

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.A No. 40-M/2021

Qutab Khan.....(Appellant)

vs

The State & another.....(Respondents)

Present: Mr. Abdul Nasir, Advocate for the
appellant.

Mr. Saeed Ahmad, Asst:A.G for the State.

Hafiz Ashfaq Ahmad, Advocate for the
complainant.

Date of hearing: 12.10.2022

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. This Criminal Appeal is directed against
the judgment of the learned Sessions Judge/Zilla Qazi,
MCTC, Shangla, dated 29.01.2021, whereby he has
convicted Qutab Khan ("the appellant") and sentenced
him as under:

- i. Under section 324, PPC, to undergo ten years imprisonment alongwith fine of Rs. 200,000/-, or in default thereof, he was ordered to suffer six months S.I;**
- ii. Under section 337-F(ii), PPC, to undergo three years imprisonment as Ta'zir and also to pay daman of Rs. 100,000/-.**
- iii. Under section 15-A.A, to undergo three years imprisonment alongwith fine of Rs. 20,000/-, or in default thereof, he was ordered to suffer 06 months S.I.**

All the sentences were ordered to be run
concurrently. The benefit of section 382-B, Cr. PC.,
was also extended to the appellant.

2. On 09.12.2019, the complainant, Bakht Amal (PW-8), reported the matter to the local police in emergency room of Tehsil Headquarter Hospital, Besham. Bakht Amal and Bakht Taj Khan, his brother, visited Besham bazaar for purchase of certain household articles. They were present in the bazaar in front of Rahim Hotel at Karora road, when the appellant came across them and exchanged some hot words with his brother, Bakht Taj Khan. The appellant took out his pistol and fired at his brother, due to which he got hit on his neck. After commission of the offence, the appellant decamped from the spot. The occurrence was stated to have been witnessed by one Mumaber s/o Abdul Wahid. Murasila was drafted which culminated into registration of the case against the appellant at the Police Station concerned.

3. After completion of investigation, challan was submitted against the appellant before the learned Senior Civil Judge/Judicial Magistrate, Kolai Palas, Kohistan at Besham, which was later on sent to the learned Sessions Judge, Shangla, for trial. Copies were supplied to the appellant u/s. 265-C, Cr. PC. Charge was framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as eleven (11) PWs. Statement of the appellant u/s. 342, Cr. PC, was also recorded, in which he was afforded an opportunity of evidence in defence and/or statements on oath but he did not avail it.

5. After hearing arguments of the learned APP duly assisted by the learned counsel for the complainant and learned counsel for the appellant, the learned trial Judge vide the impugned judgment dated 29.01.2021, convicted the appellant as mentioned in para-1 of this judgment.

6. I have heard arguments of learned counsel for the parties and the learned Assistant Advocate General, for the State and perused the record.

7. The evidence of Bakht Amal, the complainant (PW-8) and Bakht Taj Khan, the victim (PW-7), is crucial and may be discussed first. The complainant narrated nearly the same story in his statement recorded as examination-in-chief as he had told in the Murasila. To restate concisely, he deposed that on the date of the occurrence (i.e. 09.12.2019), he and Bakht Taj Khan, his brother, visited Besham bazaar for purchase of household articles. He added that while he and his brother were wandering in the



bazaar in front of Rahim Hotel at Karora road, the appellant came across them and exchanged hot words with Bakht Taj Khan. At that time, the appellant fired at his brother, due to which he was hit on his neck. The appellant ran away. He took his brother to the hospital, where he made the report to the local police, which was reduced in the shape of Murasila. The Murasila was read over to him, which he acknowledged as correct. Later on, the victim was shifted to DHQ Hospital, Alupri, in a police van. He pointed out the crime scene to the police and a site plan was prepared. The police recovered blood and one empty of 30 bore pistol from the spot, which were sealed in separate parcels. He endorsed the memo of the above mentioned articles and his as well as the signature of Muhammad Anwar alias Muamber thereon. He also stated that the motive of the occurrence was suspicion of the appellant that the victim had illicit relationship with his wife. He further explained that later on, it came into his knowledge that the appellant had telephonically asked his brother to commit the murder of his wife.


8. The complainant was subjected to lengthy cross-examination, such as, the time he and the victim left their house; their arrival in the Besham bazaar; the



purpose of their visit to Besham bazaar; the shifting of the victim to the hospital; the alleged shelter they took in the nearby shop; hearing of hot words exchanged between the victim and the appellant; and the recovery of spent bullet from the spot and the motive. A close reading of his cross-examination would reveal that the defence failed to create substantial dent in his testimony. He correctly deposed that he and the victim both left the house at 07:00, a.m.; reached Besham bazaar at about 08:30/09:00, a.m.; were present in front of Rahim Hotel at Karora road and visited Besham bazaar for purchase of household articles. He denied a suggestion that one Hukumat Khan shifted the victim to the hospital. He further correctly reiterated firstly, the police arrived in the Tehsil Headquarter Hospital, Besham, to whom he made the report: secondly, the victim was shifted to DHQ hospital, Alpuri: thirdly, he denied a suggestion that he and the victim took refuge in the shops of Sherin Zada and Gul Muhammad. In cross-examination, he was asked that he had not stated to the police in his statement recorded u/s. 161, Cr. P.C. that the victim went to the shop of Mehraban and it was on his return from the above referred shop that the occurrence took place and that he had not heard harsh words exchanged between the victim and

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the appellant. He was further asked that his hand got besmeared with the blood of the victim; in his presence spent bullet was not recovered from the spot and that later on, wife of the appellant was done to death. The answers to these questions may be referred here. For example, the refuge by him and the victim in the shops of Sherin Zada and Gul Muhammad; the entry and the coming out of the victim from the shop of one Mehraban; the non-hearing of the harsh words; the besmearing of his hands with the blood of the victim; the non-recovery of spent bullet from the spot and the murder of wife of the appellant. These points are, if at all, minor discrepancies, which have no bearing on the main core of the prosecution case.

 9. The victim Bakht Taj Khan (PW-7) in his examination-in-chief deposed that he and Bakht Amal, his brother/complainant, went to Besham bazaar, while they reached Rahim Hotel, the appellant there stated something to him, which he did not understand and the appellant then took out his pistol, fired at him at which he was hit on his neck. He then became unconscious; his brother might have taken him to the hospital; when he came to senses, he got information that the appellant had telephonically directed his brother Muhammad Muqam to commit his murder on suspicion of his illicit

relationship with his wife. He stated that the occurrence was witnessed by his brother. He, too, was subjected to lengthy cross-examination, which shows that he was asked about the exact place of firing at him; his consciousness after the occurrence; delay of two months in recording of his statement; his shifting to the hospital by Hukumat Khan; his refuge in the bazaar; his arrival in the bazaar; the purpose of his visit to the bazaar; the presence of one Mehraban in his shop, his relationship with two shopkeepers, namely, Sherin Zada and Gul Muhammad and the presence of Muhammad Anwar on the spot. The substantial parts of his statement i.e. the presence of the appellant, uttering of certain words by the appellant, the firing of the appellant at him with a pistol, with which he got injured, were not successfully upset in the cross-examination.

10. There are, however, certain other aspects which the learned counsel for the appellant tried his best to show as substantial dent in his statement. He deposed that at the time of the occurrence, he came out of the shop situated opposite Rahim Hotel. This appears to be a minor discrepancy. The reason is that mere this much statement could not be considered to undo the very firing made at him.

11. The medical report corroborates that a firearm injury was caused on the neck of the victim. As regards his unconsciousness and delay of two months in recording his statement, reference has to be made to the medico-legal report coupled with the statement of Dr. Zafar Ali (PW-1). The medical report reflects that when the police produced the victim before the Medical Officer, a question was asked from the Doctor as to whether the victim was able to speak or not. The Doctor observed him: "vitally not stable, mentally not active and alert". This observation is enough to believe that though he might not have been fully unconscious, he was surely unable to speak. The medical evidence further corroborates the prosecution story as it reflects that the victim got firearm injury. On the record there is also lying a copy of the medical report of the victim from the Department of Otorhinolaryngology, Head & Neck Surgery of Saidu Group of Teaching Hospital, Saidu Sharif, Swat (Ex PW 1/3), which shows that the victim remained in that hospital under treatment and was discharged on 25.01.2020. The record shows that his statement was recorded on 01.02.2020, some seven days, after his discharge of the hospital. However, his statement was recorded in Batagram. The complainant charged him initially pursuant to an altercation and

subsequently motivated by suspicion of illicit relationship between him and the wife of the appellant. Learned counsel for the appellant submitted that in the medical report of Saidu Group of Teaching Hospital (Ex PW 1/3), there is overwriting on the date of operation. The Medical Officer has admitted it as tampering and stated that it was not made by him. This, too, is not material. The reason is that the date of admission i.e. 10.12.2019, the next day of the occurrence and the date of discharge i.e. 25.01.2020 are quite clear.

12. Coming to the recovery of incriminating articles, the record shows that the bloodstained shirt, one 30 bore pistol bearing No. 31012812 alongwith 13 rounds, blood and one empty of 30 bore were recovered from the spot. As the appellant was also arrested the same day while he was on the run from the crime scene, the 30 bore pistol, the weapon of offence, was recovered from his possession (Ex PC, Ex PC/1, Ex PC/3 and Ex PC/4). The 30 bore pistol and the empty were sent to the FSL, whose report was obtained which is in positive. The empty and the pistol were received in the FSL on 12.12.2019, within 72 hours of the occurrence. Constable Nasrullah No. 563 (PW-3) and constable Akhtar Hussain No. 844 (PW-6)

gave evidence in support of the aforementioned recoveries.

13. HC Manzoor Alam (PW-5) furnished evidence of the fact that he and his colleague Habibullah, another police official, overpowered the appellant while he was running after the commission of the offence. The very substantial fact of the decamping of the appellant and his arrest by PW-5 and one Habibullah, police official, could not be shattered under cross-examination.

14. SHO Habib Said Khan (PW-9) recorded the report of the incident in the emergency room of THQ Hospital, Besham. He recorded the report narrated to him by Bakht Amal, the complainant, which he reduced into Murasila (Ex PA); obtained consciousness certificate from Dr. Zafar Ali (Ex PW 1/2) on his application (Ex PW 9/1) and prepared the injury sheet (Ex PW 9/2). His deposition shows that the appellant having been arrested by PW-5, HC Manzoor Alam and a 30 bore pistol found with him, was produced to him, which he took into possession and issued card of arrest of the appellant (Ex PW 9/3). While under cross-examination, he stated that there is no mention that the victim was unconscious. This fact

was explained by Dr. Zafar Ali (PW-1) coupled with his report (Ex PW 1/2) in such a way that the victim was found not vitally stable and not mentally alert and active. He was asked about his entry into the daily diary, to which he answered in affirmative though the diary is not available on the record.

15. SI/OII Muhammad Saeed Khan (PW-10) recorded statement of the victim in Batagram. His statement recorded in his examination-in-chief reveals that he obtained permission to go to Batagram for recording statement of the victim. He also obtained the medical report and the FSL report. The mere fact that the victim happened to be in District Batagram and his statement after having been recorded, could not be seen as a material doubt. As discussed above, the victim remained under treatment. While it may be said that statement of the victim was recorded after about seven days of his having been discharged from the hospital, it appears that the victim was not traceable in District Shangla. Moreover, this fact was not challenged in cross-examination. Even otherwise, no question of identification of the victim was put to PW-10. SI/OII Sarbali Khan (PW-11) the investigating officer prepared the site plan, recovered the incriminating articles, arrested the appellant and got

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recorded statement of one Hazrat Ali u/s. 164, Cr. P.C. He also deposed that during investigation, he discovered that the real motive of the occurrence was the suspicion of the appellant that the victim had illicit relationship with his wife and pursuant to that the wife of the appellant was murdered, in respect of which case FIR No. 503 was registered on 09.12.2019, u/ss. 302/311/109, PPC, read with section 15-A.A, in Police Station Besham. The site plan (Ex PB) shows that the occurrence took place across the road in front of shop of one Sherin Zada and Rahim Hotel was situated across the road to the West of the crime scene. The victim was found at point No. 1 and the appellant duly armed with a pistol at point No. 2. The distance between the two was shown as seven feet. The eyewitness Muamber and Bakht Amal were shown at points Nos. 3 and 4, respectively. They were at a distance of 12 and 11 feet from the victim and the appellant.

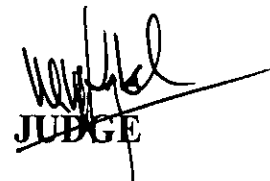


16. The conclusion of the above reappraisal of evidence is that the occurrence took place in broad day light in Besham bazaar, in presence of the eyewitness. The appellant was known to the complainant party. Both the complainant and the eyewitness furnished plain, direct and cogent evidence to support the charge.

There is a strong motive of the occurrence which the prosecution proved. The appellant was caught red handed while decamping from the spot. The weapon of offence i.e. point 30 bore pistol without license was recovered from his possession, the empty was recovered from the spot; both were examined in the FSL, whose report was positive. The medical report and the site plan substantiate the mode and manner in which the occurrence took place. The appellant failed to destroy the prosecution case convincingly and cogently. The prosecution has successfully proved the charge leveled against the appellant. Resultantly, I uphold the conviction and sentence passed against the appellant. The instant appeal is, thus, dismissed.

Announced

Dt: 12.10.2022


JUDGE

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