

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

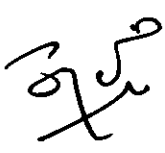
**Cr. A (Death) No.244-B of 2022**  
**With Murder Reference No.05-B/2022**

Javed  
Vs.  
The State etc

**JUDGMENT**

For Appellant: Mr. Muhammad Sadiq Khan Advocate  
For Respondent: Mr. Muhammad Anwar Khan Mamash Khel, Advocate.  
For State: Mr. Umar Qayum Khan, Asstt: AG.  
Date of hearing: 22.3.2023

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 **SHAHID KHAN, J.-** Javed Khan, the appellant has called in question his conviction & sentence vide judgment, dated 06.12.2022, rendered by learned Additional Sessions Judge-II, Bannu, whereby, the appellant was found guilty, as such, convicted & sentenced, under section 302 (b) P.P.C. for death as ta'zir for the murder of deceased Mst. Robina Bibi. He was also liable to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased and shall be recoverable as arrears of land revenue, in terms of section 544-A Cr.P.C or six months simple imprisonment in default. He was also convicted & sentenced under section 324 P.P.C for 04 years simple imprisonment for firing at the eye witness/injured Ajmal. Under section 337-D P.P.C the accused/ appellant was further

convicted for 05 years simple imprisonment. Murder Reference No.05-B of 2022 has also been sent by the learned trial Court under section 374 Cr.PC for its confirmation or otherwise, as such, the court intend to decide both the matters through the subject single judgment.

2. Brief facts of the case as divulged from the FIR, are that on 14.8.2019 at 12:40 hours complainant Laiq Zaman along with dead body of his daughter Mst. Robina Bibi and injured/son-in-law of the complainant, namely, Ajmal Khan lodged report at emergency room civil Hospital Bannu to the effect that on the day of occurrence complainant came to the house of his son in law for Eid-ul-Adha greeting. They were busy in gossiping with each other. In the meanwhile at about 11:30 hours, accused/appellant duly armed with pistol came and started firing at his daughter, Mst. Robina Bibi, as a result of it, she was hit and fell down. Ajmal, son-in-law of the complainant and husband of the deceased Mst. Robina Bibi was also got hit and sustained injuries. The accused after commission of the offence fled away from the spot and made his good escape. When the complainant attended his daughter, she succumbed to the injuries. Injured Ajmal was shifted to hospital for treatment while Mst. Robina for post mortem examination.

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3. After completion of investigation, challan was drawn and sent up for trial to the Court of competent jurisdiction.

4. To bring home charge against the appellant/accused, the prosecution placed reliance on the testimonies of 11 witnesses, followed by to confront the accused with the evidence so furnished as his statement within the meaning of section 342 Cr.P.C, wherein, the accused denied the allegations of the prosecution and professed innocence.

5. On conclusion of the trial followed by arguments of the learned prosecutor & learned defence counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the accused, as such, the accused was convicted and sentenced to death vide judgment, dated 06.12.2022, Sessions case No.36 of 2020, hence the subject criminal appeal alongwith Murder Reference.

6. Learned counsel for the appellant argued that the impugned judgment of the learned Trial Court is against the law, facts and evidence available on record. The complainant could not establish his presence on the scene of occurrence at the fateful time coupled with the cause and purpose to accompany the deceased by then; considerable delay with

regard to the registration of the event left behind due scope of consultation and deliberation to falsely implicate an innocent person. Concluded the mode & manner of the event so alleged by the prosecution is not only unbelievable but has not been substantiated through direct, cogent & worth reliable evidence during the trial.

7. Conversely, learned A.A.G assisted by learned counsel for the complainant argued that appellant is directly charged for effective firing at the deceased and injured Ajmal Khan; that ocular account furnished by the PWs is straightforward and confidence inspiring which is corroborated by the circumstantial & medical evidence, site plan, recoveries of blood and crime empties from the spot; that the FSL report also corroborates the prosecution case by elaborating that the firing has been made from one and the same weapon of offence (pistol .30 bore); that the prosecution has successfully proved the guilt of the appellant through overwhelming evidence available on record and sought dismissal of appeal of the appellant.

8. Arguments heard and record perused.

9. Undeniably, the deceased is the sister in law of the convict/appellant and husband of the deceased being real brother of the convict/appellant, therefore, as per record made

available Ex.PW10/1 their respective residential units are adjacent, however, separated by a boundary wall. Because of the blood relation of the accused and husband of the deceased, as per custom, culture & tradition of the locality, frequent visits without formal permission is common phenomenon in this part of country.

10. The story of the prosecution is that on the fateful date, day & time, the convict/appellant armed with pistol entered and fired at Mst. Robina Bibi, as a result of it, she was hit and succumbed to her injuries. The learned trial Court has placed reliance on the account of Laiq Zaman & Ajmal Khan, PW-7 and PW-8, their account is direct, consistent and unequivocal in terms that the convict/appellant the moment came there, started firing at the deceased, as a result of it, she was hit and fell down on the ground and the accused fled away. Needless to highlight, PW Ajmal Khan also received fire arm injuries. Because of the blood relation of the accused, the question of false implication can safely be excluded, whereas, the account of PW-7 Laiq Zaman is also direct, consistent & unequivocal on the material points coupled with the fact that his presence on the scene of occurrence at the fateful time is also natural for the reason to pay a visit to the house of his daughter and it is common culture & tradition of the society in this part of country to pay a visit to the nearer &

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dearer as a token of love and affection on the day of celebration of social & religious occasions i.e. marriage, Eid etc. However, account of the PW-7 is also silent regarding the motive of occurrence.

11. It is transparent from the record that motive of the occurrence does not figure at all either while lodging the report at the initial stage followed by the exercise of investigation and even during the trial none of the prosecution's witnesses could be able to utter a single word in this regard. In the prevailing circumstances where the prosecution has neither alleged motive of the occurrence at the first instance nor it has been even highlighted during the trial, therefore, the peculiar facts & circumstances has driven the Court to the conclusion that during the investigation followed by during the trial nothing as such been surfaced which could be treated as a motive for the subject event.

12. On this score alone, while lodging the report, the complainant could not highlight motive for the occurrence and on his turn in the witness box nothing as such has been brought on record. Likewise, father of the deceased did furnish his account during the trial but he could also not be able to utter even a single word in respect of the motive of the fateful incident at the earlier stage. The law of the land in this regard is much settled by now that absence of motive or absence of

proof of the same would be a sufficient mitigating circumstance to determine the quantum of sentence. The Court can lay hands on some of the latest judgments of this court for a matter of reference i.e. Mst. Nazia Anwar v. The State (2018 SCMR 911), Nadeem Ramzan v. The State (2018 SCMR 149), Haq Nawaz v. The State (2018 SCMR 21), Ghulam Muhammad v. State (2017 SCMR 2048), Saif Ullah v. State (2017 SCMR 2041), Waris Ali v. The State (2017 SCMR 1572).

13. In view of the evidence so furnished and made as part of the record coupled with the assistance so provided at the bar, the Court is of the considered view that the prosecution has neither disclosed motive of the event at the first instance nor has even highlighted the same during the trial, benefit of which for the purpose of quantum of sentence in this case will have to go to the appellant and the appellant in the given circumstances, major penalty as death shall be unwise.

14. In the circumstances where presence of the star witnesses, husband of the deceased and father of the deceased on the fateful time on the scene of occurrence could no way be denied and their account regarding the involvement of the convict/appellant in the commission of offence could also not be under estimated for the simple reason that false implication

of the convict/appellant cannot even be imagine because nothing as such is part of the investigation followed by the record made available which could amount to clash of interest of the PWs and accused.

15. To conclude, all such circumstances are taken as sufficient justification for reduction of the sentence from normal penalty of death to life imprisonment. Resultantly, the instant appeal is partially allowed, conviction of the convict/appellant is maintained, however, the quantum of sentence as death awarded to the appellant under section 302(b), P.P.C. is reduced to life imprisonment. Benefit of section 382-B, Cr.P.C. is extended to the appellant as well. Rest of the sentences awarded by learned trial Court through the impugned judgment shall remain intact. Murder Reference No. 05-B of 2022 is answered in "negative".

Announced  
22.3.2023 3  
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JUDGE

JUDGE

22.3.2023

(D.B)

Mr. Justice Sahibzada Asadullah &  
Mr. Justice Shahid Khan.

25 MAR 2023