

**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. 06/2016
in
Cr. PLA No. 09/2016.**

Muhammad Hanif son of Abdul lateef r/o of Bunar Dass Tehsil
Chilas District Diamer. **Petitioner.**

Versus

Shah Alam & 02 others

Respondents.

PRESENT:-

1. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-record for the petitioner.
2. The Advocate General Gilgit-Baltistan alongwith Mr. Saeed Iqbal, Deputy Advocate General for the proforma respondent.
3. Mr. Jahanzaib Khan Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record for respondent.

DATE OF HEARING: - 15.08.2017.

DATE OF DETAILED JUDGMENT:- 26.01.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal appeal has arisen out of the impugned judgment dated 20.04.2016 in Cr. Appeal 54/2014 passed by the learned Chief Court whereby the said Cr. Appeal filed by the respondents was accepted by setting aside the judgment dated 15.12.2014 passed by the learned Trial Court and acquitted the respondents from the case. The petitioners being aggrieved by and dissatisfied with filed this petition for leave to appeal. This court vide order dated 01.06.2016 granted leave to appeal and the case heard on 15.08.2017.

2. Briefly, the facts of the case are that the appellant/petitioner registered an FIR No. 12/2006 under section 364 PCC at Police Station City Gilgit regarding missing of one Abdul Latif from the house of accused since 22.12.2006 on suspicion. After the registration of the case, the Investigating Officer (I.O) arrested the respondent and started usual investigation. On 27.01.2006, during the investigation, on the pointation of accused Ali Sher dead body of deceased Abdul Latif was recovered. The stone which was used for the commission of the alleged crime was also recovered on the pointation of accused Shah Alam. After recovery of dead body and weapon of offence, the Section 364 PPC was converted into Section 302/34 PPC.

3. After completion of the investigation, challan of the case against the respondents was submitted in the learned Trial Court. The charge against the respondents was filed under Section 302/34 PPC except accused Ibadat Khan who was discharged by the Investigating Officer. The respondents accused pleaded not guilty and claimed for trial. The prosecution to prove its case against the accused examined as many as 17 witnesses. After the closing of the prosecution evidence, the petitioner was examined under Section 342 Cr.PC. They 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

respondents/accused, convicted them under Section 302 (b) PPC vide judgment dated 15.12.2014. The relevant portions of the said judgment are hereby reproduced as under:-

“Quote”

With the above observations, I am of the firm view that the prosecution case falls within the ambit of Article 40 Qanun-e-Shahadat Order, 1984 and corroborative evidence i.e. recoveries of dead body, weapon of offence and medical evidence has successfully proved the charge against the accused Shah Alam s/o Mazoob Shah and Ali Sher s/o Sher Ghazi r/o Bunardas District Diamer. Keeping in view the circumstantial evidence where accused were two persons and its not certain that which of the accused gave fatal injuries to the deceased and awarding life imprisonment has been held better by superior courts. The accused Shah Alam S/o Mazoob Shah and Ali Sher s/o Sher Ghazi r/o Bunardas District Diamer presently residing at Konodass Gilgit have murdered/committed Qatl-i-Amd of Abdul Latif therefore, convicted and sentenced to imprisonment for life under section 302 (b) PPC and they are further sentenced to fine of Rs. 500000/- (five hundred thousand only) each under section 544-A Cr. PC and the said amount shall be paid to the legal heirs of deceased and in case of failure/default of payment of the said amount they will undergo simple imprisonment for a period of seven (07) years, to be computed after the convict/accused completed life imprisonment. Accused shall be entitled for the benefit of section 382-B Cr. PC. As far as co-accused namely Abdullah Jan, Naseer, Abdul Rasheed s/o Mazoob Shah r/o Bunardas District Diamer presently residing at Konodass Gilgit are concerned no role has been assigned to them by the witnesses and no evidence is available on record to connect them with the alleged crime therefore, they are hereby acquitted from the charge leveled against them.

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

ANNOUNCED
15.12.2014

-Sd-
Additional Sessions Judge,
Gilgit.

“Unquote”

5. The respondents/accused being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal appeal No. 54/2014 in the learned Chief Court. The learned Chief Court upon hearing accepted the said Criminal Appeal by setting aside the judgment of the learned Trial Court vide impugned judgment dated 20.04.2016. The operative part of the

impugned judgment passed by the learned Chief Court is hereby reproduced as under:-

“Quote”

In our opinion, the above described evidence is the only prosecution evidence, whereby prosecution has attempted but in vain to prove that prosecution recovered dead body of deceased of the case. So, we are of the opinion that the prosecution has badly failed to establish the recovery of any dead body, particularly, dead body of the deceased of the occurrence reported through FIR No. 12/2006. The rest of the pieces of prosecution evidence could be taken up for discussion only if prosecution had succeeded to establish the recovery of dead body of deceased of the case. In our opinion, impugned judgment is very bad in the eye of law and prosecution has badly failed to connect the appellants/convicts with the occurrence. We, therefore, set aside impugned order and acquit the appellants/convicts from the case. We direct for immediate release of appellants from custody, if not required in any other case. This file be consigned to record.

**ANNOUNCED
20.04.2016.**

-Sd-
JUDGE
-Sd-
JUDGE

“Unquote”.

6. The State/complainant feeling aggrieved with the impugned judgment of the learned Chief Court filed Criminal petition in this court for setting aside the said impugned judgment.

7. The learned counsel for the petitioner and the learned Advocate General submit that the deceased Abdul Latif was missing for almost 30/35 days until his dead body was not found on the pointation of accused Ali Sher. They also submit that the said

recovery was made in presence of the Magistrate, private witnesses and independent journalists. Per learned counsels, the corroborative pieces of evidence i.e. unnatural death, postmortem report and blood stained cloths etc are strengthens the case of prosecution. They further submit that the dead body and crime weapons recovered on the pointation of the respondents and such recovery is admissible under Article 40 of the Qanun-e-Shahadat Order, 1984. They reiterates that the involvement of accused Shah Alam is also established by the recovery of dead body, recovery of stone i.e. weapon of offence on his pointation in presence of the Magistrate, private witnesses and independent journalists etc. The case is fit for the capital punishment, however, the learned Trial Court awarded life imprisonment to the accused instead of death sentence which was required to be maintained by the learned Chief Court. The learned Trial Court has already awarded lesser punishment by taking leniency in the case in question. The learned Chief Court fell in error in appraising the prosecution evidence and other material on record. The involvement of the respondents in the brutal murder of the deceased was proved by the prosecution beyond any reasonable doubt, consequently, the said impugned judgment is not tenable in law. They pray that the impugned judgment passed by the learned Chief Court may graciously be set aside.

8. On the other hand, the learned counsel for the respondents supports the impugned judgment. He contends that

the prosecution has to prove its case through direct tangible and inspiring confidence evidence. The circumstantial evidence cannot be admissible unless corroborated by an independent evidence. He reiterates for the conviction, the circumstantial evidence must be inter linked, inter woven and no gap should exist between the links of chain in commission of offence. Per learned counsel, prosecution witnesses 12 & 13 namely Kashmir and Tanzil (Nazir) have been declared hostile. The prosecution has failed to dig out any material support in prosecution case during their cross examination. The circumstantial evidence is not admissible unless corroborated by an independent evidence. He contends that the recovery has not been made on the pointation of respondent Ali Sher as the driver of the vehicle on which the police took the him for recovery of dead body, has stopped the vehicle by his own. Admittedly the driver was never asked by the respondent to stop the Vehicle at that place. This fact got support by prosecution witness-02 namely Sawal Khan. He further contends that there are glaring contradictions between the recovery witnesses of dead body and with the statement of the Magistrate. He reiterates that the time of recovery of dead body was 04:30 PM on 27.01.2006 whereas according to the postmortem report and statement of Dr. Wajahat Hussain, the time of postmortem was 10:00 AM which shows that the postmortem has been conducted prior to the recovery of dead body. Similarly, the time between the death and postmortem has been mentioned as more than 15 days and this fact does not corroborate the story of

the prosecution. He contends that no witness has been associated from the locality i.e. from the house of respondent. The mode of transportation of dead body has not also been mentioned anywhere in the record. Further, the prosecution witness-02 has denied that police has not recorded his statement under Section 161 Cr. PC. He adds that accused Abdullah Jan, Naseer, Abdul Rasheed s/o Mazoob Shah were discharged by the Investigating Officer namely Akbar Hussain. The respondent were again arrested by the other Investigating Officer despite the fact that no iota of evidence against the said accused was available on record. The ocular evidence is not corroborated by medical evidence on record. He prays that the impugned judgment may pleased be maintained in circumstances.

9. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment as well as the judgment passed by the learned trial court. The perusal of the statement of prosecution witness-02 reveals that police did not recover the dead body of the deceased in presence of the prosecution witnesses. The said prosecution witness deposed in his statement that he personally did not see the dead body recovered by the police. The police have shown a bag to the prosecution witnesses claiming that the dead body of the deceased is in the said bag. Neither the dead body was identified by the prosecution witnesses nor the legal heirs of the deceased. The recovery of the dead body of the deceased on pointation of the respondent is doubtful. There are material

contradictions in the statements of prosecution witnesses. Admittedly the ocular testimony is not corroborated by medical evidence. The prosecution has miserably failed to prove its case against the respondents beyond reasonable doubts. The learned counsels for the petitioners/complainant also could not appoint out any infirmity or illegality in the impugned judgment. In our considered view, that impugned judgment is well reasoned and well founded. No interference into it is warranted by this court.

10. In view of the above discussions, we dismissed this appeal vide our short order dated 15.08.2017. Consequently, the impugned judgment dated 20.04.2016 in Criminal Appeal No. 54/2014 passed by the learned Chief Court was affirmed. These were the reasons of our said short order.

11. The appeal is dismissed in above terms.

Chief Judge.

Judge.