

**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. 23/2017
In
Cr. PLA. No. 16/2017.**

Bulbul Aman Shah **Petitioner.**

Versus

The State **Respondents.**

PRESENT:-

1. Mr. Jahanzaib Khan Advocate alongwith Mr. Muhammad Abbas Khan Advocate-on-Record for the petitioner.
2. Mr. Amjad Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for complainant.
3. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General for the respondent/State.

DATE OF HEARING: - 25.09.2017.

DATE OF DETAILED JUDGMENT:- 26.01.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has arisen out of the impugned judgment dated 20.03.2017 in Cr. Appeal No. 26/2015 passed by the learned Chief Court whereby the said Cr. Appeal filed by the State was accepted by setting aside the judgment dated 12.09.2015 passed by the learned Session Judge Ghizer. Consequently, the petitioner was convicted/sentenced under Section 302(b) PPC by awarding him death sentence with the directions that the petitioner shall be

hanged by neck till he be dead. He was also fined to Rs. 10,00,000/- to be paid to the legal heirs of the deceased under Section 544-A Cr.PC. The accused was convicted under Section 13 Arm Ordinance and awarded him for 05 years R.I. with a fine of 10,000/-. He was also convicted under Section 337-D PPC and awarded 05 years R.I. for causing firearm injuries to Mst. Kai Bibi wife of the deceased. Similarly, the weapon of offence was confiscated in favour of the State. The petitioner being aggrieved by and dissatisfied with, filed this petition for leave to appeal. This court vide order dated 08.05.2017 issued notice to the respondent and the case was heard on 25.09.2017.

2. Briefly, the facts of the case are that FIR Nos. 21/2010 and 23/2012 were registered on 27.08.2010 and 02.10.2012 at about 2100 and 1900 hours respectively at Police Station Yasin District Ghizer on the complaint of one Samar Wali Shah real brother of deceased Ramazan Shah. As per contents of the said FIR that on the day of occurrence i.e. 27.08.2010, the victim alongwith her deceased husband were coming from Jamat Khana after offering Isha prayer towards their home. On their way near the field of one Rehmatullah someone opened fire on the husband of victim from maize crop. Resultantly, the husband of the victim fell down. In the meantime, a muffled person with a gun came there and again fired, so many fire shots hit on her husband. The victim lady unmuffled the accused and identified him. She had tried to resist but sustained bullet injuries and became unconscious. The

petitioner/accused run away from the spot. The motive behind the incident was stated to be a dispute regarding theft committed in the shop of deceased by the accused Bulbul Aman one year prior to the occurrence. The complainant who is real brother of deceased who has not nominated any one in his written complaint. The petitioner, however, was shown suspected for the commission of murder of deceased in the FIR. After commission of alleged murder, the accused absconded and he was declared proclaimed offender.

3. After completion of the investigation, the incomplete challan under Section 173 read with section 512 Cr. PC was submitted in the Trial Court. Later on, after about two years of occurrence the petitioner/accused was arrested from Chitral on 26.09.2012. During the investigation, it transpired that the motive behind the occurrence was that the deceased was having extra marital relations with the wife of accused. The police submitted another incomplete challan and in the said challan another co-accused Gul Sambar was declared absconder. The said co-accused as evident from the record secured bail before arrest and who appeared in the Court on 08.03.2013. The co-accused Gul Sambar effected a compromise with the complainant party, which was allowed by the learned Trial Court and he was acquitted from the charges on the basis of the said compromise.

The charge against the petitioner was framed on 01.06.2013 who did not plead guilty and claimed for trial. The prosecution to prove its case against the accused examined as many as 14 witnesses.

After the closing of the prosecution evidence, the petitioner was examined under Section 342 Cr.PC on 21.04.2015. He neither opted to appear on oath nor produced any witness to defend him 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, acquitted the petitioner in both the case FIR Nos. 21/2010 and 23/2012, vide judgment dated 12.09.2015. The relevant portions of the said judgment are hereby reproduced as under:-

“Quote”.

The upshot of the above discussion is that the prosecution has badly failed to prove its case beyond the shadow of doubt. The prosecution case is of double version regarding the motive of the offence and impleading the co-accused at belated stage. Neither the motive had been proved from the independent source nor the recovery of crime weapon could furnish corroborative to evidence of said witnesses. Case of prosecution, in circumstances, is not free of doubt. It is basic principle of criminal law that conviction must be based on the evidence beyond any shadow of doubt. The instant case suffers from doubts. The accused is entitled to benefit of doubt.

Consequently, the accused is hereby acquitted in both the cases FIR No. 21/2010 and FIR No. 23/2012 Police Station Yasin. The accused be released forthwith if not required in any other case. The recovered rifle Kalashinkove bearing No. 22043 is hereby confiscated in favour of the State. File be consigned to record after due completion.

“Unquote”.

5. The State/respondent being aggrieved by and dissatisfied with the aforementioned judgment of the learned Trial Court filed Criminal appeal No. 26/2015 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 20.03.2017. The operative part of the said impugned judgment is hereby reproduced as below:-

“Quote”.

14. In the circumstances, the judgment of learned Sessions Judge Ghizer dated 12.09.2015 is set aside. the appeal filed by the State and the complainant is accepted and in consequence, thereof, the accused is convicted u/s 302(b) PPC and awarded death sentence. He shall be hanged by neck till he be dead. He is also fined to Rs. 10,00000/- (Ten lac only) to be paid to the legal heirs of the deceased u/s 544-A Cr.PC. The accused is also convicted u/s 13 A.O. and awarded 5 years R.I. with a fine of Rs.10,000/- (Ten thousand only). He is also convicted u/s 337-D PPC and awarded 5 years R.I for causing firearm injuries to Mst. Kai Bibi. The weapon of offence is confiscated in favour of the State. A copy of this order be sent to the SSP Ghizer and Deputy Commissioner Ghizer for causing arrest of the accused and his committal to judicial custody for execution of sentences. The compliance report shall be submitted to the Registrar of this Court within 15 days from the date of receiving of copy of this judgment.

15. The criminal appeal No. 26/15 is disposed of in the above terms.

“Unquote”

6. The learned counsel for the petitioner submits that the impugned judgment has been passed by the learned Chief Court without hearing the petitioner, without perusing evidence and material on record, hence, the same is not sustainable being ex parte judgment. He also submits that the petitioner has not been provided opportunity to defend his case on merits and he was condemned unheard. Per learned counsel, the learned Chief Court has shifted the responsibility for delaying and lingering on the case

on the petitioner whereas the case was adjourned mostly due to the absence of the counsel for the complainant or the counsel for the State. He submits that the alleged offence took place in the darkness of night and the accused was nominated in the FIR on suspicion. The motive of such murder as stated in the FIR is a disputed between the deceased and the accused on the commission of theft in the shop of the deceased prior one year of the alleged crime. The injured lady Mst. Kai Bibi made a contradictory statement in Court regarding the identification of the accused. Similarly the FIR lodger namely Samar Wali has also contradicted the contents of FIR with regard to the motive for commission of the offence. He stated in his statement before the Court that the accused had suspected the illicit relations of the deceased with the lady of the family of the accused. He submits that these contractions are material in nature which makes the case of prosecution doubtful. The impugned judgment is not sustainable being result of misreading, non-reading and misappreciation of prosecution evidence and other material on record. He prays that the impugned Judgment passed by the learned Chief Court may graciously be set aside in circumstances. While saying so he relied upon the case laws reported as 2017 SCMR 486 and 2008 SCMR 06.

7. Conversely, the learned counsel for the complainant and the learned Advocate General Gilgit-Baltistan appearing on behalf of the State support the impugned judgment passed by the learned

Chief Court. Per learned counsel ample opportunities were provided to the petitioner by the learned Chief Court to defend and plead his case but he willfully remained absent while using delaying tactics. The Cr. Appeal was decided by the learned Chief Court in accordance with law in its own merits. They contend that the alleged crime took place in presence of the Eye-Witnesses i.e. the victim lady and Mr. Iqbal Ahmed who have was un-muffled and identified the petitioner/accused on the spot/place of occurrence. The said two prosecution witnesses implicated the petitioner in commission of the offence by attributing him a specific role. Both prosecution witnesses corroborated each other on material facts. The medical evidence, recovery of the weapon of offence, long absconson of the petitioner, Ballistic Expert positive report are in line with the prosecution case. The recovery of the weapon of offence has been made on the pointation of the accused in presence of the witnesses which is admissible. They contend that the prosecution has successfully proved its case against the petitioner beyond reasonable doubts. The learned trial Court has failed to appreciate the involvement of the petitioner by misreading, non-reading and misappreciation the evidence on record while passing its judgment which was rightly reversed by the learned Chef Court. They pray that the impugned judgment may pleased be maintained. In support of their contentions the learned counsels cited the case laws reported as 2008 SCMR 688 and 1996 PLD 138.

8. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment passed by the learned Chief Court as well as judgment passed by the learned Trial Court. We have perused the statements of PW-01, 02, 03 and 04 who while deposing have directly charged the petitioner by attributing him a specific role in commission of the offence. The prosecution witness-01 namely Kai Bibi widow of the deceased is the eye witness of the occurrence who identified the petitioner by removing the veil/un-muffled him. The defence could not shatter her during her cross examination. Whereafter she was hit by the petitioner by opening fire upon her. Due to her resistance she was injured and initially she was taken to the local hospital for first aid later on she was shifted to DHQ Hospital Gilgit. She was again transferred to CMH Gilgit for further treatment. She remained under treatment for one month. The statement of the said PW was also supported by the PW-02, 03 and 04. All the statements of the said PWs are corroborative in nature. The medical evidence, recovery of the weapon of offence, unexplained abscondance of petitioner for two years, recovery of the crime weapon on the pointation of the petitioner in presence of the witnesses and the Ballistic Expert positive report are enough proof to connect the petitioner with the commission of offence of the murder of deceased Ramzan Shah. The petitioner has a long criminal history and there are 08 various FIRs against him. The petitioner remained underground and was living in Chitral a District

of the Province of KPK for a period of two years while using the CNIC of his real brother namely Abdul Aman Shah. The learned counsel also could not point out any infirmity and illegality in the impugned. In our considered view the learned Chief Court has rightly appreciated the prosecution evidence & material on record and convicted the petitioner. The prosecution has succeeded in proving its case against the petitioner beyond any shadow of doubts. The case laws cited by the learned counsel for the petitioner are distinguishable whereas the case laws relied upon by the learned counsels for the respondent are applicable.

9. In view of the above discussions, we converted this Cr. Petition into an appeal and the same was dismissed vide our short order 25.09.2017. Consequently, the impugned judgment dated 20.03.2017 in Cr. Appeal No. 26/2015 passed by the learned Chief Court was affirmed. The convictions and sentences awarded to the petitioner namely Bulbul Aman Shah son of Abdul Aleem R/O Qorqolti, Tehsil Yasin, District Ghizer by the learned Chief Court were also maintained. These were the reasons of said short order.

10. The appeal is dismissed in above terms.

Chief Judge.

Judge.