

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

Cr.A.No.89-P/2022.

**J U D G M E N T**

Date of hearing ----- 02.02.2023.

Appellants by --- Mr.Shakeel Ahmad Khan, Advocate.

State by --- Mr.Muhammad Bashir Naveed, A.A.G.

Complainant/respondent in person.

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**S M ATTIQUE SHAH, J:-** Through instant criminal appeal, appellants Mst.Laiq Zari and Sikandar Hayat have challenged the impugned judgment dated 22.01.2022, rendered by learned Additional Sessions Judge/Judge Mode Criminal Trial Court (MCTC), Mardan whereby the appellants involved in case FIR No.277 dated 24.05.2017 registered under sections 302/34 PPC read with section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 at police station Garhi Kapoora, District Mardan were convicted under sections 302 (b)/34 PPC and sentenced to undergo each for life imprisonment as *Tazir* along with compensation of Rs.400,000/- payable to the legal heirs of deceased under Section 544-A Cr.P.C or in default thereof to

undergo six months simple imprisonment. Appellant Mst.Laiq Zari has also been convicted under section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 and sentenced to suffer imprisonment for three years, however, benefit of section 382-B Cr.P.C was extended to both the appellants.

2. As per prosecution case, Mst.Laiq Zari (appellant No.1), the then complainant along with her son Sikandar Hayat (appellant No.2) came to PP Gumbat where she reported the matter to the effect that on the eventful night, she along with her son and other children were sleeping in their house when at about 0010 hours a person hold her hand upon which she woke up and saw that it was Farman (deceased) who was her neighbour and asked her to commit *Zina Haram* with him upon which she started scuffling with him and due to her hue and cry her son Sikandar Hayat also got awakened and thus they both started beating Farman who fell on the ground, whereafter she fired at him with .30 bore pistol, as a result whereof he got hit and died on the spot. Later on, during the

course of investigation the appellants were nominated as accused upon the statement of Sulaiman Ahmad, son of deceased Farman, recorded under section 164 Cr.P.C.

3. After completion of investigation, complete challan against the appellants was submitted before the learned trial Court, which indicted them for the offence to which they pleaded not guilty. In order to prove its case, prosecution examined 10 witnesses, whereafter statements of the accused were recorded under section 342 Cr.P.C wherein they professed their innocence. After conclusion of trial, the learned trial court while appreciating the evidence in its wisdom had found the appellants guilty of the charge and; whilst recording their conviction sentenced them as mentioned above, whereagainst they have filed the instant appeal.

4. Record reflects that initially the matter was reported by appellant No.1 Mst. Laiq Zari through *murasila* Ex.P.A/1 while stating that at the relevant time and; place she was asleep in courtyard of her house,

meanwhile deceased Farman came to her cot and; caught hold her hand to commit her rape, which she resisted; upon her hue and; cry appellant No.2 Sikandar Hayat attracted to the spot and after noticing the deceased grappled with his mother brought an axe from the kitchen and gave a blow to the deceased. Appellant No.1 also fired at the deceased, which hit him, resultantly, he died on the spot. The matter was reported by appellant No.1 in the police station at 01:00 hours which was reduced into FIR EX.PA. Initially the case was registered under section 376/511/457 PPC. Subsequently, upon the statement of Sulaiman Ahmad son of deceased (PW-1) recorded under section 164 Cr.P.C. on 25.09.2017 both the appellants were charged for the murder of deceased under section 302/34 PPC, which resulted into their arrest on 30.05.2017 whereafter they recorded their confessional statements on 30.05.2017 & 01.06.2017 respectively wherein they confessed the crime; but in self-defence. Prosecution in support of its case examined 10 P.Ws. P.W-1 is the statement of Sulaiman Ahmad s/o the

deceased who reiterated his statement so recorded under section 164 Cr.P.C. P.W-2 is the statement of Muhammad Sadeeq who has stated that appellant No.1 was having a bad character, and; therefore, people of locality turned her out from the village. Dr. Ahsan was examined as P.W-3 who conducted the postmortem examination of the deceased Ex.PM. He also endorsed the injury sheet prepared by him as Ex.PM/1. The postmortem report Ex.PM shows the following injuries.

**INJUREIS:-**

1. FA entry wound of 0.5 cm at back of right ear with cut on that side of ear and exit wound on left side of skull approximately 2.5 cm in length.

2. Injuries on right leg as below

*Below knee sharp injury*

*In middle of leg blunt injury*

*Scalp, skull and vertebrae:- left side skull bone fracture with damage to membrane and soft tissues.*

*Right side skull part at back of right ear also damaged.*

**Thorax:** healthy.

**Abdomen:** healthy

**Muscles, Bones and Joints:-**

*Right leg blunt and sharp injury*

*Left side skull bone fractured.*

**OPINION:-**

*In my opinion the death occurred due to damage of brain tissues.*

Kareem Khan, SI was examined as (P.W-4). He stated that on 24.05.2017 at about 01:00 AM the appellant No.1 in the company of appellant No.2 reported the matter in the police post upon which he scribed the *murasila* Ex.P.A/1, which was thumb impressed by appellant No.1, the said report was also endorsed by appellant No.2 by signing the same. He also prepared recovery memo Ex.P.W-4/1 vide which he took into possession a 30. bore pistol bearing No.FF681 (cut) along with a fixed charger containing two live rounds produced before him by the appellant No.1 at the time of report. He also prepared injury sheet and; inquest report of the deceased Ex.PW-4/2 and; Ex.PW-4/3, respectively. He sent the dead body of the deceased for PM examination through Bilal FC No.3151. Shafi Ullah, SI was examined as (PW-5) who stated that during the days of occurrence, he was posted as Moharrar who handed over the crime pistol to Karim

Khan, SI (PW-4) for its safe custody. Bilal FC No.3151 was examined as (P.W-6). He stated that in his presence appellant, No.1 produced the crime pistol vide recovery memo Ex.PW-4/1 while stating that she has committed the murder of deceased Farman her neighbour who entered her house with intent to commit *Zina Bil Jabr* with her. Atta Muhammad FC No.3458 was examined as (P.W-7). He is the marginal witness of recovery memo Ex.PW.7/1 vide which the I.O secured blood-stained earth from the place of deceased and; sealed the same into parcel No.1 Ex.P1. In his presence the I.O also secured vide recovery memo Ex.PW.7/2, two empties of 30 bore pistol freshly discharged lying in scattered condition and; sealed the same into parcel No.2 Ex.P2. In his presence, the appellant No.2 produced to the I.O one Axe (blood-stained) while disclosing that with the said axe he had given blows to deceased during grappling. Likewise, he is marginal witness to recovery memo Ex.PW.7/1 vide which the I.O took into possession blood stained clothes of deceased consisting of one *Qameez*, *shalwar* sent by the doctor

through constable Bilal No.3151, which were sealed by the I.O in parcel No.3 Ex.P4. In his presence the I.O also took into possession sperm stains of deceased vide recovery memo Ex.PW.7/5 sent by the doctor through constable Bilal No.3151, which was sealed into parcel No.4 as Ex.P5. In his presence lady doctor after examining Mst. Laiq Zari took her swab in a phial and handed over the same to the I.O through recovery memo Ex.PW.7/6 which was sealed into a parcel as (Ex.P6). He is also the marginal witness of the recovery memo Ex.PW.7/7 through which the I.O took into possession crime pistol which was sealed by him in parcel No.6 (Ex.P7). He is also the marginal witness of the pointation memo Ex.PW.7/8 & Ex.PW.7/9 drawn at the instance of the appellants. Ajab Khan, SHO was examined as P.W-8 who after completion of the investigation submitted complete challan against the appellants. Mohib ur Rehman, Judicial Magistrate-Ist Class, Mardan was examined as P.W-9 who recorded confessional statements of both the appellants on 30.05.2017 & 1.06.2017 respectively. He exhibited the



questionnaires as Ex.PW.9/1 & 9/4, certificates as Ex.PW.9/2 & 9/5, and; confessional statements of appellants as Ex.PW.9/3 & 9/6 who endorsed the said documents and; admitted his signatures thereupon. Muslim Shah, Inspector was examined as P.W-10 who investigated the case.

5. Heard. Record perused.

6. Record shows that the occurrence was taken place at 00:10 hours, which was immediately reported by appellant No.1 in presence of appellant No.2 at the police post. Appellant No.1 also produced to the scribe of *murasila* Ex.PA/1 the crime pistol which was taken into possession by him. Subsequently, on pointation of both the appellants, pointation memos were also prepared by the I.O. Both the appellants also recorded their confessional statements while endorsing their initial report which was made through *murasila* Ex.PA/1 and; *FIR* Ex.PA. The commission of occurrence inside the house of the appellants was not denied by (P.W-1) Sulaiman Ahmad son of the deceased, however, he has stated that appellant No.1

was leading an immoral life while his deceased father refrained her from such life but she was not ready to give up immoral life, and; therefore, both the appellants with consultation took the deceased inside their house and murdered him. However, in his cross-examination, he stated that "*I am not the witness of the occurrence*". He has also stated that he has not made any complaint to the police regarding the bad character of appellant No.1 or taking his father inside the house by both the appellants. He has admitted in his cross-examination the presence of the dead body of deceased inside the house of appellants. He has also admitted that there were witnesses of the occurrence, however, neither, he could produce them before I.O in support of his stance, nor the prosecution could record their testimony before the court at the time of trial. He has also admitted it correct that the husband of Mst. Laiq Zari is alive and at the relevant time and; date of the occurrence, he was not present at the spot. He has also admitted it correct that he has not brought any witness for recording

statement regarding the bad character of appellant No.1 and; her immoral life.

7. Though, prosecution has placed much reliance and; stress on the confessional statements of the appellants' Ex.PW-9/3 & Ex.PW-9/6, but it cannot get any benefit therefrom as both the appellants had endorsed their stance regarding the occurrence as taken on the day first in a very straightforward manner which rings true in the peculiar circumstances of the case. It is a settled principle that conviction can be based upon a solitary judicial confession of an accused but in that eventuality, it is to be relied upon in toto without any pick and; choose. **2023 SCMR 139 JAVED IQBAL V. THE STATE. 2015 SCMR 856 DADULLAH and another V. THE STATE. PLD 2006 SC 30 MANJEET SINGH V. THE STATE.** When the said confessional statements are placed in juxtaposition with the initial report of the appellants containing in *murasila* Ex.PA/1 & *FIR* Ex.PA the same rings true, voluntary, and; confidence inspiring fully endorsing their initial report qua commission of the offence wherein they

both have admitted the occurrence but in self-defence.

8. Undeniably, the occurrence had taken place inside the house of the appellants; but they immediately reported the matter to the police officials in the PP which was reduced into *murasila* Ex.PA/1 followed by registration of *FIR* Ex.PA while taking the plea of self-defence to protect the honour of appellant No 1. Later, they were nominated as accused upon the statement of (P.W-1) Sulaiman Ahmad s/o the deceased, and got arrested and; made confession. However, while recording their statements under section 342 Cr.P.C both the appellants denied the commission of offence while abandoning the plea of self-defence. However, it's been long settled that if an accused had not raised the plea of self-defence during trial either in his statement under section 342 Cr.P.C or at the time of cross-examination of the prosecution witnesses, still, the court can infer the same from the evidence led during the trial if it is reasonable and; appealable to prudent mind. ***Safder Ali V Crown (PLD 1953 F C 93), Shamir alias Shamla v. The***

**State (PLD 1958 S C 242), P L D 1964**

**(W.P) Peshawar 143 and Mohammad**

**Zaman V. Dost Mohammad and others**

**(SCMR 1988 388).** As earlier discussed,

both the appellants had also recorded their

confessional statements Ex.PW-9/3 &

Ex.PW-9/6 respectively while admitting the

occurrence inside their house at the

relevant time but had taken the plea of self

defence in order to protect the honour of

the appellant No 1 which squarely supports

their stance reported in *Murasla* Ex.PA/1 ✓

and; *FIR* Ex.PA. In the matter of self-

defence, courts have to carefully examine

and; analyze the evidence put forth by the

prosecution at the time of appraisal and;

reappraisal, and; while arriving at the

conclusion that the occurrence has taken

place as a result of self-defence, then even

though no such plea has been taken by the

accused in their statements under section

342 Cr.P.C. or while cross examining the

prosecution witnesses, the benefit of the

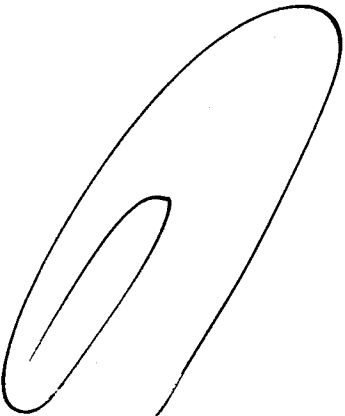
same can undeniably be extended to them

as a matter of right and; not as a grace

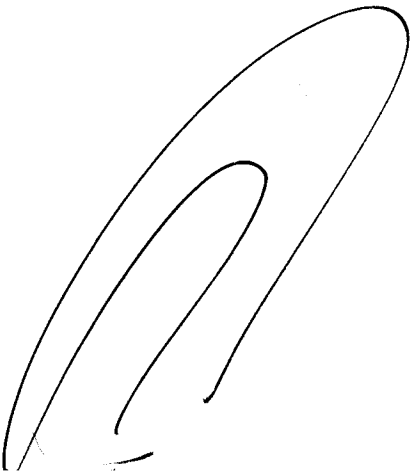
keeping in view the cumulative effect of

such evidence.

9. As discussed above the occurrence had taken place inside the house of the appellants at odd hours of the night and; the dead body of deceased has also been recovered therefrom which fact has also been fully supported by the prosecution evidence including Sulaiman Ahmad s/o the deceased. Therefore, given the peculiar circumstances of the case, now we have to determine whether the act/reaction in self-defence was proportionate and; commensurate to the threat to the honour of appellant No.1 or otherwise. It is settled that right of self-defence only commences when a reasonable apprehension arises from an attempt or threat to commit an offence and it is always to be exercised as a preventive measure rather than for launching an attack. As earlier discussed, per PM report Ex.PM. deceased had received ***one entry wound of 0.5 cm at the back of right ear with cut on that side of ear & exit wound on left side of skull approximately 2.5 cm in length alongwith an injury on Rt leg below knee (sharp injury), in the middle of leg (blunt injury).*** The firearm



injury is attributed to appellant No.1 which caused the death of the deceased, while the sharp and; blunt injury had been attributed to appellant No.2. Admittedly, the occurrence occurred at odd hours of the night while both the appellants were asleep when the accused entered their house, therefore, the reaction of both the appellants was quite natural in state of panic and; then obvious in the given circumstances as the law has recognized exercise of the right of self-defence to resist an attack on a person to defend his life and; honour when the same is in danger or at stake, particularly, when the state machinery is immediately and; readily not available to such person, then his reasonable use of force is justified under the law, however, the same must be proportionate and; commensurate to the threat posed therein. It's long been settled that courts while examining the question of self-defence, would not measure the action of an accused on a golden scale but would extend due concession on account of human error of judgment in such a situation. ***Ali Mea V. King- Emperor (AIR***



**1926 Cal. 1012), Ahmad Nawaz V. The State (1970 SCMR 597), and Mashal Khan V. The State (PLD 1988 SC 25).**

Keeping in view the *ibid* principle, particularly deceased a neighbor of the appellants, having sixty years of age, and; being empty-handed at the relevant time, therefore, in our estimation, the reaction of appellants was justified; but, the use of force was not proportionate and; commensurate to the attempt made by him in the given circumstances.

Given the above discussion, instant appeal is partially allowed, convictions of appellants are converted into Sections 302 (c)/34 PPC from Section 302 (b) PPC and; their sentence is reduced to five years simple imprisonment, amount of compensation is also reduced to 300,000/- payable to the LRs of the deceased under section 544-A or in default whereof to undergo four months simple imprisonment. Conviction under section 15 of Khyber Pakhtunkhwa Arms Act, 2013 is maintained, however, sentence is reduced to two years. Benefit of section 382-B Cr.P.C extended to the appellants shall



remain intact and; their sentences shall run  
concurrently.



JUDGE

**Announced.**  
**Dt. 17-02-2023**



JUDGE

HON'BLE MR.JUSTICE ABDUL SHAKOOR &  
HON'BLE MR.JUSTICE S. M. ATTIQUE SHAH.

(A-K-KHAN Court Secretary)