/2003 before the Chief Court Gilgit-Baltistan, challenging the judgment/order dated 18-12-2003, passed by the learned Sessions Judge Skardu under section 302/34 P.P.C. whereby the learned Divisional Bench of Chief Court, Gilgit-Baltistan, accepted the appeal of accused Muhammad Sadiq and acquitted him, while dismissed the appeal to the extent of petitioner/accused Mirza Muhammad and confirmed the murder reference, vide judgment/order dated 11-11-2008, hence this petition for grant of leave to appeal.

The accused were charged to which they do not plead guilty and claimed trial. The prosecution in order to prove its case, produced twenty witnesses and also tendered documentary evidence to strengthen its case.

We have heard the arguments at length from either side and perused the record of the case with due care and caution.

The learned counsel for the convict /petitioner Haji Jamal Khan Advocate vehemently argued that the witnesses PW-1 to 3 are closely related to the deceased as

such their deposition can not be considered as truthful evidence. He further contended that the convict has falsely been implicated in this case only on the ground of malafide. The occurrence is unseen, therefore, the impugn judgment/order is contrary to law and facts on the record of the case, as such not maintainable. He further submits that the learned Division Bench of Chief Court mainly relied on the statement of PW-4 Fida Hussain and PW-5 Syed Ahmed Shah, whereas the trial Judge fully relied upon the statements of PW-1 (son), PW-2 (widow), and PW-3 (mother of deceased) whose name are not figured in the FIR, hence the impugned Judgment/Order of the learned Division Bench, of Chief Court, as well as of the trial court, are not maintainable and liable to be set aside. He further emphasized that there are glaring contradictions in the use of the alleged weapon of offence. It is stated in the prosecution evidence, that the petitioners used sticks, while prosecution obtained positive report of stones from the Experts, which are too not conventional weapons. Moreover, there are material improvements and contradictions in the statements of the so called eye witnesses, as such the impugned judgments/orders being unwarranted by law are liable to be set aside. The learned counsel for the petitioner/convict concluded with the last submission that this leave to appeal may kindly be accepted and acquit the accused (Mirza Muhammad) honorably as the prosecution hopelessly failed to prove the guilt of accused.

On the other hand the learned Advocate General refuted the arguments put forward by the learned counsel for the petitioner/convict and contending that it is a fit case for capital punishment, the veracity of the statements of the PW-4 and PW-5 is very natural, inspiring and independent as such defence counsel could not shatter the veracity of the same. Therefore, the conviction orders passed by the learned lower courts are liable to be upheld. The complainant lodged the report of the occurrence without any delay. There are independent and reliable witnesses of the occurrence. The role of accused has also been described by the witnesses. He further submits that other evidence against the accused/respondents fully corroborates with the prosecution version. The prosecution has proved the guilt of the accused/respondents beyond any shadow of doubt, hence the order of acquittal to the extent of Muhammad Sadiq is not maintainable in the eye of law, whereas the appeal filed by the convict Mirza Muhammad is liable to be dismissed. He further contended that recovery of suttas and stones have been effected by the police on the pointation of the accused in presence of independent witnesses of the locality. Post mortem report also supports the version of the prosecution regarding death of the accused by blunt weapon. Hence, the lower courts have rightly convicted the accused and the conviction orders are not liable to be set aside.

We have carefully examined the respective contentions of counsel for both the parties in the light of

relevant record of the case. We find that the evidence of Fida Hussain PW-4 and Syed Ahmed Shah PW-5 is truthful, real inspiring and trustworthy. The evidence of the said two eye witnesses is not suffering from any material defect or contains any describable contradictions and discrepancies to create a slight doubt regarding the guilt of petitioner/appellant (Mirza Muhammad).

The case of respondent Muhammad Sadiq is distinguishable from the case of petitioner/appellant (Mirza Muhammad) because the star eye witness Fida Hussain in his statement specifically charged the petitioner/appellant Mirza Muhammad for giving Sutta blows on the deceased person Haji Muhammad, while respondent Muhammad Sadiq was standing holding a Sutta in his hand. According to the evidence of Fida Hussain, the star witness, appellant Muhammad Sadiq was standing near the deceased holding a Sutta in his hand. As far as the petitioner/appellant Mirza Muhammad is concern, we are of the opinion that he caused multiple head injuries to the deceased, with a Sutta /stones which is supported by Medical report, eye witnesses and other circumstantial evidence. Therefore, we need not to apply a device of shifting grain from the chaff, as the eye Witnesses fully corroborates to each other on material without any contradictions. So far as the motive is concern it is stood proved from the material available on record, that accused and deceased had a civil dispute over a patch of land and same is sub-judice before the civil court. This fact is

also been disclosed by the accused that the deceased had to take possession of the disputed land but they have taught him a lesson which he will remember in his life. The same fact has also been disclosed by PW-11 in his statement. He filed a copy of Jama-Bandi as marked Ex.PW-1/C along with a copy of mutation relating to the deceased. Hence, the complainant party had no reason to involve the accused in the case in hand except the land in dispute. In the FIR Ex.PW-11 /A, the motive for the offence has been mentioned by FIR lodger, that dispute over a patch of land between the deceased and the same is pending for disposal before the Civil court. Therefore, the motive for the offence has been proved beyond any shadow of doubt.

When we are going to see the second aspect of the case, we find that the brother of the deceased submitted written report after received information, wherein, he has cited two witnesses namely Fida Hussain and Syed Ahmed Shah, who were said to be present at the place of occurrence. Three eye witnesses namely Zahir Abbas (son) of deceased, Mst. Kulsum Bi, widow and Mst. Bano mother of deceased, who are said to have first had information regarding the occurrence, but on the perusal of the record, it becomes clear that the statement of all the three eye witnesses has been recorded after six days of the occurrence but no explanation has been put forward to the effect that why their statements were not recorded on the first day of occurrence or immediately after the death of the deceased? The two other

witnesses Fida Hussain and Syed Ahmed Shah can be relied upon as their names appears in the FIR which is the first information report regarding occurrence, and reliance can be placed on their statements.

After appreciating the prosecution evidence this court has come to the conclusion that occurrence has taken place on broad day light, first information report has been lodged without delay, therefore, question of false implication does not arise in this case. Eye witness PW-4 Fida Hussain and PW-5 Syed Ahmed Shah had shown their presence on the spot of occurrence, which was not disputed by the defence, accused is directly charge in the FIR with specific role. Ocular evidence of PW-4 and PW-5 is consistent and there is no contradiction. Their evidence is convincing inspiring and truthful one, as such the defence counsel could not collect a single iota of a word after lengthy cross examination which has definitely benefited to the accused.

Appellant Mirza Hussain has been awarded death sentence with fine of Rs.3,00,000/- on charge of murder , normal penalty for offence of murder is death but in appropriate cases where some extenuating circumstances, are available, courts have discretion to award lesser punishment of imprisonment for life. It is an admitted position that both the parties were closely related and their existed no background of any previous enmity or deep rooted hostility between appellant and deceased.

Petitioner/appellant lived in the same village, in other words, no untoward incident took place previously between the parties. It can, therefore, safely be said, that the parties to this case lived amicable and peacefully in the village. Record shows that it was not a pre-planned case but a chance meeting of both the parties ,resulted in a sudden fight in which accused caused death of deceased (Haji Mohammad). It was the bounded duty of the prosecution to have proved as to what actually happened immediately before the occurrence in hand took place. This has not been done by the prosecution. Minor contradictions in medical and other circumstantial evidence is available on record but can not be discarded the evidence at all. These factors make out a case for mitigation of sentence and lesser punishment of life imprisonment would meet ends of justice. Therefore, we are inclined to award lesser sentence to the appellant on the aforesaid grounds. The sentence of petitioner/appellant is converted from death to imprisonment for life. Whereas, the criminal appeal No.06/2008 filed by the State against the acquittal of Mohammad Sadiq is dismissed.

Our short order, in the case in hand is re-produced herein below, is treated as part of this judgment:-

For the reasons to be recorded later on, the criminal petition No.06/2008 filed by the state against the acquittal of Muhammad Sadiq from the charge of murder of Haji Muhammad under section 302/34 PPC by the Chief Court and criminal petition No.07/2008, filed by Mirza Muhammad

his co-accused against his conviction and sentence of death awarded to him by the trial court which has been maintained by the Chief Court in appeal filed by him are converted into appeals and disposed of as under:-

“The criminal appeal No.06/2008, against the acquittal of Muhammad Sadiq is dismissed, whereas the criminal appeal No.07/2008, is partly allowed with the reduction of sentence of death into imprisonment for life under section 302 (b) P.P.C. and conviction of fine of Rs.300.000/- imposed upon the appellant into compensation under section 544-A Cr.P.C. to be paid to the legal heirs of the deceased by the appellant before his release from jail and in default of payment of compensation , he will under go simple imprisonment for six months. The appellant will be given benefit of section 382-B Cr.P.C. Subject to the payment of compensation which shall be recoverable from him as arrears of land revenue.”

Announced.
03-08-2010

CHIEF JUDGE

JUDGE