

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

Cr.A No. 238-M/2020

(Ghaffar Khan and another versus The State and another)

Present: Mr. Mujahid Farooq, Advocate for the
appellants/convicts.
Mr. Haq Nawaz Khan, Assistant A.G. for State.
Mr. Islam Shah, Advocate for complainant.


Cr.R No. 48-M/2020

(Mst. Shabana Bibi versus The State and others)

Present: Mr. Islam Shah, Advocate for the petitioner.
Mr. Haq Nawaz Khan, Assistant A.G. for State.
Mr. Mujahid Farooq, Advocate for the
respondents/convicts.

Date of hearing: **27.05.2021**

JUDGMENT




ISHTIAQ IBRAHIM, J.- Appellants Ghaffar Khan and Sahib Zar, his father, have preferred this appeal challenging the judgment dated 16.09.2020 of the learned Additional Sessions Judge/Izafi Zilla Qazi, Swat at Bahrain in case FIR No. 429 dated 22.06.2018 u/s 302/34 PPC registered at Police Station Madyan, District Swat whereby they were convicted u/s 302(b) PPC and sentenced to life imprisonment with fine of Rs.100,000/- each payable to LRs of the deceased as compensation u/s 544-A, Cr.P.C or to suffer further six months S.I

each in case of default thereof. Benefit of section 382-B, Cr.P.C was extended to him.

We have also before us the connected Cr.R No. 48-M/2020 whereby complainant has prayed for enhancement of sentence of the appellants/convicts. Both the cases are emanating from the same judgment, therefore, they are decided together through this judgment.

2. Complainant Mst. Shabana Bibi (PW-3) made a report to police on 22.06.2018 at 14:00 hours to the effect that some two years ago her marriage was solemnized with appellant Ghaffar son of Sahib Zar whereas Mst. Izzat Jan daughter of Sahib Zar was married to her father Gul Muhammad Khan (deceased). Her mother Izzat Jan had gone to *Kalail*, District *Buner* for celebrating *Eid-ul-Fitr* whereas she herself had come to the house of her parents a few days before *Eid-ul-Fitr*. On 22.06.2018 at 09:00 hours her husband and father-in-law (the appellants) came to the house of her father situated at village *Baila Bashigram* and she served them with tea whereafter they made a demand from her father for taking her back to their house. In reply, her father asked them to bring his wife Mst. Izzat Jan to his

house and take his daughter. On this issue an altercation took place between them during which appellant Sahib Zar caught hold of her father whereas her husband Ghaffar struck him with a stone causing severe injuries on his head. The appellants decamped from the spot whereas the injured was shifted to hospital with the help of relatives, however, he succumbed to the injuries on the way. The complainant mentioned the motive behind the occurrence as altercation over the females issue and claimed that she, her brother Saddam Hussain (PW-4) and many other people have witnessed the occurrence.



3. Inspector Shahinshah (PW-5), the then SHO of P.S Madyan reduced report of the complainant into *Murasila* Ex.PA and sent the same to police station for registration of FIR. He also prepared injury sheet as well as inquest report of the deceased and handed over the dead body to Dr. Tanveer Ullah Khan (PW-6) who after examination of the dead body prepared his report (Ex.PW-6/1) which is as under:

Date and hour of examination: 22.06.2018 02.05 P.M

Symptoms observed before death: Nil

Information furnished by police: *Head injury*

I. EXTERNAL APPEARANCE:

Mark of ligature on neck and dissection etc.
No mark of ligature.

Condition of subject--- stout emaciated,
decomposed etc, clothing. *Blood spots on
gray colour clothes.*

- Crush wound on the occipital region.
Bone exposed and movable with
examination. Wound size 4x3x2 cm.
- 2nd wound on Lt temporal region bone
exposed # on X-Ray. Sizes 3x2x2 cm.
- Red wound on Lt post auricular
region 3x2 cm. Bone exposed.
- # of the left radius closed.
- Bruises on left arm.

II. CRANIUM AND SPINAL CORD

III. .

IV. .

V. MUSCLES, BONES, JOINTS

Injuries:

Closed Lt Radius.

Occipital + Lt temporal bone.

Mastoid process Lt sided.

VI. REMARKS BY MDICAL OFFICER

Body received dead wearing gray shalwar
qamees with blood spots.

On examination, multiple fractures of the
skull (temporal bone, mastoid process,
occipital bone).

of Lt Radius.

Cause of death: *Head injury (multiple #'s)*

Object used: *blunt.*

Probable time that elapsed:

(a) Between injury and death: *instantly.*

(b) Between death and post-mortem: *3-5 hrs.*

4. The appellants were arrested on the
same day. Investigation of the matter was conducted
by Shamsul Haq S.I (PW-10) on completion
whereof complete challan was put in Court for trial

of the appellants. They were formally indicted for the offence to which they did not plead guilty and claimed trial. Prosecution examined ten PWs in support of its case against the appellants who once again denied allegations of prosecution during their examination u/s 342, Cr.P.C. The trial concluded with the arguments of learned counsel for the parties including the learned APP for State. Finally the learned trial Court announced its judgment on 16.09.2020 and found both the appellants guilty of the offence, hence, convicted and sentenced them as mentioned earlier. Being aggrieved, both the appellants have jointly preferred this appeal whereas complainant has filed the connected revision petition with the prayer for enhancement of the sentence awarded to the appellants by learned trial Court.

5. We have gone through the record with able assistance of learned counsel for the parties including the learned Assistant A.G. for State.

6. Prosecution has based its case on ocular account furnished by complainant Mst. Shabana Bibi (PW-3) and her brother Saddam Hussain (PW-4), medical evidence and other circumstantial evidence

in shape of site plan and incriminating recoveries coupled with positive FSL report.

According to record, place of occurrence is house of deceased Gul Muhammad Khan situated in *Nao Banda*, a hilly area, at a distance of 18/20 kilometers from police station *Madyan*. According to site plan Ex.PW-10/1, the said house is surrounded by forest on two sides while on the northern and western sides there are ravines meant for rain water, hence, no house is there adjacent to the house of deceased. There is female relationship between the parties; complainant Mst. Shahbana is wife of appellant/convict Ghaffar Khan whereas his sister Mst. Izzat Jan was wife of deceased Gul Muhammad Khan. Both the parties are *Gujar* by caste. Family of deceased is residing in District Swat whereas the accused side hails from the adjacent District Buner. As emerging from the evidence, marriages of the said two females were result of exchange (*watta satta*) and both the appellants had visited the house of deceased to take back the complainant to their house who had come to the house of her father on the eve of *Eid-ul-Fitr*. Since, the appellants had not brought wife of deceased Mst. Izzat Jan from *Buner* and they were

desirous of taking back the complainant, as such, initially an altercation took place between the deceased and appellants which culminated in his death through blows of stones by appellant Ghaffar Khan. The motive so set up by complainant in her report stands to reason in view of the *watta satta* marriages and this relationship between the parties is neither disputed nor controverted by defence.

7. Complainant and her brother Saddam Hussain are natural eye witnesses of the occurrence being residents of the same house where the occurrence took place. They have recorded consistent statements wherein they have not only confirmed presence of each other in the same house at the time of occurrence but they have also supported each other with regard to the time of arrival of the appellants to their house as well as the time of occurrence. Nothing was brought on record during their cross-examination to create a slightest doubt with regard to their presence in the same house at the time when the deceased was given stone blows by appellant Ghaffar Khan. Statement of complainant can be given extra credence for the reason that though she has lost her father in the same occurrence

but she has charged her husband despite of cordial relations with him as nothing to the contrary has been brought on the record to this effect. No doubt, the deceased was father of both the eye witnesses, however, non-availability of an independent witness in view of the above stated scenario is understandable, as such, prosecution could not be blamed for not producing an inhabitant of the area as eye witness of the occurrence. It is by now well settled principle of criminal law that mere relationship between witnesses and deceased is not a ground to discard their evidence. Since both the eye witnesses have established their presence on the spot at the time of occurrence and their testimony has not been shattered, therefore, their statements, being corroborated by medical and other circumstantial evidence, are worth reliance and can safely be relied upon. Reliance is placed on Anwar Shamim and another Vs. The State (2010 SCMR 1791). The rule laid down by august Supreme Court in the said judgment is as under:

It is a settled principle of law that mere relationship between the witnesses and the deceased is not enough to discard their evidence. It is duty and obligation of the court for requiring corroboration of interested witnesses then it must first ascertain whether he saw the occurrence and

was in a position to identify the accused and whether he should be believed without corroboration. The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Both the courts below have come to the conclusion that their statements are of such a nature that their testimony must be given due weight and were believed.

8. The ocular account gets proper corroboration from medical and other circumstantial evidence. While reporting the matter, complainant stated before police that her husband Ghaffar Khan hit her father with stone due to which he sustained serious injuries on his head causing his death while he was being taken to hospital for medical treatment. Doctor Tanveer Ullah (PW-6) has reported two wounds on head of the deceased i.e on his occipital and left temporal regions with blunt object, hence, medical evidence is in conformity with the contents of FIR. The occurrence took place in hilly area as is evident from site plan and photographs of the spot available on record where stones are abundantly available one of which lying nearby was lifted by appellant Ghaffar Khan and hit therewith the deceased during the scuffle. The blood-stained stone with which the deceased was hit and clothes of the deceased have been taken into possession besides

the I.O has also collected blood-stained earth from the spot. The mentioned objects have been examined through FSL and Serologist has opined in his report that 'it was human blood of the same group'. Thus, circumstantial evidence on record duly corroborates the complainant's version and also validly confirms the mode and manner of the occurrence to the extent that deceased was killed through blows of stone in his residential house.

9. Although complainant has charged both the appellants but she has attributed the role of hitting her father with stone to appellant Ghaffar Khan whereas charged appellant Sahib Zar by stating that he had caught hold of her father at the time when appellant Ghaffar Khan was giving him stone blows. As regards the role of appellant Ghaffar Khan, he is specifically charged for giving stone blows to deceased which proved fatal and caused his death. Prosecution has proved the above allegation against appellant Ghaffar Khan through confidence inspiring evidence and by analyzing the material available on record no opinion could be formed other than that the deceased had died due to the head

injuries he had sustained at the stone blows of the said appellant. However, keeping in view the peculiar circumstances of the present case we do not find ourselves in agreement with the findings of learned trial Court that he had committed *qatl-i-amd* of deceased punishable under section 302(b) PPC. The admitted fact on record is that the appellants had come to the house of deceased unarmed just for the purpose to take the complainant back to their house despite disagreement of the deceased, hence, he entered into altercation with them which turned into a sudden fight. The above mode and manner of the occurrence suggests that neither the appellants had come there with any pre-planning nor they had the intention to kill the deceased. All that had happened had occurred at spur of the moment wherein stone was used by appellant Ghaffar Khan and unfortunately the blows thereof took the life of deceased. If he had the intention to kill the deceased he would have come there duly armed with any kind of weapon i.e pistol, knife etc. In addition, the parties belong to same caste and they have female relations with each other besides there is nothing on record to suggest previous enmity or hatred between them. In such

circumstances, conviction of the said appellant under section 302(b) PPC by trial Court was not a correct conclusion rather the act of the said appellant falls within the definition of *Qatl shibh-i-amd* which is an offence under section 315 PPC punishable under section 316 PPC. It would be appropriate to reproduce section 315 PPC for convenience.

315. *Qatl shibh-i-amd*. Whoever, with intent to cause harm to the body or mind of any person causes the death of that or any other person by means of weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit *qatl shibh-i-amd*.

Illustration

A in order to cause hurt strikes Z with a stick or stone which in the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. Z dies as a result of such hurt. A shall be guilty of *qatl Shibh-i-amd*.

In the present case, undoubtedly appellant Ghaffar Khan has hit the deceased with stone and such blows do not cause death in ordinary course of nature. According to record, the occurrence took place in house of deceased where, as per evidence, his sons and daughters were present, as such, he was in dominant position over the appellants. His refusal to let his daughter go with them also shows his stubborn attitude which led to the unfortunate incident. It appears that something had happened between the parties prior to the

occurrence which has not been brought on record. In view of the above mentioned circumstances and in absence of any evidence to suggest pre-planning or intention on the part of appellant Ghaffar Khan to commit murder of the deceased, the safe and just conclusion in our view is that the said appellant is liable under section 316 PPC instead of section 302(b) PPC.

10. As regards the case of co-appellant Sahib Zar, complainant has charged him for holding the deceased in order to facilitate his co-appellant in committing the alleged murder. According to card of arrest, this appellant is an aged person of 50/51 years with normal physique whereas deceased was his son-in-law who was a strong person. In response to a suggestion by defence counsel, complainant stated that:

یہ درست ہے کہ میرا والد صاحب ایک مضبوط، تندرست اور توانا شخص تھا۔

In the mentioned situation, the version of prosecution does not stand to reason that appellant Sahib Zar had overpowered the deceased more particularly in presence of his sons and daughters who obviously could not be expected to remain silent

spectators in such a critical situation. Moreso, there is no evidence on record of reliable nature to prove the said allegation against appellant Sahib Zar rather it appears that complainant has falsely charged him by throwing a wider net. Likewise, we have already discussed in detail that the occurrence had taken place at spur of the moment without any pre-planning on the part of appellants, therefore, the allegation of prosecution that both the appellants had acted in prosecution of their common intention, is baseless. Thus, involvement of appellant Sahib Zar in the occurrence is doubtful in the circumstances and he is entitled to get the benefit of that doubt.

11. Though the report was lodged with delay of 4 ½ hours but as per contents of FIR, the distance between the place of occurrence and police station is about 18/20 kilometres. It is also a matter of evidence that the place of occurrence is a hilly area where the family of deceased resides seasonally for the purpose of grazing herds. According to statements of PWs especially the eye witnesses, walking distance between *Nao Banda* (place of occurrence) and *Bashigram* is of 1 ½ hours and no facility of road is available between the said villages

whereas the distance from *Bashigram* to *Madyan* can be covered in two hours through a vehicle. Thus, the total distance between the spot and police station can be covered in 3 ½ hours and the delay, being well explained, is not fatal to the prosecution case.

12. In light of the above discussion, this appeal is partially allowed, the impugned judgment is set aside to the extent of appellant Sahib Zar and he is acquitted of the charge. The impugned judgment to the extent of appellant Ghaffar Khan is modified by converting his conviction from section 302(b) PPC to section 316 PPC. The sentence of life imprisonment awarded to him by trial Court is reduced to fourteen (14) years with benefit of section 382-B, Cr.P.C. He shall also pay *Diyat* to LRs of the deceased according to valuation notified by Federal Government for financial year 2018-2019 as the occurrence had taken place in relevant period and he was also arrested there and then. He shall also pay Rs.100,000/- to LRs of the deceased as compensation under section 544-A, Cr.P.C and in case of default thereof he shall undergo simple imprisonment for six months in addition to the substantial sentence of 14 years. The connected Cr.R

No. 48-M/2020 is dismissed for having become
infructuous.

13. Above are the reasons of our short order
of the even date.

Announced.
Dt: 27.05.2021

JUDGE

JUDGE

Office
15/6/2021
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