

BEFORE THE HONOURABLE PESHAWAR HIGH COURT
BANNU BENCH, BANUU.

Cr. Appeal No. 323-B / 2018

1. Bad Shah Jamil son of Plai Khan R/O Mohalla Janda Khel
 Ghundi Mir Khan Khel Tehsil & District Karak.
 Appellant

VERSUS

1. The State .
2. Muhammad Janbaz Khan son of Muhammad Amaz
 Khan R/O Ghundi Mir Khan Khel Tehsil & District
 Karak.. ----- Respondents.

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APPEAL UNDER SECTION 410 CR.PC AGAINST THE
JUDGMENT OF LEARNED SESSIONS JUDGE KARAK
DATED 28-07-2016 IN SESSION CASE NO. 28/7 OF 2015
ARISING OUT OF FIR NO. 127 DATED 25-09-1996 UNDER
SECTION 302//324/34 PPC POLICAION STATION SABIR
ABAD DISTRICT KARAK VIDE WHICH THE APPELLANT
HAS BEEN CONVICTED UNDER SECTION 302 (b) PPC
AND SENTENCED TO DEATH WITH DEATH AS TA'ZIR
U/S 302 (B) PPC FOR THE QATL-E-AMD OF THE VICTIM
AMEER FARAZ BY FIRE SHOTS AND HE SHALL BE
HANGED BY NECK TILL HE IS DEAD. FURTHER THE
APPELLANT IS AWARDED RS. 5, 00, 000/- (FIVE LACS)
COMPENSATION U/S 544-A (1) CR.PC PAYABLE TO THE
HEIRS OF THE DECEASED AND IF FAILS TO PAY THE
SAME IT SHALL BE RECOVERED AS ARREARS OF LAND
REVENUE AT PROPER TIME FAILING WHICH HE WILL
SUFFER SIX MONTHS R.I SUBJECT TO SEPARATE
ORDER.

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ATTESTED

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Peshawar High Court,
 Bannu Bench



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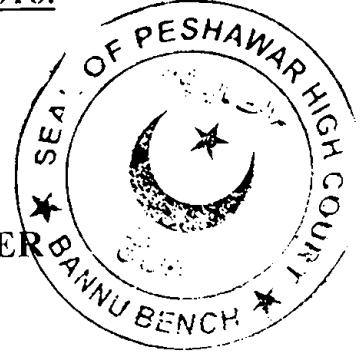
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(40)

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr.A. No.323-B/2016 with
Murder Reference No.07-B/2016.

BADSHAH JAMIL
VERSUS
THE STATE AND ANOTHER



JUDGMENT

Date of hearing: 14.02.2017.

Appellant-Petitioner Badshah Jamil by
Takuluddin Akbar Azam Adv. and M. Rehman

Respondent State by Shahid Hameed Qureshi
Addl: A.G. and other by Malik Akhtar Nawaz Adv.

ISHTIAQ IBRAHIM, J.- This criminal appeal is directed against the judgment dated 28.7.2016, passed by learned Sessions Judge, Karak, in case FIR No.127 dated 25.9.1996 registered under Sections 302/324/34 PPC at Police Station Sabir Abad, District Karak, whereby appellant Badshah Jamil was convicted under Section 302(b) PPC and sentenced to death as ta'zir alongwith compensation amounting to Rs.5,00,000/- (Rupees five lac) under Section 544-A(1) Cr.PC payable

to the legal heirs of the deceased and if fails to pay the same shall be recovered as arrears of land revenue at proper time failing which he will suffer six months R.I subject to separate order.

2. The learned trial Court has also sent Murder Reference No.07-B/2016 for confirmation of death sentence. Since the appeal and murder reference are the outcome of one and the same judgment, therefore, these are being disposed of through this single judgment.

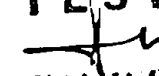
3. The story of prosecution as narrated in FIR (Ex.PW-10/1) is that on 25.9.1996 at 1100 hours, (PW-10) complainant Muhammad Jan Baz Khan brought the dead body of his cousin Ameer Faraz to the Police Station and reported the matter to the local police that on the fateful day he alongwith deceased had gone to the shop of Nasib Khan, when came out of the shop at about 1130 hours, the appellant armed with Kalashnikov emerged, made *Lalkara* and started firing at the deceased due to which he was hit and died on the spot.

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The complainant chased the accused to catch him but at some distance, co-accused Zafar Iqbal and Rasool Badshah duly armed were also present there who made firing at him but he escaped unhurt.

4. After completion of investigation, complete challan was submitted. Accused Zafar Iqbal alias Jabal and Rasool Badshah faced the trial and on conclusion of trial they were acquitted while the appellant was declared as proclaimed offender vide judgment dated 11.9.2003. Later on, the appellant was arrested and supplementary challan against him was submitted. The learned trial Court, on conclusion of trial, convicted and sentenced the appellant as referred above, vide judgment dated 28.7.2016, which is impugned before us.

5. At the very outset, learned counsel for the appellant submitted that, though, the learned trial Court has appraised and taken into consideration the testimony (512 Cr.PC statements) of two witnesses, i.e, PW Dr. Abdul Samad and PW Awal Khan SIO, but did not pass any formal order regarding the transfer of their

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EXAMINER
Peshawar High Court,
Bondu Bench

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statements from the file of previous trial of co-accused into the present trial and as such committed gross illegality, therefore, the impugned judgment of conviction is liable to be set aside.

6. Learned counsel for the complainant opposed the same while learned A.A.G for the State conceded to the legal preposition. He submitted that statements of these two PWs need to be transferred into the trial of the appellant in accordance with law, therefore, the case be remanded to the learned trial Court.

7. Order sheet No.18 dated 01.02.2016 of learned trial Court depicts that counsel for the complainant moved an application duly endorsed by SPP regarding taking into account earlier statements of PW Awal Khan retired SHO recorded as PW-7 and PW-11 during trial of co-accused, by then the appellant was absconding but the learned trial Court kept pending the said application by holding that *"the request would be seen in purview of Article 46(2) of the Qanun-e-*

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Shahadat Order, 1984 at the relevant time of judgment". Vide same order sheet fresh summon was also issued to PW Dr. Abdul Samad through Vice Chancellor Khyber Medical University, Peshawar and case was adjourned to 25.02.2016. On 25.02.2016 the case was adjourned to 21.3.2016 due to Note Reader. On 21.3.2016, counsel for complainant submitted an application duly forwarded by APP, whereby request for taking into account previous statement of PW Dr. Abdul Samad, recorded as PW-4, was made. This application was also kept pending by holding that *"the request would be seen in purview of Article 46 (2) of the Qanun-e-Shahadat Order, 1984 at the relevant time of judgment"*.

8. After going through the judgment, it appears that the testimony of these two witnesses was taken into consideration against the appellant when he was convicted in the above terms. Needless to say that the statements of witnesses recorded under Section 512

Cr.PC can be legitimately treated as evidence in

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EXAMINER
Peshawar High Court
Dera Ismail Khan

subsequent proceedings in view of provisions of Article 47 of Qanun-e-Shahadat read with Section 512 Code of Criminal Procedure but the learned trial Court has neither passed any order regarding transfer of statements of above mentioned witnesses to the file of the present case nor serious steps were taken to bring on record evidence regarding the non-availability of Dr. Abdul Samad and incapacitation of Awal Khan retired SHO and thus committed illegality while passing the impugned judgment.

9. For the reasons mentioned above, we allow Cr.A.No.323-B/2016, set aside the impugned judgment dated 28.7.2016 and remand the case to the learned trial Court with the direction to make efforts for the procurement of attendance of the subject witnesses failing which make order for the transfer of their statements recorded during the trial of co-accused, followed by recording of statement of the accused under Section 342 Cr.PC and thereafter pass the judgment after affording opportunities of hearing to the parties.

Office is directed to remit the record of the case to the learned trial Court immediately, who shall conclude the trial within shortest possible time but not later than four months from the date of receipt of the record while treating the accused as an under trial prisoner to be produced in the learned trial Court for further proceedings at that end. The Murder Reference No.07-B/2016 is also decided in negative.

Announced.
Dt: 14.02.2017.

Justice Afsar Shah, J

Justice Ishtiaq Ibrahim

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Examiner
Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

