

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT**  
**MINGORA BENCH**  
(Judicial Department)  
**Cr.A No. 267-M/2021**

Sultani Room son of Shah Zamin.....(Appellant)

V/S

The State & another .....(Respondents)

Present: Mr. Rahim Ullah, Advocate, for the accused/  
appellant.

Hafiz Ashfaq Ahmad, Astt: A.G, for the State.

Mr. Ashfaq Ahmad Khan, Advocate, for the  
respondent/complainant.

**Criminal Revision No. 72-M/2021**

Sanobar Khan son of Said Haroon .....(petitioner)

v/s

Sultani Room & another.....(Respondents)

Present: Mr. Ashfaq Ahmad Khan, Advocate, for the  
petitioner/complainant.

Mr. Rahim Ullah, Advocate, for the accused/  
respondent.

Hafiz Ashfaq Ahmad, Astt: A.G, for the State.

Dates of hearing: 23.01.2024

**JUDGMENT**

**SHAHID KHAN, J.-** Through the subject  
single judgment, the Court shall decide the  
captioned criminal appeal No. 267-M of 2021  
Titled **“Sultani Room v/s The State &  
another”** coupled with the connected criminal  
revision No. 72-M/2021 Titled **“Sanobar Khan  
v/s Sultani Room & another”**, as the subject  
criminal appeal & criminal revision are by-  
product of one & the same impugned  
order/judgment passed by the learned

Additional Sessions Judge/Izafi Zila Qazi,  
Kabal, Swat, dated 23.10.2021, in respect of  
case FIR No. 172 dated 15.03.2020, U/Ss  
302/201 PPC, R/W Section 15-AA, P.S, Kabal,  
District Swat.

2. Reportedly, the complainant,  
Sanobar Khan reported the subject event to the  
local police at emergency ward of Kabal  
hospital in terms that on the relevant day, date  
& time he was present in his house in  
connection with the marriage of his nephew. At  
17:30 hours, he received information from one  
Faisal Hayat via mobile phone that he along  
with one Israr and his nephew Khalid Khan  
(deceased) have gone to the house of their aunt,  
Mst. Gulshan situated at the vicinity of village  
*Qalagai*. Both the aforesaid persons i.e. Faisal  
Hayat & Israr were sitting in the house of the  
accused/appellant, Sultani Room, whereas,  
Khalid Khan went inside the house in order to  
meet with his aunt (پہوپی). After a while, the  
children of the house came to the *Baitak*/guest  
room and informed the aforesaid two persons  
with the respect to the quarrel in between  
Khalid Khan and the accused/appellant, Sultani

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Room. Acting on such information, when they went inside the house in order to ease-down both the parties. Inside the premises of the house, the accused/appellant, Sultani Room (while being duly armed with Kalashnikov) started firing at Khalid Khan, as a result of it, he got hit on right side of his belly and died on the spot. The accused after the commission of offence decamped from the spot and the deceased then injured was shifted to the Kabal hospital for treatment. For verification of the aforesaid information conveyed by Faisal Hayat, when the complainant went to the emergency ward of Kabal hospital, whereby, he found the dead body of the deceased, Khalid Khan. The occurrence was claimed to have been witnessed by Faisal Hayat and Israr. Motive for the commission of offence was stated to be verbal altercation (وقتی تکرار) which took place between the parties. In view of the report of the complainant, the 'Murasila' (Ex. PW-2/3) was drafted which culminated into the *ibid* FIR (Ex. PW-14/1) registered against the accused/appellant at P.S concerned.

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3. Upon arrest of the accused/appellant followed by completion of investigation, *challan* was drawn and was sent-up for trial to the learned trial Court. Accused/appellant was confronted with the statement of allegations through a formal charge-sheet to which he pleaded not guilty and claimed trial.

4. To substantiate the guilt of the accused/appellant, the prosecution furnished its account consist of the statements of fifteen (15) witnesses. The accused was confronted with the evidence so furnished through statement of accused within the meaning of section 342 Cr.P.C.

5. On conclusion of the proceedings/trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the accused/appellant and the learned counsel for the complainant/learned State counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the appellant/accused through cogent & worth

reliable evidence, as such, the accused was convicted & sentenced as follows:-

**U/S 302 (b) PPC to imprisonment for life, along with compensation in the sum of Rs. 200,000/- (two hundred thousand), U/S 544-A Cr.P.C, in default of payment of the compensation, the accused shall further undergo six months, simple imprisonment.**

**U/S 15-AA to suffer rigorous imprisonment of three years, with fine of Rs. 10,000/- (ten thousand), or in default of payment of fine, the accused shall further undergo one-month, simple imprisonment, however, the appellant was acquitted U/S, 201 PPC.**

**All the sentences were ordered to run concurrently.**

**The accused/appellant has also been extended the benefit of section 382-B Cr.P.C.**

6. It obliged the appellant/accused to approach this Court through the subject criminal appeal, whereas, the petitioner/complainant has also filed the connected criminal revision No. 72-M/2021 for enhancement of the sentences awarded to the accused/respondent.

7. Learned counsel for the parties as well as the learned Astt: A.G for the State have been heard at a length and the record gone through with their valuable assistance.

8. The record so furnished would divulge that in the case in hand the law of the land was set into motion by the complainant, Sanobar Khan (PW-11) when he reported the

unfortunate incident of the murder of his nephew, Khalid Khan to the local police at emergency ward of Kabal hospital, whereby, he specifically charged the accused/appellant, Sultani Room for committing the murder of the deceased by firing at him through his Kalashnikov. Motive for the commission of the offence was stated to be verbal altercation which took place between the parties at the spur of the moment. It is also an admitted fact on both ends, that the complainant himself is not an eyewitness of the occurrence as at the relevant time he was present in his house in connection with the marriage of his nephew. The whole charge of the complainant against the accused/appellant qua the murder of the deceased is based on the ocular-account/information conveyed by PWs, Faisal Hayat and Israr. Both of them have accompanied the deceased Khalid Khan to the house of the accused/appellant, Sultani Room, wherefrom, they were supposed to bring the other PW, Mst. Gulshan to the house of her parents. It is also an admitted fact floating on

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the surface of the record that the entire prosecution's case hinges upon the testimonies of both the aforesaid witnesses as well as the ocular-account furnished by another eyewitness of the occurrence, Mst. Gulshan Bibi. On his own turn, Faisal Hayat, appeared in the witness-box as PW-10. In his examination-in-chief, he almost reiterated the same facts as advanced in the '*Murasila*' followed by the *ibid* FIR lodged by the complainant, qua the effective role of committing the murder of the deceased, Khalid Khan, by the accused/appellant, Sultani Room, by firing at him through his Kalashnikov and that too inside the premises of his house. It is very much clear from the examination-in-chief of this PW that he has come up with a very straight-forward & natural narrations of the occurrence in terms that on the fateful day he in the company of other PW, Israr accompanied the deceased, Khalid Khan in order to bring the PW Mst. Gulshan Bibi to the house of her parents and at the relevant time they were sitting in the

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*Baitak*/guest room and upon hearing the sound of quarrel as well as pursuant to the call of Mst. Gulshan Bibi when they went inside the house they saw the accused/appellant, while being duly armed with Kalashnikov started firing at Khalid Khan, as a result of it, he got hit and died on the spot. He was cross-examined at considerable length by the learned counsel for the defence, however, the probative worth of his testimony qua the effective role of committing the murder of the deceased could not be shattered. With the blessing of the learned counsel for the defence, the arrival of the complainant-party to the spot of occurrence was confirmed & verified in view of the depositions of PW-10, in the following words;-

فی

میں، اسرار اور خالد بذریعہ vitz موٹر کار گلشن بی بی کے گھر آئے تھے۔ ہم خانہ ملزم بوقت تقریباً 16:45 بجے پہنچے تھے۔

With respect to the mode & manner of the occurrence, PW-10, in his examination-in-cross deposed as under;-

جب خالد اندر چلا گیا تو 5/6 منٹ بعد ہم نے شور کی آواز سنی۔ شور کی آواز سننے پر گھر کے بچے اور مسماۃ گلشن بی بی ہمارے پاس خلاصی کیلئے اندر لے



جانے کیلئے آئے ہم فوار اندر چلے گئے۔ جب ہم اندر چلے گئے تو ملزم نے مقتول  
خالد پر بذریعہ کلاشنکوف فائر کی اور دوسرے دروازے سے بھاگ کر نکل گیا۔

Same was the case with the  
testimony of another eyewitness of the  
occurrence, Mst. Gulshan Bibi. She appeared  
in the Court as PW-9. In her examination-in-  
chief, she deposed almost the same narrations  
of the occurrence as advanced by PW-10,  
Faisal Hayat, qua the murder of the deceased,  
Khalid Khan, committed by nobody else but  
her real husband, therefore, this element alone  
excludes all possibilities of consultations or  
deliberations on the part of the complainant-  
party qua implication of the accused/appellant  
as a single accused in the case in hand. With  
respect to the presence of the deceased and  
other PWs, she deposed in her examination-  
in-cross, in the following terms;-

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مہمان خانہ جہاں پر چشم دید گواہان موجود تھے میری گھر کے پیوست ہے۔  
مقتول خالد خان فائر سے لگنے کے بعد بر موقع تھوڑی دیر بعد جان بحق ہوا  
تھا۔

The complainant of the case in  
hand, Sanobar Khan appeared in the Court in  
support of his case as PW-11. Though, he is  
not an eyewitness of the occurrence, however,

his account furnished in the Court is adamant of the fact that the deceased, Khalid Khan, in the company of other eyewitnesses i.e. Faisal Hayat & Israr were gone to the house of the accused/appellant, Sultani Room in order to pick the other PW, Mst. Gulshan Bibi. The prosecution also made reliance on the account of Mst. Wilayat Bibi. She appeared in the witness-box as PW-12. In her examination-in-chief, she has put-forward the purpose of the visit of the complainant-party to the house of the accused/appellant, in the following terms;-

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میں نے اپنے نواسے خالد کو مساتہ گلشن بی بی کو لانے کیلئے بھیجا تھا۔ مذکورہ خالد نے اپنے ساتھ دیگر دو کسان اسرار اور فیصل حیات کو بھی اپنے ساتھ لے گئے تھے چونکہ میں اس روز اپنے گھر میں اکیلی تھی۔ میری بہو اپنے بچہ کو ہسپتال لے گئی تھی اور میری بیٹی بھی گھر پر موجود نہ تھے۔

The complainant as well as the PW-12 were cross-examined at a substantial length, however, nothing favourable to the accused/appellant could be extracted from their mouths qua the presence of the deceased & other eyewitnesses at the venue of crime i.e. the house of the accused/appellant.

9. Bare look of the trend of cross-examinations of PW-9 & PW-10 would reflect that they have not been cross-examined in terms of their presence in the house of the accused/appellant on the fateful day in the company of the deceased, Khalid Khan. The presence of the aforesaid eyewitnesses of the occurrence also affirmed by way of testimony of PW-5, Akhtar Munir, Constable, who stated in his examination-in-cross that when they went to the venue of crime, the eyewitnesses i.e. Israr & Faisal Hayat were present there, however, they were called to the spot pursuant to the information conveyed by police.

Israr

10. The learned counsel for the accused/appellant also raised an objection in respect of the testimonies of the witnesses i.e. Mst. Gulshan Bibi, PW-9, Faisal Hayat, PW-10 and the complainant, Sanabor Khan, PW

11 (uncle of the deceased), being closely related to the deceased. It is transparent from the record that neither during the investigation nor during the trial an iota of evidence could have been surfaced which could prima facie speak of any *ill-will* or *malafide* on part of the star witnesses of the prosecution which could strike the prudent mind as to depose falsely against the accused/appellant for their vested interest. In this regard, reliance is placed on the judgment of Apex Court rendered in case titled "Qamar-uz-Zaman alias Kala v/s The State" reported as 2011 SCMR 856. It was also held by the Apex Court in case titled "Naik Muhammad alias Nika & another v/s The State" reported as 2007 SCMR 1639 that mere relationship of witnesses with deceased per se would not render them interested or partisan witnesses.

11. The medical evidence furnished by PW-3, Dr. Sami Ullah further boost & substantiates the version of the prosecution. As per medical-legal report of the deceased i.e. Ex. PW-3/1, he has received multiple

firearm injuries on his body, which is exactly in consonance with the story of the prosecution, therefore, the medical evidence of the subject event duly supports the stance of the prosecution. Even otherwise, it is well settled that corroboration is only rule of caution and not a rule of law. If testimony of an eyewitness is found reliable & trustworthy then there is hardly any need to look for any corroboration. In this regard, reliance is placed on the case law titled "Muhammad Waris v/s The State" reported as 2008 SCMR 784. Similarly, it was also held by the Apex Court in case titled "Shafat Ali & others v/s The State" reported as PLD 2005 Supreme Court 288 that as far as medical evidence or expert's opinion was concerned, it was always treated to be confirmatory in nature and if there was ocular account fully reliable in support of incident, then the minor contradictions in medical and ocular account, if any, could be outweighed.

12. The case in hand is also having sufficient circumstantial evidence in the form of

recovery of blood stained earth, crime empties of 7.62 bore from the spot (in scattered conditions) and weapon of offence i.e. Kalashnikov, on the pointation of the accused/appellant coupled with positive FSL report, therefore, the circumstantial evidence is also in line with the version of the prosecution.

13. As a result of cumulative effect of evidence of the prosecution, the Court has reached to the conclusion that the accused/appellant has rightly been found guilty of commission of the offence, however, his sentence of life imprisonment requires a rethinking. It is part of the record and as highlighted by the learned counsel for the appellant/accused that there is an ordinate delay of one hour in reporting the matter to the local police despite the fact that as per version of the prosecution the complainant was informed well within time by the eyewitness, Faisal Hayat through his mobile phone from the alleged occurrence of the murder of the deceased, therefore, he was under statutory obligation to inform the local police with utmost promptitude, however, as per available record, the prosecution could not furnish any plausible explanation qua



the delay of one hour occurred in reporting the matter to the local police. It is also evident from the bare perusal of the record that the most important & relevant eye-witness of the occurrence i.e. Israr son of Shah Bahadar was not examined by the prosecution, therefore, an inference could be drawn within the meaning of Article 129 (g), *Qanun-e-Shahadat Order*, 1984 that had he been produced he would have not supported the case of prosecution. Similarly, the testimony of PW-9, Mst. Gulshan Bibi is of no legal worth for the prosecution qua the guilt of the accused/appellant, as her name has neither been mentioned in the '*Murasila*' followed by the *ibid* FIR nor she has been cited as an eyewitness of the occurrence in the site plan, Ex. PW-15/1. There is also in field the delayed statement of the PW, Mst. Gulshan Bibi, whose testimony could be of paramount importance to the case of prosecution as she was nobody else but the real wife of the accused/appellant and aunt (پہوچی) of the deceased, Khalid Khan. Other than it, the prosecution has not been able to bring on record any specific motive that why the accused/appellant was all-out to kill the deceased

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and that too inside the premises of his house rather the motive as set-up by the prosecution in the form of verbal altercation (وقتی تکرار) prima facie suggests that the occurrence might have taken place at the spur of the moment, therefore, prima facie, it seems that the accused/appellant was having no premeditation or intention to kill the deceased. On all counts, all these minor weaknesses & lacunas in the evidence of prosecution, as discussed hereinabove, may not be taken as a justification for the out-right acquittal of the accused/appellant, but such weaknesses may be considered for reduction of the sentence as held by the Apex Court in case titled "Mst. Bevi v/s Ghulam Shabbir and another" reported as "1980 SCMR 859", wherein, it has been observed;-

"It has been held in some cases that the principle underlying the concept of benefit of doubt can in addition to the consideration of question of guilt or otherwise, be pressed also in matter of sentence. As a definite motive was asserted against the respondent and the same has failed, keeping in view all the circumstances of this case, it would not be necessary to impose the capita' punishment. Therefore while finding him guilty; under section 302, P. P. C. he is sentenced to transportation for life should be awarded as compensation."

A similar rational has also been expounded by the Apex Court in case titled "Mir Muhammad alias Miro v/s The State"



reported as 2009 SCMR 1188. Further reliance may also be placed on the judgments rendered in case titled "Muhammad Ayaz Khan v/s Murtaza and other" reported as 2008 SCMR 984 and case titled "Kamran Ullah v/s The State and another" reported as 2020 SCMR 1214.

14. Similarly, in eventuality when an accused person committed an offence without any premeditation or planning and in the heat of a free-fight had struck the deceased with a single blow. In such circumstances, his case would come within clause (c) of section 302, PPC. Conviction of accused recorded U/S 302 (b) PPC was altered to one U/S 302 (c) PPC and consequently, his sentence of life imprisonment was reduced to ten years imprisonment. Reference can be made to the case law Titled "Zeeshan alias Shani V/S The State (PLD 2017 Supreme Court 165).

Needless to highlight that in the event in hand, the accused/appellant was also confronted with the same set of allegations in terms that the occurrence took place at the spur of the

moment during the course of verbal altercation without any premeditation or planning on the part of the accused/appellant. All such circumstances are taken as sufficient justification for reduction of the sentence from the normal penalty of life imprisonment to ten years imprisonment.

15. In view of the above discussion and exposition of law, the subject criminal appeal is partially allowed to the extent that the sentence of life imprisonment awarded to the accused/ appellant, Sultani Room, U/S 302 (b) PPC is reduced to ten (10) years imprisonment within the meaning of section 302 (c) PPC. The benefit of section 382-B Cr.P.C is also extended to the appellant/accused, whereas, the rest of the impugned order/judgment dated 23.10.2021 shall remain intact.

16. Since we have allowed the appeal filed by the appellant/accused against his conviction & sentence, therefore, the connected criminal revision bearing No. 72-M/2021 filed by the petitioner/complainant for enhancement of the sentence awarded to the accused/

respondent has become infructuous, hence, the  
same is also dismissed.

Date of announcement  
Dt. 23.01.2024

  
JUDGE

  
JUDGE

Office  
25/01/2024  
WTR