

**PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.A No. 540-P/2014 with M.R No. 14/2014.

JUDGMENT

Date of hearing. 15.12.2015.

Appellant (Fazal Majeed) By Mr. Muhammad Arif Khan,
Advocate.

State By Syed Sikandar Hayat Shah, AAG.

Complainant. By Mr. Sohail Akhtar, Advocate

QAISER RASHID KHAN, J.- Fazal Majeed appellant,

charged u/s 302 PPC in case FIR No.74 dated

9.2.20130 registered at PS City Hangu, was convicted

under section 302 (b) PPC and sentenced to death by the

learned Sessions Judge Hangu vide his judgment dated

09.09.2014. He was also ordered to pay a fine of

Rs.200000/- (Two lac) as compensation to the legal

heirs of the deceased U/S 544-A Cr.P.C. or in default to

suffer further six months SI with benefit of section 382-

B Cr.P.C. Feeling aggrieved, the appellant has filed the

instant appeal challenging the validity of his conviction

and sentence, while the learned trial Judge has also sent

Murder Reference (No.14 of 2014) for confirmation of

his death sentence. Both the matters are being disposed of by this single judgment.

2. Facts, as per FIR, are that on 9.2.2013 at about 16:55 hours Muhammad Aamir complainant (PW-1) brought the dead body of his deceased uncle Nawab Khan to the emergency room of Civil Hospital Hangu and reported the matter to the local police to the effect that he alongwith his uncle Nawab Khan and aunt Mst. Nazeera Jan were proceeding to their home from Kohat and when reached near the house of Zaheer Hussain situated in Ganjano Kalay Hangu, the accused-appellant Fazal Majeed appeared duly armed with a pistol and started firing at his uncle who was ahead of him with which he was hit and died on the spot. The occurrence was witnessed by Mst. Nazeera Jan widow of the deceased. Motive for the occurrence was previous blood feud. Murasila was drafted and sent to the Police Station where case FIR No. 74 dated 9.2.2013 under section 302 PPC was registered. On the same day, the accused-appellant was arrested and vide recovery memo Ex.PW7/1, a 30-bore pistol P-1 with fixed charger

containing three live rounds of the same bore P-2 were recovered from his possession.

3. Investigation commenced in the case and on conclusion of the same, complete challan was submitted before the learned trial court against the accused-appellant where the prosecution in order to prove its case examined as many as 10 witnesses.

Muhammad Amir complainant appeared as PW1. He narrated the same story as mentioned in the FIR. At his instance the site plan was prepared.

PW-2 Haji Muhammad identified the dead body of the deceased before the doctor and the police.

PW-3 Mst. Nazeera Jan widow of the deceased Nawab Khan also narrated the same facts as stated by PW1. She deposed that on the day of occurrence she alongwith her deceased husband Nawab Khan, Muhammad Amir (son of her brother-in-law) had visited the house of their relative at Kohat and at the fateful time she alongwith her deceased husband and Muhammad Amir were proceeding to their house through Ganjano Kalay road when in the meanwhile the accused Fazal Majeed duly armed with a pistol appeared

and fired at her husband with which he was hit and died on the spot. Her statement was also recorded under section 161 Cr. P.C.

Dr. Furqan (PW4) on 9.2.2013 at 05:15 pm conducted post-mortem examination of the deceased Nawab Khan and found the following:

External appearance.

1. One small entry wound 0.5 cm on mid upper back with exit wound in left upper chest measuring 1 cm x 1 cm.
2. One entry wound 0.5 cm x 0.5 cm in size at the left lower back with exit wound at left upper quadrant of abdomen.

Thorax: Left side walls, ribs, cartilages, pleurae, left side and left lung were found injured.

Zahir Shah HC (PW-5) incorporated the contents of the murasila into FIR (Ex.PA).

Asif Ali Constable (PW6) is marginal witness to recovery memo Ex.PC vide which the I.O took into possession blood from the place of the deceased through cotton P-1, two empties of .30 bore pistol P-2 near the place of accused Fazal Majeed, blood stained Qameez of the deceased P-3, Shalwar P-4 and Banyan P-5 sent by

the doctor. He is also marginal witness to the pointation memo Ex.PC/1.

Shafeerullah Constable (PW-7) is marginal witness to the recovery memo Ex.PW7/1 vide which in his presence the accused-appellant Fazal Majeed was arrested. He stated that at the time of arrest the accused was armed with .30 bore pistol P-1 fixed with charger containing three rounds of the same bore as P-2 being the weapon of offence with which murder was committed by the accused-appellant. He had signed the recovery memo and in this respect his statement under section 161 Cr.P.C was also recorded by the I.O.

Mumtaz Khan SI (PW-8) is the I.O who conducted investigation in the case. He went to the spot, prepared the site plan Ex.PB at the instance of the complainant and during spot inspection took into possession blood through cotton as P-1 from the place of deceased, two empties of 30-bore from near the place of accused emitting smell of fresh discharge as P-2. Similarly he received blood stained garments of the deceased, Qameez as P-3, Shalwar as P-4 and Banyan as P-5 sent by the doctor and were sealed into parcel. He

also recorded the statements of the PWs under section 161 Cr.P.C and conducted house search of the accused but when reached Gul Bagh there he received the information on wireless that the accused Fazal Majeed was arrested by SHO Rahim Khan. He further stated that on the recovery of pistol another FIR No. 75 of the same date was registered under section 13 A.O against the accused-appellant which was also investigated by him and had recorded the statements of the PWs of that case. On the pointation of Muhammad Rahim SHO, he prepared the pointation memo Ex.PB/1 in respect of the spot of arrest of the appellant. He also prepared pointation memo Ex.PC/1 at the instance of the accused-appellant and recorded his statement under section 161 Cr.P.C. He dispatched the blood stained articles to the serologist whose report is Ex.PZ and also dispatched the pistol alongwith empties to the FSL for examination, report whereof is Ex.PZ/1. On completion of the investigation he handed over the case file to the SHO for submission of complete challan in the case.

Iqrar Ali, ASI (PW-9) deposed that while on gusht he received information from Civil Hospital

Hangu that a dead body has been brought there. He accordingly rushed there where the complainant Muhammad Amir reported the matter to him which he recorded in the shape of murasila Ex.PA/1 which bears his signature as well as thumb impression of the complainant as a token of its correctness. He prepared the injury sheet Ex.PM/1 and inquest report Ex.PM/2 of the deceased and the same also bear his signature. He then dispatched the dead body for post-mortem to the doctor.

PW-10 Muhammad Rahim ASI PTC Hangu stated that on 9.2.2013 he was on gusht when received information about the killing of a person and the fleeing of the accused at Ganjano Kalay road. He proceeded to the spot, alerted the rider squads and also chased the accused and on his arrest a .30 bore pistol bearing No.A9709 with a fixed charger and three rounds of the same bore were recovered from his possession which was giving the smell of freshly fired weapon. He arrested the accused, prepared his arrest card Ex.PW10/1, drafted the murasila upon which case F.I.R

No. 75 under section 13 A.O was registered at Police Station City on 9.2.2013.

4. After the closure of the prosecution evidence, the convict-appellant was examined under section 342 Cr.P.C. who pleaded innocence and denied the allegations of the prosecution brought against him. However, he neither wished to produce any evidence in his defence nor himself appeared as his own witness in disproof of the allegations of prosecution as provided under section 340 (2) Cr.P.C. On conclusion of the trial, after hearing of the learned counsel for the parties and appraising the evidence, the learned trial Judge convicted and sentenced the appellant as mentioned in the introductory part of this judgment, hence the present appeal.

5. The learned counsel for the appellant vehemently attacked the impugned judgment of conviction and sentence of the appellant. He argued that the appellant is innocent and has been falsely charged by the complainant as apparently the occurrence is unwitnessed one. He contended that there are grave and serious contradictions in the statements of the PWs which

escaped the sight of the learned trial court while recording the impugned judgment of conviction. He contended that it is the consistent view of the august apex court that when there are contradictions in the statements of the PWs, its benefit should go to the accused. He lastly contended that the crime weapon has been planted against the appellant by the prosecution so as to bring its case in line with the version advanced by the complainant party and thus the appellant deserves acquittal.

6. The learned Assistant Advocate General assisted by the learned counsel for the complainant supported the impugned judgment of the learned trial Judge in its entirety.

7. Arguments heard and the available record minutely perused with the assistance of the learned counsel for the parties.

8. In the present case, it was the complainant Muhammad Amir who reported about the occurrence at Civil Hospital Hangu at 16:55 hours to the effect that he alongwith his deceased uncle Nawab Khan and aunt Mst. Nazeera Jan while proceeding to their house from

Kohat when reached the place of occurrence at 16:35 hours, the appellant namely, Fazal Majeed, armed with a pistol appeared and fired at Nawab Khan which resulted in his death on the spot and the incident was witnessed by Mst. Nazeera Jan, widow of the deceased. Motive was stated to be previous blood feud. He narrated the same eye-witness account of the occurrence while recording his statement before the learned trial court as PW-1. He was subjected to a lengthy cross-examination but he stuck to his version regarding the incident and despite the best efforts of the learned defence counsel, he was unable to dislodge the stance of the complainant. Rather during such exercise he further explained and elaborated the mode and manner of the incident. In this respect, it would be apt to reproduce some portions of his cross-examination as below:

“We might have reached Hangu via flying coach at 16:00 hours.”

“The place of occurrence might be at a distance of 1 to ½ KM from the place where we were deboarded from the flying coach at main bazaar Hangu.”

“The accused appeared from the street armed with pistol and proceeded 2/3 paces from me and had then made fire upon the deceased.”

“I saw the accused who appeared in a spur of moment and at a distance of 3 paces from me. Self stated that then he fired upon the deceased.”

“The deceased got hit at about 16:35 hours and the rickshaw was brought by somebody within five minutes.”

“I and my maternal aunt and deceased boarded in the rickshaw to the hospital. We reached to the hospital Hangu within five minutes. When we brought the dead body to the Civil Hospital Hangu, the police was not already present in the hospital. The police reached to the Civil Hospital after 5/6 minutes after our arrival to the hospital.”

As such through his cross-examination, he adequately explained the site plan prepared at his instance and the places assigned to the deceased and eye-witness Mst. Nazeera Jan as well as the distance between the appellant, the complainant and the deceased.

9. Mst. Nazeera Jan accompanying her deceased husband Nawab Khan and the complainant Muhammad Amir also furnished her ocular account and narrated the same facts as given by the complainant in his deposition before the learned trial court. She was also subjected to the test of a real lengthy and searching cross-examination but she did not budge an inch as far as the facts leading to the murder of her husband at the hands of the appellant are concerned. She when questioned

duly explained her departure from the house of her relative namely, Jamadar, at about 10:00 am on the day of occurrence, the killing of her husband at 16:35 hours and also the time consumed in reaching Hangu as she had visited the hospital for her treatment. Some excerpts from her cross-examination being relevant are reproduced below:

“The accused suddenly emerged and was at a distance of 5 paces ahead of me. Fazal Majeed accused facing trial was previously known to me as he had paid many visits to our house. We had blood feud enmity with the accused facing trial which is more than 20 years old.”

Thus in one breath she not only explained the details of the site plan but the blood feud with the appellant as well. In reply to another question, she stated **“The complainant PW Amir was a little ahead of me while I was following him.”** The same is exactly in line with the site plan. She was not further quizzed regarding the site plan in order to make some dent in her statement except the routine and perfunctory questions regarding her and the complainant’s presence at the time of occurrence were put to her which she on a rather dismissive note termed as incorrect. To another

question, she replied **“the accused made two fire shots.”** Thus by every count, both the witnesses of the ocular account have given straightforward statements about the occurrence and as to how the deceased was done to death by the appellant with his pistol. They have not contradicted each other on any material aspect of the case and there is a seal of truthfulness strongly affixed on their statements. Minor and, of course, negligible contradictions which may appear in their statements as far as the visit to Kohat is concerned can in no manner dislodge and bring into even a remotest degree of doubt their ocular testimony which despite the best and strenuous efforts of the defence in the cross-examination goes unshattered.

10. During the course of arguments, the learned counsel for the appellant contended that the ocular testimony has been furnished by interested witnesses and conviction cannot be based on their evidence. We are afraid such argument is both misplaced and misconceived in the present case. No doubt, both the eye-witnesses are closely related to the deceased but mere relationship is no ground to discard their

straightforward and confidence inspiring evidence which is otherwise free from the element of consultations and deliberations in view of the promptitude whereby the report was made within a span of 20 minutes from the time of occurrence and also, of course, false implication. Reliance in this respect is placed on case titled “*Sharafat Ali vs. The State*” (1999 SCMR 329).

11. As far as the medical evidence is concerned, Dr. Furqan (P.W.4) conducted autopsy on the dead body of deceased Nawab Khan and found two entry wounds with corresponding exit wounds on his body.

12. Admittedly, two empties of .30 bore as P-2 were recovered from the spot near the place of the accused by the I.O and the same when taken in juxtaposition with the medical evidence, fully support the statement of the complainant and the eye-witness Mst. Nazeera Jan whereby she stated that the accused-appellant had fired two shots with which her husband was hit and died on the spot.

13. After the commission of the offence at 16:35 hours, the appellant tried to make good his escape in the

direction of Ganjano Kalay but as the local police was already alerted regarding the murder committed by him, therefore, he was arrested at a short distance away from the crime spot at 17:25 hours i.e. within a short period of 50 minutes alongwith crime pistol of .30 bore bearing No. A9709 with fixed charger and 3 rounds of the same bore by PW-10 Muhammad Rahim who was at that time posted as SHO Police Station City Hangu. As per PW-10, “the pistol was giving freshly fired smell” and accordingly case FIR No. 75 of the same date under section 13 A.O was registered at Police Station City Hangu against the appellant. The two .30 bore crime empties recovered from the spot and the .30 bore pistol recovered from the accused-appellant at the time of his arrest were sent to the FSL and in this respect the report of the Fire Arms Expert (Ex.PZ/1) is as below:

“OPINION. Microscopic examination of the case has revealed that the two 30 bore crime empties marked C1 and C2 were fired from 30 bore pistol No. A 9709 in question, in view of the following major points i.e. striker pin marks, breach face marks, chamber marks, etc are similar.”

14. The accused-appellant was also tried in case FIR No. 75 of the same date under section 13 A.O and finally convicted and sentenced to 2 years R.I with a

fine of Rs. 3000/- or in default to further undergo ten days S.I by the learned Sessions Judge, Hangu vide judgment dated 9.9.2014 against which he has preferred Cr.A No. 541-P/2014 which too, is dismissed through a separate judgment of the even date.

15. In view of the above discussion, the prosecution case through promptly lodged FIR, confidence inspiring ocular testimony, recovery of crime empties from the spot, supportive medical evidence, arrest of the accused-appellant within a short span of 50 minutes, the recovery of crime pistol giving freshly fired smell and the positive report of the firearms expert is proved against the appellant to the hilt and that is how the learned trial court has rightly convicted and sentenced him vide the impugned judgment. As such we dismiss the instant appeal and maintain the conviction and sentence of the appellant. The death sentence awarded to the appellant is confirmed and the Murder Reference is answered in the affirmative.

Announced:

15.12.2015.

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