

JUDGMENT SHEET

**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)**

Cr.A No. 314-M/2021

Zahireen son of Shams Ullah (Appellant)
Versus

(1) The State through A.A.G.
(2) Mst. Bibi Zaroon wife of Bakht Sherin Khan & others
(Respondents)

Present: *Mr. Razaullah, Advocate.*
Mr. Saeed Ahmad, Asstt:A.G.
Mr. Amjad Ali, Advocate.

Cr.R. No. 75-M/2021(for enhancement)

Mst. Bibi Zaroun wife of Bakht Sherin Khan
(Petitioner)
Versus

(1) Zaharin son of Shams Ullah Khan
(2) State through A.A.G.
(Respondents)

Present: *Mr. Amjad Ali, Advocate*
Mr. Saeed Ahmad, Asstt: A.G.
Mr. Razaullah, Advocate.

Date of hearing: **17.05.2022**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Appellant namely
Zahireen has called in question judgment of his
conviction and sentence dated 30.10.2021 passed by
the learned Sessions Judge Buner at Dagger, vide
which he was convicted and sentenced as follows;

- *U/S 302 (b) PPC to life imprisonment (on two counts) along with compensation of Rs. 300,000/- (three hundred thousand) under section 544-A Cr.P.C payable to legal heirs of both the deceased, or in default thereof, the accused shall further undergo six months simple imprisonment. The compensation was ordered to be recoverable as arrears of land revenue.*
- *The Appellant was also extended the benefit of section 382-B Cr.P.C.*

2. The appellant faced trial in the criminal case registered vide FIR No. 783 dated 31.08.2002 under section 302 PPC at Police Station Daggar District Buner, on the basis of 'Murasila' (Ex.PA/1) sent by Qasim Jan Khan, Sub Inspector (retired) (APW-10) to the police station concerned on 31.08.2002. The complainant namely Ghaffar Khan reported the matter to local police that his deceased niece namely Mst. Nasia was married to one Bakht Rehman one year prior to the present occurrence. She was having illicit relations with Waris Khan (deceased) and she has come to the house of her parents about four days back. On the fateful day, the accused namely Zahireen (the appellant herein) while being duly armed with firearms, (who is brother-in-law (دیور) of Mst. Nasia) went to the house of Waris Khan and started firing at him, as a result of which he got hit and died on the spot. Afterwards, the accused/

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appellant Zahireen went to the house of parents of Mst. Nasia where she was also killed by firing at her. The occurrence was witnessed by one Mst. Nasib Zaroon. Motive behind the occurrence was stated to be illicit relations of Mst. Nasia with the male deceased namely Waris Khan.

3. Initially, the accused was avoiding his lawful arrest, therefore, proceedings under section 512 Cr.P.C were initiated against him and upon completion of the same he was declared proclaimed offender vide order dated 02.06.2005 of the Court of learned Sessions Judge Buner. Upon arrest of the accused, supplementary *challan* was submitted against him before the learned trial court and charge was also framed against him, to which he pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined twelve (12) witnesses in support of their case. Thereafter, statement of the accused was recorded under section 342 Cr.P.C. On conclusion of proceedings in trial, the accused/appellant was convicted by the learned Sessions Judge Buner at Daggar vide judgment dated 25.04.2019 and sentenced to life imprisonment (on two counts) under section 302 (b) PPC along with



compensation of Rs. 300,000/- payable to both the legal heirs of the deceased, or in default thereof to suffer six months simple imprisonment.

4. The aforesaid judgment of conviction was challenged by the appellant by filing criminal appeal No. 210-M of 2019 before this Court. This Court vide judgment dated 25.05.2021 while allowing appeal of the appellant set aside the judgment of conviction dated 25.04.2019 and the case was remanded back to learned trial Court to first frame a charge against the accused and then re-examined certain prosecution witnesses and shall also provide an opportunity of cross-examination to the defence.

5. After remand, the learned trial after compliance of the directions of this Court (as given in the aforesaid judgment), convicted and sentenced the appellant vide the impugned judgment dated 30.10.2021. The appellant has challenged the aforesaid judgment of his conviction and sentence by filing the instant appeal before this Court, while the petitioner has also filed the connected *Criminal Revision No. 75-M of 2021* for enhancement of the sentence awarded to the accused/respondent namely Zahireen.

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6. Arguments of learned counsel for the parties as well as learned Astt: A.G. appearing on behalf of the State were heard in considerable detail and the record perused with their able assistance.

7. In this case the story of prosecution as narrated by the complainant namely Ghaffar Khan (who was not produced as a witness during the course of trial) that the local police visited the house of the deceased where he made report to the effect that one the deceased namely Mst. Nasia is his niece (بہتیجی) who has married to one Bakht Rahman about one year back, however, his niece Mst. Nasia was having illicit relations with one Waris Khan and four days prior to the happening of present occurrence her niece came to the house of her parents and as such it was yesterday on 30.08.2002 when at about 03 o clock the appellant namely Zaireen, (who was brother-in-law (دیور) of her niece) entered the house of Waris Khan and killed him through firearm and thereafter the appellant namely Zaireen went to the house of parents of Mst. Nasia where the complainant was also present and he made a fire at Mst. Nasia through firearm and

kill her. After the occurrence, the appellant made his good escape. The occurrence was stated to be witnessed by one Mst. Nasib Zaroon (mother of the deceased). Motive behind the occurrence was stated to be illicit relationship between Waris Khan and Mst. Nasia.

8. In this case the record reveals that the occurrence has taken place on 30.08.2002 at 15:00 hours whereas the report has been lodged by the complainant namely Ghaffar Khan on the next day of the occurrence i.e. on 31.08.2002 inside the house of one of the deceased at 13:00 hours and as such there is 22 hours delay in lodging of the First Information Report and that too when the local police visited the house of the complainant. In the case of "Muhammad Akram v/s The State" reported as 2009 SCMR 230 the Hon'ble Apex Court has held that conduct of the father of the abductee, who knew the accused, lodged the FIR after an ordinate delay of six months of the abduction and recovery of his son, had cast heavy doubt on the veracity of the FIR.

9. In this case, the site plan (Ex. PB) was prepared on the pointation of the complainant namely Ghaffar Khan as well as other alleged eyewitnesses of the occurrence which shows that the houses of the two

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deceased though are situated in affront of each other, but at a distance of 300 yards. The site plan further stipulates that Mst. Nasia was shown at point "B" which is inside her room whereas the complainant Ghaffar Khan has been shown at point No. 5 and the mother of the deceased namely Mst. Nasib Zaroon has been shown at point No.6, whereas the other deceased namely Waris Khan has been shown at point No. 1 at the veranda of his house, whereas PWs Bakht Sherin Khan and Mst. Bibi Zaroun have been shown at point No. 3 & 4 inside the house and as such the complainant at point No. 5 could not see the places assigned to both the deceased.

10. In order to establish the guilt of the appellant the prosecution has produced ten (10) witnesses and the ocular account in this case has been furnished by APW-7 namely Mst. Bibi Zaroun, who is the mother of the deceased Waris Khan and APW-8 namely Mst. Nasib Zaroun, who is the mother of deceased Mst. Nasia. The APW-7 namely Mst. Bibi Zaroun has clearly stated in her statement that at the relevant time her deceased son was sitting outside the house when in the meanwhile the accused came there and started altercation with the allegation of illicit

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relations of my son with the sister-in-law (بہابی) of the accused/appellant namely Mst. Nasia and he then fired upon his son and shot him dead with three fire shots. She has candidly stated that it was 03:00 p.m. and on the next day of the occurrence the local police came to the spot and who prepared site plan on her pointation and the police also recovered three empty shells and blood stained earth from the scene of occurrence. The aforesaid statement of APW-7 has presented a totally different picture when it is seen in *juxta* position with the site plan. In the site plan the deceased namely Waris Khan has been shown at point No. 1 which is inside the veranda of the house of APW-7 and as such her statement alone is sufficient that the prosecution has not been able to prove the mode and manner of this occurrence as the statement of this APW-7 goes a long way to contradict the First Information Report as well as the site plan which was prepared on pointation of the complainant and other eyewitnesses of the occurrence. In the case of "Iqbal Shah vs the State" reported as 1998 P Cr.LJ 1177, this Court has held that the site plan was referred not for the reason that it a solid piece of evidence but its utility cannot be

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ignored being the first reflection of the spot as indicated or pointed-out by the eye-witnesses furnished a panoramic view of the occurrence to scrutinize the evidence tendered at the trial by prosecution witnesses.

11. Another alleged eyewitness of the occurrence namely Mst. Nasib Zaroun (mother of the deceased lady Mst. Nasia) appeared in the Court as APW-8 and she in her examination-in-chief has straight-away stated that she does not want to prosecute the present appellant. In view of the aforesaid only two statements of the alleged eyewitness, the prosecution has not been able to bring on record any other ocular-account of the occurrence.

12. It is also relevant to mention here that the prosecution has not been able to prove the contents of the First Information Report for the reason that the complainant namely Ghaffar Khan, the very maker of the report has not been produced as witness in the Court to support the contents of the FIR and as such when the very foundation of the prosecution case has not been established, then any

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superstructure built upon it through production of any other witnesses would be of no fruitful result for the prosecution.

13. It is also astonishing to mention here that in this case the fathers, brothers or any other male members of both the deceased have not come forward to charge the present appellant and both of them have opted to just produce the old ladies in the Court i.e. mothers of both the deceased, which conduct of the complainant-party prima facie shows that they have suppressed the mode and manner and real facts of the occurrence.

14. As stated earlier, that in this case as per the contents of the 'Murasila' (Ex. PA/1) the occurrence has taken place on 30.08.2002 at 15:00 hours whereas the report was made to local police on the next day i.e. on 31.08.2002 at 13:00 hours, after 22 long hours of the occurrence, however, APW-1 namely Dr. Sultanul Mulk when appeared in the Court he has stated that on 31.08.2002 at about 18:00 hours i.e. after 27 hours of the occurrence when he examined the two deceased fresh blood was oozing from their injuries, which fact alone is

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sufficient to cast a serious doubt as how fresh blood could be oozed from the injuries after 27 hours and that too in hot summer weather.

15. In this case though the prosecution has alleged motive of illicit relations between the two deceased, however, the prosecution has not brought on record an iota of evidence to prove the same and if at all there was a motive (as alleged by the prosecution in the FIR), then the same has no relevancy with the present appellant when admittedly husband of the deceased namely Mst. Nasia, her father and brother are still alive as it could be a matter of honour for them at the first hand and not for the present appellant, therefore, it is too unreasonable and improbable that a person with such a remote relationship would act in such a manner, as alleged by the prosecution.

16. It is also settled law that for giving benefit to an accused, it is not essential that there should be many grounds for the same, even a single doubt is sufficient to extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty

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persons be acquitted but one innocent person should not be convicted. In the case of "Muhammad Mansha v/s The State" reported as 2018 SCMR 772, the Hon'ble Apex Court has held that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749). In the case of "Tariq Pervaiz v/s The State" reported as 1995 SCMR 1345, the Hon'ble Apex Court has held that the concept of benefit of doubt to an accused person is deep-rooted in our country. For giving

him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

Further reliance in this regard may also be placed on the following judgment;

- 1) Muhammad Akram v/s The Bashar (2009 SCMR 230).
- 2) Faryad Ali v/s The State (2008 SCMR 1086).

17. In light of what has been discussed above, the instant appeal is allowed, the accused/appellant namely Zaireen is extended the benefit of doubt and resultantly acquitted of the charges leveled against him by setting aside the impugned judgment of conviction and sentence of the Court of learned Sessions Judge Buner at Dagger dated 30.10.2021. He be released forthwith from the Jail, if not required in any other case. Similarly, the connected criminal revision

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No. 75-M of 2021 filed by the petitioner is also dismissed having become infructuous.

18. These are reasons for our short order of even date.

Announced
Dt. 17.05.2022



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Office
31/05/2022
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