

Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr. A No.231-B of 2019

Muhammad Waqif
Vs.
The State etc

JUDGMENT

For Appellant: Mr. Mir Zali Khan Khattak, Advocate

For Respondents: Mr. Salamat Shah Mehsood, Advocate for respondent No.1

For State: Sardar Muhammad Asif, Asstt: AG for the State

Date of hearing: 05.04.2022

SAHIBZADA ASADULLAH, J.- The appellant, Muhammad Waqif, has called in question the judgment dated 11.07.2019, rendered by learned Additional Sessions Judge-I, Karak, whereby, the appellant was convicted under section 302(c) P.P.C. and sentenced to imprisonment for ten years and held that the murder of deceased was the outcome of an immoral and unnatural offence, he was not Mautam-ud-Dum, therefore, no compensation was awarded to his legal heirs in terms of section 544-A Cr.P.C. Benefit of section 382-B Cr.P.C was also extended in favour of convict / appellant, while co-accused Malool Nawaz was acquitted of the charges leveled.

2. Complainant, Khub Niaz, moved criminal revision petition No.52-B/2019 for enhancement of sentence of appellant and Cr.A No.227-B/2019 against acquittal of co-

accused Malool Nawaz. Since all the three matters have arisen out of the same judgment, therefore, we intend to decide the same through this common judgment.

3. The prosecution case, as per contents of F.I.R Ex: PA, is that complainant Khub Niaz brought dead body of his deceased brother Ameen Ullah with the help of co-villagers to the Police Station Latamber and lodged report to the effect that on eventful day, he and his brother Ameen Ullah were proceedings to Mohabati Kala for some domestic work and when they reached the place of incident, at 14:20 hours, convict / appellant alongwith co-accused Malool Nawaz, armed with Kalashnikovs, appeared from southern side of tube well, asked them not to move and started firing at them, as a result of which, his brother Ameen Ullah got hit and died on the spot, while the complainant luckily escaped unhurt. The accused after commission of the offence decamped from the spot. Motive for the offence was stated that accused were forbidden from wandering with their enemies. Hence, the FIR *ibid*.


4. After completion of investigation and arrest of the accused, prosecution submitted juvenile challan against him, where at the commencement of trial, the prosecution produced and examined as many as 10 witnesses. On close of prosecution evidence, statement of accused was recorded under section 342 Cr.P.C, wherein he professed innocence and false implication,

however, neither he opted to be examined on oath as provided under section 340(2) Cr.P.C, nor wished to produce defence evidence. After hearing arguments, the learned trial Court vide impugned judgment dated 11.07.2019, convicted and sentenced the accused /appellant Muhammad Waqif as mentioned above while accused Malool Nawaz earned his acquittal, hence, the instant appeals and revision against the judgment of conviction. Since all the three matters have arisen out of the same judgment, therefore, we intend to decide the same through this common judgment.

5. We have heard learned counsel for the parties alongwith learned A.A.G for the State at length and with their valuable assistance, the record was gone through.

6. The unfortunate incident claimed the life of the deceased and the matter was reported with the Police Station Latamber, on 27.12.2017 against the appellant and another. After registration of the case, the injury sheet and inquest report were prepared, whereafter, the dead body was sent to the doctor for postmortem examination. The investigating officer after receiving copy of the F.I.R visited the spot and on pointation of the eye witness prepared the site plan. During spot inspection, the investigating officer collected blood stained earth from the place of the deceased alongwith 24 empties of 7.62 bore from

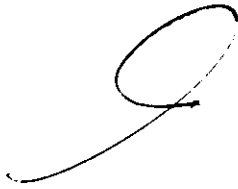
the spot. During spot inspection, the investigating officer also observed bullet marks on the walls of the tube well.



7. The collected empties were sent to the Firearms Expert to ascertain as to whether those were fired from one or different weapons. It is pertinent to mention that the accused / appellant was arrested on 01.01.2018, whose physical custody was requested and during interrogation he expressed his willingness to record his confessional statement. The appellant was produced before the court of Judicial Magistrate on 04.01.2018, who was provided an opportunity to think and reconsider his option to confess, but after the learned Magistrate got fully satisfied, his confessional statement was recorded. It is pertinent to mention that at the time of his arrest, a Kalashnikov was recovered from his possession which was sent to the Fire Arms Expert along with the collected empties. The expert after chemical analysis came to the conclusion that out of 24, 16 empties were fired from the Kalashnikov recovered from his possession.

8. When the investigation was completed, challan was submitted before the competent court of law and ultimately vide the impugned judgment, the learned trial court was pleased to convict the appellant as stated above.

9. The learned trial court convicted the appellant vide the impugned judgment after the collected evidence was thoroughly



appreciated, but this being the court of appeal is eager to re-assess the already assessed evidence, so that miscarriage of justice could be avoided. As the learned trial court was having two different narrations of the same story before it, so it took pain to appreciate the different aspects of the case. It is evident from the record that while reporting the matter the complainant disclosed that while in the company of the deceased when they reached to the place of incident, the accused i.e. Waqif and Malool sons of Azam duly armed appeared and started firing at them which resulted into the death of the deceased. Contrarily, the appellant after his arrest when was produced before the court of Judicial Magistrate, he confessed his guilt and as such his confessional statement was recorded, where he admitted the death of the deceased, but in a different manner. The learned trial court after due deliberation and application of its judicial mind to the collected evidence, though disbelieved the version given by the complainant, but accepted the story narrated by the appellant and the subsequent recoveries and as such instead of convicting the appellant under section 302(b) P.P.C, chose to convict the appellant under section 302(c) P.P.C.

10. We are to determine as to whether the incident occurred in the manner as given by the complainant in his First Information Report or it occurred in the way as disclosed by the

appellant in his confessional statement, duly recorded before the court of Judicial Magistrate. This court is to ascertain that once the stance of the complainant was disbelieved then what the normal course should have been with the learned trial court i.e. to acquit or to convict the appellant. We are to search out as to whether the awarded sentence fits in the given circumstances of the case.

11. There is no denial to the fact that soon after the incident, the dead body was shifted to the local police station, where the matter was reported and that after the injury sheet and inquest report were prepared, the dead body was shifted to the doctor for post mortem examination. After receiving copy of the F.I.R, the investigating officer visited the spot and on pointation of the complainant prepared the site plan. During spot inspection the investigating officer collected blood stained earth from the place of the deceased and 24 empties of 7.62 bore from the spot. The investigating officer investigated the case from different angles, but when the appellant was arrested, the situation changed. As the appellant confessed his guilt before the competent court of law and also the weapon recovered from his possession wedded with 16 empties, collected from the spot, so this court is to see that which of the story is nearer to the truth and which not.

12. It was extensively argued that when the eye witness account was disbelieved and that when the appellant came forward with a different story, then in such eventuality the conduct of the complainant cannot be condoned and in case his narration is not believed, then the same will lead to an outright acquittal of the appellant. We are not persuaded with what the learned counsel for the appellant submitted, rather we are to travel an extra-mile to determine the status of the witnesses examined and the credibility of the stories they came forward with. Yes, the confessional statement of the appellant twisted the prosecution case and to untwist the same, extra care and caution is needed. Leaving aside for a while the story forwarded by the complainant, we would like to dilate upon the evidentiary value of the confessional statement and the recoveries effected from possession of the appellant.

13. The appellant soon after his arrest was produced before the court of Judicial Magistrate where he confessed his guilt. The learned Judicial Magistrate appeared before the trial court as PW-09 who stated that on 04.01.2018 the appellant was produced by the local police for recording his confessional statement, the accused was provided ample opportunity to re-think and recompose himself and that after gaining satisfaction regarding the willingness of the appellant to confess, he recorded his confessional statement. This witness was cross-

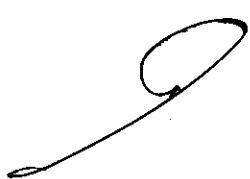
examined on material aspects of the case but nothing detrimental could be extracted from his mouth and that the learned Judicial Magistrate fully complied with the guidelines and parameters provided both by the superior courts as well as in the High Court Rules & Orders. The learned counsel for the appellant could not succeed in inviting our attention to any illegality caused or irregularity committed. After taking into consideration the precautions taken by the learned Judicial Magistrate and the happy mood of the appellant to confess his guilt, we lurk no doubt in mind that the same was validly recorded and voluntarily made as is held in case titled "The State v. Minhum (PLD 1964 SC 813):

"Retracted confessions, whether judicial or extra-judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. As against the maker himself his confession, judicial or extra-judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement. The question, however, as to whether in the facts and circumstances of a given case the Court should, act upon such a confession alone is an

entirely different question, which relates to the weight and evidentiary value of the confession and not to its admissibility in law."

14. The sequence in which the appellant narrated the events while confessing his guilt is natural and that the record could not persuade that the same was the outcome of influence, coercion or inducement. Once this court reaches to a definite conclusion that the confessional statement was validly recorded then this court is to assess the available record as to what should be the appropriate sentence and also to determine as to whether the only confessional statement of the accused/appellant can be pressed into service to convict him for the offence charged. The Apex Court has dealt with the matter in case titled "Mst. Joygun Bibi v. The State" (PLD 1960 (SC (Pak) 313) in the following manner:

"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement




in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."

15. True that the complainant came forward with a different story and equally true that the accused/ appellant after his arrest narrated the events in a different manner, but in the given circumstances this court is not absolved of the liability to test the veracity of the confessional statement, its voluntary character and the fulfillment of the legal requirements. We cannot ignore that the accused/ appellant during the days of incident was juvenile and that his confessional statement is the narration of the true events which happened on the preceding night. Nothing was brought on record by the defence to suggest otherwise. The appellant while recording his statement before the court of Judicial Magistrate explained in unequivocal terms that the deceased committed sodomy with him and that he was constantly tortured. The confessional statement further

explained that after committing sodomy, the appellant was still under the influence of the deceased and that after getting an opportunity, he succeeded in killing the deceased to take revenge. After assessing the evidence available on file, this Court reaches to an inescapable conclusion that the case against the appellant is proved to the hilt and that the impugned judgment does not warrant interference. The instant criminal appeal being bereft of merit, is hereby dismissed.

16. Through the connected criminal revision bearing No.52-B/2019, the petitioner has prayed for enhancement of the awarded sentence. In order to appreciate this particular aspect of the case, we are to scan through the record to ascertain as to whether the learned trial judge was justified in taking a lenient view and as to whether the reasons advanced for awarding lesser sentence finds support from the collected evidence and recorded statements. It was argued by learned counsel for the petitioner that sodomy was committed by the deceased with the accused / appellant, on the preceding night of the incident and the deceased was killed a day thereafter, so the question of sudden provocation does not arise, as the emotions and anger of the appellant had reduced to a greater extent and before he was composed and in full control of his faculties. So, the learned trial court failed to appreciate this particular aspect of the case and fell in error to convict the appellant under section 302(c)



P.P.C instead of section 302(b) P.P.C, where the normal penalty is only and only death sentence. He further submitted that the learned trial court was well within its competence to award imprisonment for life as Tazir instead of blessing the appellant with a sentence under section 302(c) P.P.C. He concluded that the impugned judgment to the extent of the awarded sentence is arbitrary, mechanical and without application of judicial mind, which calls for interference. We are not impressed with what the learned counsel submitted, as different people react differently in particular circumstances of particular cases. True that while confessing his guilt, the appellant explained that the deceased committed sodomy with him on the preceding night, but as he could not find an opportunity to get rid of the deceased, so he kept on waiting and it was on the day of incident, when he succeeded in killing the deceased. We are not persuaded with submissions made at the bar regarding the recession of emotions of the appellant, as the imprints created on his mind did not vanish with the time, rather the unholy thoughts haunted him constantly, searching for an opportunity to do away with the deceased. The situation is further be clarified by the Apex Court, in its recent reported judgment "Raza and another v. The State and others" (2020 SCMR 1185), wherein it is held that:

"As observed earlier, that the occurrence had

taken place due to the act of the deceased, which enraged the mental faculty of the petitioner and under the impulses of the same the instant occurrence had taken place, the same is spelled out from the record and as such the benefit of the same is available for which so many circumstances are not required rather the glimpse of the same is always deemed sufficient, which has been established by the Superior Court from time to time."

17. The attending circumstances of the case leads this Court nowhere, but to hold that the learned trial judge was fully justified to convict the appellant under section 302(c) P.P.C. The same calls for no interference. The instant criminal appeal being bereft of merit is hereby dismissed.

18. As the impugned judgment is maintained, so in such eventuality, the instant criminal revision petition bearing No.52-B/2019 as well as criminal appeal No.227-B/2019 have lost its efficacy. The same cannot proceed further and are dismissed as such.

Announced

05.04.2022

Ghafoor Zaman/Steno


JUDGE

JUDGE

(D.B)

Hon'ble Mr. Justice Ishtiaq Ibrahim &
Hon'ble Mr. Justice Sahibzada Asadullah


31 MAY 2022