JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(*Judicial Department*)

Cr.A No.281-B of 2016

Jawad-ul-Haq
Vs
The State.

JUDGEMENT

Date of hearing 07.11.2017

Appellant-Petitioner: **By Muhammad Rashid Khan Dhirma Khel, Advocate.**

Respondent: **By Shahid Hameed Qureshi,**

Addl: AG.

ABDUL SHAKOOR, J.- This criminal appeal is directed against the judgment dated 20.4.2016 passed by the Additional Sessions Judge, Banda Daud Shah, District Karak, whereby appellant Jawad-ul-Haq was convicted and sentenced under section 302 (b) PPC to imprisonment for life on two counts for charge of committing Qatl-e-amd of deceased Imtiaz Amin and Mst. Dilshad Begum with payment of fine Rs.2,00,000/-(two lacs) to be deposited to State. In default whereof he shall

undergo for one year S.I. Under section 15 Arm Act, he was sentenced for 05 years R.I with a fine of Rs.30,000/-. In default whereof he shall undergo for further 06 months S.I. Benefit of section 382-B Cr.P.C was extended to the accused/appellant.

2 Precisely, the facts of the prosecution case, as per FIR, are that on 17.4.2015 complainant brought the dead bodies of deceased Mst. Dilshad Begum wife of Muhammad Naseer and Imtiaz Alam son of Zargham and lodged a report in Police Station Banda Daud Shah to the effect that on the eventful night he and other members of his family were asleep in the house of his son Muhammad Ishfaq. At about 0100 hours he heard the noise of fire shots. He awaken and saw his grandson namely Jawad (convict/appellant) who on seeing both the deceased in compromising position killed them. Motive stated by the complainant was that the

accused on seeing both the deceased in compromising position.

3. The convict/appellant was arrested and after completion of investigation complete challan against the accused was put in Court. Accused was produced in custody. Provisions of section 265-C Cr.P.C complied with and thereafter he was formally charge sheeted under sections 302/15AA, to which he pleaded not guilty and claimed trial.

4. Trial commenced and the prosecution in order to prove its case, examined as many as eleven witnesses. After closure of the prosecution evidence, statement of the accused was recorded under section 342 Cr.P.C, wherein he pleaded innocence, however, he neither wished to produce evidence in defence nor to be examined on oath under section 340(2) Cr.P.C. After conclusion of the trial, the learned trial Court after hearing

arguments of counsel for the parties, convicted and sentenced him as mentioned above.

5. Feeling aggrieved by the judgment of the learned trial Court, Jawad-ur-Haq, the appellant impugned the same through filing instant Cr. Appeal.

6. Learned counsel for the appellant argued that impugned judgment of the learned Trial Court is against the law, facts and evidence available on record; that the learned trial Court has convicted the appellant on flimsy and capricious grounds by misreading and none reading the evidence on record; that the occurrence has taken place in dark hours of night which has admittedly remained un-witnessed and the accused has been charged only on the basis of suspicion. He further argued that it is unbelievable that a person after committing a double murder will wait in his house for the arrival of police and will hand over two weapons to them with a

confession that he has committed the offence. He further argued that the medical evidence is in complete contrast to the story set up in the FIR and circumstantial evidence does not support the prosecution version. He lastly argued that the instant appeal deserve to be allowed and the accused/appellant be acquitted from the charges alleged against him.

7. Conversely, learned AAG representing the State argued that appellant is directly charged for effective firing at the deceased; that ocular account furnished by the PWs is straight forward and confidence inspiring which is corroborated by medical evidence, site plan, recoveries of blood and empties from the spot; that the prosecution has successfully proved the guilt of the appellant through overwhelming evidence available on record and sought dismissal of the appeal of the appellant.

8. Valuable arguments of learned counsel for the parties and AAG representing the State heard and record perused.

9. According to the contents of FIR, the complainant and other inmates of the house are the eye witnesses of the occurrence but in cross examination the complainant (PW-10) admitted that he heard the noise of firing at about after 1100 p.m. He was sleeping in the house of Muhammad Ishfaq and the occurrence had taken place in the house of Muhammad Nasseer, which is situated at a distance of 50/100 paces from the house of Muhammad Ishfaq. He further admitted that he has not seen the accused at the time of firing and that after the occurrence Muhammad Jalil and Muhammad Razzaq also reached to the spot. Before charging the accused they consulted the enquiry with one another. He also admitted in cross examination that he is not eye witness of the occurrence. In a criminal case, the evidence

produced by the prosecution should be so strong or solid that it should start right from the toe of the deceased on one hand and the same should encircle a dense grip around the neck of the accused on the other hand and if the chain is not complete or any doubt which occurred in the prosecution's case that is sufficient to demolish the structure of evidence and the benefit of doubt must go to the accused especially when the same has been built up on the basis of feeble or shaky evidence. It is also settled law that not many circumstances creating doubt in the prosecution story are required but only one circumstance creating doubt in the prosecution story is enough to acquit the accused. Reliance can easily be placed upon 2009 SCMR 230 wherein the Hon'ble Supreme Court has held as under:--

> "For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right."

10. The motive advanced by the prosecution remained unproved. No shred of evidence whatsoever has been led to prove as to where and in whose presence the deceased were present in compromise position as alleged by the complainant in his report. It is settled law that where the motive remains unproved, then the ocular account would be considered with great care and caution. Complainant, no doubt appeared as solitary witness, who happens to be the father in law of deceased Mst. Dilshad Begum. No doubt, conviction can be recorded on the basis of solitary statement of a witness having close relation with the deceased or victim provided the same is trustworthy, confidence inspiring and corroborated by strong circumstances of the case. Besides, an eyewitness who claimed his presence at the spot, to make his testimony believable and reliable, must satisfy the mind of the court

through some physical circumstances or through some corroborative evidence about his presence at the spot.

11. Mere recovery of blood from the spot, bloodstained last worn garments of the deceased coupled with positive Serologist report and recovery of empties from the spot, in absence of direct evidence, would not be sufficient to sustain conviction of accused in capital charge. Such recoveries are always considered as corroborative pieces of evidence, which are always taken into consideration along with direct evidence and not in isolation.

12. We are of the firm view that prosecution has miserably failed to bring home the guilt of appellant through cogent and confidence inspiring evidence beyond shadow of doubt. The prosecution evidence is pregnant with doubts and according to golden principle of benefit of doubt one substantial doubt would be

enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim " it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent". Wisdom in this regard can also be derived from the judgments of the apex court in case titled, **"Muhammad Khan and another v. The State" (1999 SCMR 1220)** and case titled, **"Muhammad Ikram v. The State" (2009 SCMR 230).** The learned trial Court

has not evaluated the evidence in its true perspective and thus reached to an erroneous conclusion by holding the appellant guilty of the offence. Resultantly, this appeal is allowed. Conviction and sentences of the appellant are set aside and he is acquitted of the charges leveled against him. He be set at liberty forthwith, if not required in any other case.

These are the detailed reasons of my short order of even date.

Announced
07.11.2017

JUDGE.

JUDGE.

Ihsan.-*