

**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH**

(Judicial Department)

**Cr.A No.37-B of 2022**

**Afsar Khan**  
**Vs**  
**The State & another.**


**JUDGMENT**

For Appellant: M/s Muslim Jan and Masood Iqbal Khatak,  
Advocates.

For respondent: Mr. Muhammad Riaz Khattak, Advocate.

For State: Sardar Muhammad Asif, Asstt: AG.

Date of hearing: 22.02.2023

 SHAHID KHAN, J.--- Afsar Khan, the appellant through the subject appeal under section 410 Cr.P.C, has called in question the judgment, dated 10.02.2022, of the learned Additional Sessions Judge, Karak at Takht-e-Nasrati in case FIR No.382, dated 18.11.2008, under sections 302/324 P.P.C, registered at Police Station Takht-e-Nasrati, District Karak, whereby, he was convicted under section 302(b)/34 PPC and sentenced to imprisonment for life alongwith payment of Rs.5,00,000/- as compensation to the legal heirs of deceased under section 544-A Cr.P.C or in default thereof, to undergo six months simple imprisonment. Benefit of section 382-B Cr.P.C was extended to the accused/ appellant.

2. The transient facts as unfolded in the first information report are that on 18.11.2008 at 16:00 hours the complainant Aurangzeb along with his brother Abdul Wahab and cousin Wali Khan was fetching reed trees through donkey cart from the house of Abdul Manaf to their house. Wali Khan and Abdul Wahab were going ahead at some distance. On their reaching to the house of Abdul Wahab, meanwhile accused/ appellant along with co-accused Junaid Khan, duly armed with Kalashnikovs came to the place of incident from front side and fired at Abdul Wahab, as a result of which he got hit and died on the spot. The accused after commission of the offence fled away from the place of incident. Motive for the offence was stated to be dispute over paternal land. Hence, the *ibid* FIR.

3. After completion of usual investigation, the prosecution submitted challan under section 512 Cr.P.C against the accused and on 26.3.2009 they were declared as proclaimed offenders. Later on the accused/appellant applied for Bail Before Arrest which was dismissed on 09.7.2019, whereafter he was arrested and thereafter prosecution submitted supplementary challan against him for trial. The accused was produced in custody and provisions of section 265-C.Cr.P.C were complied with.

✓ On 03.10.2019 formal charge was framed against the accused/appellant to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as ten witnesses.

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4. On closure of prosecution's evidence, statement of appellant/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 arrived at the conclusion that the involvement of the accused Afsar Khan has been substantiated in view of the evidence so recorded, as such, he was convicted & sentenced vide the impugned judgment, Hence, the instant appeal against the judgment of conviction.

5. Learned counsel appearing on behalf of the accused/appellant argued that the accused/appellant is innocent and falsely implicated by the complainant on malafi basis; that order and judgment of Additional Sessions Judge, Karak at Takht-e-Nasrati is illegal and perverse and not sustainable in the eye of law. Added, no weapon of offence or other incriminating article was

recovered from the possession of accused/ appellant during investigation/interrogation; that there are glaring contradictions on record which have virtually ruined the case of prosecution and, therefore, the impugned judgment of conviction is unsustainable; that after making preliminary investigation the instant case has been registered by the complainant; that the medical evidence, site plan, recoveries and F.S.L report do not support the prosecution case. Concluded, the occurrence has not taken place in the mode & manner so alleged by the prosecution and intended to have presented before the Court and the allegations against the convicts/appellant are full of surmises, conjectures and doubts, whereas, the learned trial Court could not be able to appreciate the facts & circumstances coupled with the mode & manner of the occurrence and proper appreciation of the evidence so furnished, as such, on acceptance of the appeal in hand, the impugned conviction & sentence of the appellant/ accused deserves to be set aside followed by his acquittal to meet the ends of justice.

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6. On the other hand, the learned Additional Advocate General assisted by the learned counsel for the complainant vehemently controverted the arguments

advanced by the learned Counsel for the appellant and submitted that the instant case is arising out of an promptly lodged F.I.R without any consultation & deliberation rather based on actual facts & circumstances. The appellant being known to the complainant party has been directly nominated with not only specific role in the commission of offence in respect of the promptly lodged F.I.R excluding the remote chance of any consultation & deliberation. Added, the evidence, substantive & circumstantial so collected during the investigation, connects the convicts/appellant with the commission of offence. The complainant and eye witness on their turn as PW-8 and PW-9 respectively are focal & consistent on the emerged of the accused at the fateful time, being known to him, have been duly nominated with the kind of weapons of offence so carried followed by assault through firing with their respective weapons of offence. Added, during the trial, the substantive evidence so furnished has faced the lengthy and searching examination-in-cross of the learned defence counsel but nothing as favourable could have been brought from their mouths to shatter their veracity & truthfulness. The subject account is focal & consistent on the material points and during the trial the same has neither been shattered nor contradicted, as such,

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worth reliable, therefore, the learned trial Court has properly appreciated the facts & circumstances coupled with the evidence, substantive & circumstantial and has arrived at a right & just conclusion followed conviction of the accused/appellants. Concluded the impugned judgment & conviction of the learned trial Court being based on proper appraisal of the evidence, substantive & circumstantial coupled with the law on subject and requested for dismissal of the subject appeal.

7. Learned counsel for the parties as well as the Asstt: Advocate General were heard at length and the record was scanned through, with their valuable assistance.

8 The record reflects that it was on 18.11.2008 at 16:00 hours, when the complainant alongwith his brother Abdul Wahab and cousin Wali Khan after fetching reed trees through donkey cart from the house of Abdul Manaf were to proceeding to their house and when reached to the place of incident, the accused/ appellant alongwith co-accused, armed with Kalashnikovs, came there and fired at Abdul Wahab with intention to commit his murder, as a result of it, the deceased was hit, fell down and died on the spot. The deceased was shifted to police station Takht-e-Nasrati, where the matter was reported to Ali Hussain DSP

✓ (PW-04). The scribe after drafting the *FIR*, prepared the injury sheet and inquest report and the dead body was sent to the doctor for postmortem examination. The investigating officer after receiving copy of the *FIR* visited the spot and on pointation of the complainant, prepared the site plan. During spot inspection he vide recovery memo Ex.P.C recovered and took into possession blood stained earth from the place of deceased and sealed the same into parcel. Vide same memo he also recovered and took into possession three empties of 7.62 bore from the places of accused lying in scattered condition and sealed the same into parcel. Through recovery memo Ex.PC/1 the investigating officer took into possession one blood stained shrit and one bunyan belonging to the deceased. Initially, the appellant remained in hiding and was declared a proclaimed offender. After his arrest, the appellant faced trial and on its conclusion, was convicted and sentenced as stated above.

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9. There is no denial at all that the matter was thrashed out by the learned trial Court and that the material aspects of the case were taken into consideration while determining the fate of the appellant. As this Court is seized of the matter, so in order to appreciate as to whether the conclusion drawn by the learned judge finds favour from

record of the case and as to whether the statements of the witnesses were so consistent, which ended in conviction. To ascertain this material aspect of the case, the court feel it essential to revisit the entire case i.e. the collected record and the recorded statements, as the question of life and liberty of a citizen is involved.

10. In order to establish the charge against the accused/appellant, the prosecution has examined as many as 10 witnesses. The statement of accused/appellant was recorded U/S. 342 Cr.P.C in which he denied the charge and stated that he is innocent and has been falsely implicated in the case.

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11. The prosecution rested its case on the ocular testimony, furnished by complainant/PW-8, brother of deceased, eye witness/PW-9, cousin of the deceased, the motive, medical evidence and recoveries from the scene of crime i.e. blood stained earth and empties of 7.62, abscondance of accused and site plan.

12. The most important witnesses examined by the prosecution was the complainant who claims that he has witnessed the whole occurrence from its commencement till its end. In his statement, the witness deposed that at the fateful time, date and place, he along



✓ with his deceased brother Abdul Wahab and cousin Wali Khan was bringing Sarkanda in donkey cart from the house of Abdul Manaf. His deceased brother Abdul Wahab and PW Wali Khan were going at some distance in front of him. When they reached to the house of deceased, the accused/appellant and co-accused Junaid duly armed with Kalashnikovs came in front of them and started firing at Abdul Wahab, with which his deceased brother was hit and died on the spot. After commission of offence, accused decamped from the spot. The complainant, PW Wali Khan and people of the locality took the dead body of the deceased to the police station, where he lodged the report. The report correctly bears his signature as well as the signature of Wali Khan. The site plan was also prepared at his instance. Motive behind the occurrence was dispute over the paternal land. He charged the accused for commission of the offence. Likewise, Wali Khan, eye witness/PW-9 deposed that on 18.11.2008 at about 16:00 hours, he along with his cousin Aurangzeb and deceased Abdul hWahab was bringing Sarkandas in Gadha Gari from the house of Abdul Manaf and were coming to their house. He and Abdul Wahab were going at some distance in front of Aurangzeb. When they reached to the house of deceased, the accused duly

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✓ armed with Kalashnikovs came in their front and started firing at the deceased, as a result of which he was hit and died on the spot. After commission of offence, accused decamped from the spot. He along with complainant and people of the locality took the dead body of deceased to the police station, where Aurangzeb lodged the report and his signature was also obtained on it which correctly bears his signature as well as the signature of Aurangzeb. He also identified the dead body of the deceased before the police as well as before the doctor.

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13. These witnesses were cross-examined at length by learned counsel for defence, however, nothing could be elicited so as to doubt their statements. Besides, their testimony get corroborated from the evidence of Dr. Gul Sanat Shah (Retired Principal Medical officer) (PW-7) who found 1/4x1/4 FAI entry wound on back of skull on occipital area with 12x6 inch FAI exit wound on front of skull with shattering of skull bone and brain exit injury No.1, 1/4x1/4 inch FAI entry wound medical side of left upper arm making exit 1/2 x 1/2 inch on later side of left upper arm exist of injury No.2, 1/4x1/4 inch FAI entry wound on back of upper right limb making exit 1/4x1/4 inch on anterior side of left arm exit to injury No.3, 1/4x1/4 inch FAI injury on left side pelvis making exist

✓  
1/2 x 1/2 inch on front of abdomen around umbilicus exit to injury No.4 and 1/4x1/4 inch FAI entry wound on back of left side chest making exit wound 1/4x1/2 inch on lateral side chest right side chest exit to injury No.5) which confirms the ocular account of complainant regarding the weapon used in the occurrence. The arguments of learned counsel for the accused/appellant that the complainant/PW-8 and eye witness/PW-9 were none other than the brother and cousin respectively of deceased and is, therefore, highly interested witness and his deposition should, thus, be discarded, as it has not been corroborated by any independent witness, does not commend us. The mere fact that deceased was brother of the complainant and cousin of the eye witness does not impeach their evidence in any manner. However, their evidence must be scrutinized carefully and if on such scrutiny their testimony is found wholly trustworthy and intrinsically reliable then probable conviction can be based on the testimony of such witnesses, besides a close relative of a deceased would be most reluctant to spare the real culprit and implicate innocent person. We thus, reject the submission of learned counsel for the appellant, that PW-8 the complainant and PW-9 the eye witness being related to the deceased shall not be relied upon.

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Reliance is place on case titled “**Ijaz Ahmad Vs. The State and others**” (2022 SCMR 1577) wherein it has been held that:-

**(d) Penal Code (XLV of 1860)---**

“----S. 302(b)--- Qatl-i-amd---Prosecution witness related to the deceased---Testimony--Mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case.”

14. Other than the above, it is case of the prosecution that after the occurrence, the appellant and co-accused Junaid had disappeared and were declared as proclaimed offenders. The appellant Afsar Khan was arrested on 09.7.2019, whereas, co-accused Junaid is still wanted. Even if it is presumed that the abscondance of appellant has not been proved in accordance with law, even then his long disappearance and avoiding from process of justice is a hurdle in his way and can be used as corroboration to the ocular account. The appellant could not explain his long disappearance of about 11 years. The appellant also could not dispute his date of arrest as stated by the investigating officer.

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15. Pursuant to the above, we have come to the conclusion that the prosecution has established its case beyond any shadow of doubt against the appellant and the conviction and sentence recorded by the trial Court through the impugned judgment is based on correct appreciation of evidence, which does not call for any interference. Therefore, the judgment of conviction and sentence recorded by the learned trial Court is maintained and this appeal is dismissed accordingly.

**Announced**

22.02.2023

*Ihsan.*



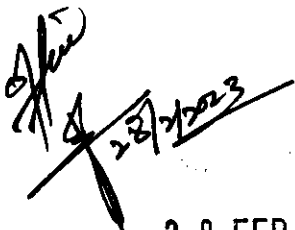
**JUDGE**



**JUDGE**

(DB)

*Hon'ble Mr. Justice Sahibzada Asadullah &  
Hon'ble Mr. Justice Shahid Khan.*



28 FEB 2023  
*Ihsan*