

Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

JCr.A No.64-B of 2022

Gul Nawaz Khan

Vs

The State etc

JUDGMENT

For appellant: **Muhammad Saleem Awan Advocate**

For respondent: **Pir Shahan Liaqat Sayyed Advocate**

For State: **Mr. Umer Qayyum, Asstt. A.G.**

Date of hearing: **14.06.2023**

Dr. Khurshid Iqbal, J.---

FACTS:

1. Gul Nawaz Khan (appellant) was tried by the learned Additional Sessions Judge-IV / Model Criminal Trial Court (MCTC), Bannu, pursuant to a case registered vide FIR No.398, dated 23.06.2016, under sections 302/324/337-D/337-A(i), PPC, at Police Station Mandan, Bannu. On conclusion of the trial, the Trial Court convicted the appellant under sections 302/324, PPC, and acquitted him from the charges under sections 337-D/337-A(i), PPC. It recorded the conviction and sentence in the following terms:

- i. **Accused Gul Nawaz Khan is convicted and sentenced under section 302(b) PPC to**

imprisonment for life as ta'zir. He shall also pay compensation to the tune of Rs.5,00,000/- to the legal heirs of the deceased within the ambit of section 544-A of the Criminal Procedure Code, 1898. The same shall be recoverable as arrears of land revenue and in default of payment of such compensation, the convict shall suffer further S.I for six months.

ii. He is further convicted U/S 324 PPC to six years R.I with fine of Rs.60,000/- payable to both the injured persons (i.e. Rs.30,000/- each).


iii. Both the aforesaid sentences of imprisonment shall run concurrently. Benefit of section 382-B Cr.P.C is extended to the convict.

2. On 23.06.2016 at 22:30 hours, complainant Sher Wali Khan, alongwith the dead body of his deceased nephew Umer Daraz Khan, his sister-in-law Ms. Gul Qasim Jana Bibi and neighbour Ms. Mala Bibi, injured-victims, reported in the Emergency Ward of Civil Hospital, Bannu that on the night of the occurrence, he, alongwith his nephews Umer Daraz, Arsalan, sister-in-law Ms. Gul Qasim Jana and neighbour Ms. Mala Bibi, were present in the house of Umer Daraz. At 21:30 hours, appellant-accused Gul Nawaz Khan entered into the house and started altercation with Umer Daraz. During the altercation, he pulled out his pistol and started firing at Umer Daraz, Ms. Gul Qasim Jana and Ms. Mala Bibi in order to

commit their Qatl-i-Amd. As a result, they got hit and injured, whereas the complainant and his nephew Arsalan luckily escaped unhurt. Amongst the injured, Umer Daraz succumbed to his injuries on the spot. The appellant also fired at himself, the complainant added. The appellant registered a cross case FIR No.399 in which he charged the complainant for firing at him. Motive for the occurrence was disclosed as a dispute over womenfolk.

THE TRIAL:

3. After completion of investigation, report under section 173 Cr.P.C was submitted before the Trial Court. Copies of statements and documents were supplied to the appellant within the meaning of section 265-C Cr.P.C. He was charge sheeted,

 to which he didn't plead guilty and claimed trial. The prosecution in order to prove its case produced 14 witnesses. In

his statement recorded under section 342 Cr.P.C, the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he did not opt to appear as his own witness on oath as provided under section 340(2) Cr.P.C in disproof of the allegations levelled against him. He also did not produce any evidence in his defence. After hearing arguments of the prosecution and defence, the trial court convicted the appellant under 302/324, PPC, as per the details stated above, and acquitted him from the charges under 337-D/337-A(i),

PPC.

HEARING:

4. We have heard learned counsel for the parties at length and perused the evidence available on the record with their able assistance.

REAPPRAISAL OF EVIDENCE:

5. We propose to reappraise the prosecution evidence in the following parts.

A. Ocular account

6. We shall begin with the ocular account, as the prosecution case primarily depends on this kind of evidence. It was furnished by the complainant Sher Wali Khan and Ms. Qasim Jana, the injured mother of the deceased Umer Daraz (PWs 8 and 9). In their respective statements recorded as examinations-in-chief, they restated the prosecution story almost in the same details as it was stated as first information in the murasila recorded in the DHQ hospital in Bannu. Key aspects on which they were cross-examined pertains to: the relation of the appellant with the deceased and the injured Gul Qasim Jana at time of the incident, the purpose of the complainant and of the injured Ms. Mala Bibi in the house of the deceased; and, the moment of death of the deceased; and the motive.

Wali Khan

7. From their cross-examination, it is reflected that the appellant is the son-in-law of Ms. Gul Qasim Jana as Ms. Shaheena, her daughter is his wife. At the time of the incident, Ms. Shaheena was not present in her house. The complainant is the brother of late Gul Sharifullah Khan, husband of Ms. Gul Qasim Jana and father of the deceased Umer Daraz and Arsalan. He lives separately. He visits their house daily. Ms. Mala Bibi is an afghan woman, residing in their neighbourhood. She fetches water from a water pump in their house. On the eventful night, an altercation ensued between the appellant, Ms. Gul Qasim Jana and Umer Daraz. During the altercation, the appellant took out his pistol and opened fire which hit Umer Daraz, Ms. Gul Qasim Jana and Ms. Mala Bibi. As a result of the firing of the appellant, Umer Daraz died on the spot and the two women injured. The appellant also fired at himself in order to create a cross version of the incident. He charged the complainant Sher Wali Khan for firing at him. His case was registered on the basis of FIR No.399 on 23.06.2016 U/S 324, PPC. We will examine the cross case later in this judgment in greater details. The motive of incident was that Ms. Gul Qasim has another daughter by the name Ms. Amreena Bibi. The family had some dispute regarding the aforesaid Ms. Amreena. The time of the incident was not challenged in the cross examination. However, the complainant was asked about his

reading of watch for the purpose of time. He replied that he can't understand watch reading. However, in reply to another question, it was rather confirmed from him that the incident took place in the month of Ramadhan, and the tawarch prayer was finished at that time. He specifically stated that the time of the incident was 21:30 hours. Hence, the defence failed to create a material dent about the time of the incident. It is, however, important to note that regarding the presence of Ms. Amreena Bibi, both the PWs were not in unison. The complainant stated that Ms. Amreena is residing in Karachi and that she was not present at the time of incident. Ms. Gul Qasim Jana contradicted the complainant, stating that Ms. Amreena was present in the house at that time. The appellant in his judicial confession stated that Ms. Amreena was present and that he fired at her with criminal intention, and not at all others. We will dilate upon this aspect of the case later in this judgment. Of great significance is the fact that the presence of the appellant at the place of the incident, indeed, couldn't be disputed. The complainant denied a suggestion that he was not present on the spot. This suggestion, too, is factually wrong for the reason that the appellant in his cross report charged him for allegedly firing at him.

8. At the behest of the complainant, Inspector Hidayat-ur-Rahman, Investigating Officer (IO/PW12), prepared the site

plan (ExPB). As depicted in the site plan, the house, where the incident took place, is situated north-south, having its main entry gate in the north; a washroom linked to the northern wall, having opening towards south; two rooms with their doors opening toward north; and in the extreme south, there is small vacant place. The incident took place in the courtyard. The complainant and Arsalan were at points 1 and 5, near the eastern wall; Ms. Gul Qasim Jana, the deceased and Ms. Mala Bibi were respectively at points 3, 2 and 4; whereas the appellant was at point 6. The deceased faced all the three from north toward south; in front of him. The complainant and Arsalan were towards his right side in the east. The I.O collected blood from the place of the deceased only, two empties of .30 bore pistol from the place of the appellant: point 'A' near point 6, his place of presence, which he sealed in two parcels. The deceased, at point 2, happened to be his direct target, which obviously resulted in his death. The appellant was at a distance of 5 feet, 9 inches from the deceased; 6 feet 4 inches and 5 feet, 11, inches from the injured Gul Qasim Jana and Ms. Mala Bibi, respectively. The complainant was not cross examined from the perspective of the site plan. The I.O was somehow cross examined. He admitted having recovered no blood from the places of the injured women. He denied a suggestion that point 'A' has been written in different ink.

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Rather, he offered an explanation that he has given details of point 'A' at the back of the site plan. Ms. Amreena Bibi was shown in the site plan. It follows that she was not present at the place of the incident. It has been held umpteen times that when ocular account is natural, truthful, convincing, reliable, and confidence inspiring, then it alone is sufficient to sustain conviction. Reference can be made to Muhammad Irfan v. State (2018 PCr.LJ 1319), Muhammad Akhtar v. State (2009 YLR 1092), State v. Muhammad Sarwar (2007 YLR 74), Ijaz Ahmad v. State (2007 PCr.LJ 1249) and Shabbir Ahmad alias Shabbira v. The State (2003 PCr.LJ 1023).

B. Medical evidence

9. Coming to the medical evidence, we noted above that the deceased was directly in the line of the fire by the appellant. The complainant stated that after having been hit with the shots fired by the appellant, Umer Daraz breathed his last on the spot. Ms. Gul Qasim Janan supported his stance. Dr. Inamullah, the Medical Officer (PW6) in his post-mortem (PM) examination report noted that the time between injury and death was 03 to 05 minute. Hence, the medical evidence fully proved that the deceased died on the place of the incident. The PM report demonstrates that two firearm entry wounds with two exit wounds were found on the dead body of the deceased. The respective sizes of entry and exit wounds were the same: ¼ X ¼

and 1/3 X 1/3, respectively. While under cross examination, the Medical Officer admitted his inability, being not a forensic expert, to state within how much distance the deceased was hit. The respective sizes of the entry and exit wounds, referred to above, were got restated from him under cross examination.

10. The injured Ms. Gul Qasim Jana and Ms. Mala Bibi were medically examined by Lady Doctor Rozina Aman whose statement was recorded twice: as PW1 and PW 14. The former was injured on her abdomen. In her latter statement, Dr. Rozina Aman stated that the original medico legal report of Ms. Gul Qasim Jana was misplaced. She produced carbon copies of the report and discharge slip. She stated that the particulars of the injured Ms. Gul Qasim Jana were visible and readable in the carbon copy of the report, but the set of the injuries were found blank in the carbon copy. However, her statement candidly proves that Ms. Gul Qasim Jana was injured and admitted in the hospital and that her discharge slip shows her endorsement. It follows that both the women were injured, treated in the hospital and discharged. However, the exact seats of injuries of Ms. Gul Qasim Jana couldn't be verified from the carbon copy of her medico legal report.

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11. In the medical evidence, an important element cropped up from the medico legal report of the appellant. Dr. Shah Baraz (CW1), a Medical Officer in the Women & Children

Hospital, noted 07.30 pm as the time of examination of the appellant on 23/06/2016. Learned counsel for the appellant emphasized that 07.30 pm, as the time of examination of the appellant is materially doubtful. Be that as it may, the FIR he lodged against the complainant shows 21:30 hours as the time of the incident. The injury sheet available on the record of the cross case doesn't show the time of examination of the injuries on the appellant. However, the same was surely prepared at the time of recording of the FIR, which is 21:30 hours, and never 07.30 am. The same is, thus, surely a clerical mistake. The medical evidence is in consonance with the ocular account as regards the nature, locale, time and impact of the injuries on the person of the deceased. Thus, the medical evidence lends complete support to the ocular account. In similar circumstances, the Supreme Court in Muhammad Abbas and another v. The State (2023 SCMR 487), has considered the medical evidence in favour of the prosecution.

C. Recoveries

12. We would now advert to the recoveries. During the spot inspection, the I.O recovered blood stained earth from the place of the deceased and two empties of .30 bore pistol from the place of the appellant. One Constable Sadullah # 1792 (PW4) collected blood stained Qameez of the deceased from the Medical Officer which he handed over to the I.O. SHO Abdul

Majid Khan (PW13) arrested the appellant on 23.06.2016, the day of the incident and recovered from his possession the .30 bore pistol bearing # 777, which being unlicensed, a separate criminal case FIR # 106 was registered against him on 25.06.2016 under section 15-AA. Constable Naqibullah # 105 is one of the marginal witnesses of the memo vide which the pistol was recovered. The FSL reports of the aforementioned recovered articles, most notably of the pistol and the two empties, were returned as positive. The report clearly states that two crime empties were fired from the .30 bore pistol # 777, the blood stained earth and Qameez. As the appellant was under treatment in the hospital, SHO Abdul Majid arrested him who made a cross report in the Police Station. The positive FSL report lends full support to the prosecution case. When ocular account is reliable and duly supported by medical evidence as is the case before us, then the positive FSL report can safely be considered in favour of the prosecution. Reference may, for example, be made to Imran Mehmood v. The State (2023 SCMR 795), Asim Shahzad v. The State (2014 MLD 893) and Ghulam Hussain v. The State (2013 PCr.LJ 789).

D. Confession

13. The appellant recorded judicial confession before Judicial Magistrate Mr. Amir Ali Afridi (PW4). There are two material aspects of the confession. Firstly, PW4 recorded the

statement of the appellant through the Computer Operator of his court what he called under his supervision, and not under his own handwriting. In the certificate he appended to the confessional statement, he mentioned that the statement was recorded under his supervision. In his deposition, he mentioned the designation of the official who wrote it, but he didn't mention the name of the official. He didn't endorse this fact himself. Secondly, after recording the statement, he handed over the appellant to the police officials; not to the Naib Court of his court while sending on judicial remand to jail. Even if we don't believe, as the trial Court did, the confession as a piece of evidence, the question is can we ignore the cross case he registered against the complainant. Even otherwise, as held *Imran Mehmood v. The State (2023 SCMR 795)*, if the confessional statement of the appellant is excluded from consideration, there is sufficient material available on the record in the shape of ocular account duly supported by medical and circumstantial evidence to sustain conviction. We next propose to discuss the cross case (FIR # 399).

E. The cross case

14. The medical report of the appellant in the cross case shows one fire arm entry wound on his left leg at middle on the medial side of $\frac{1}{4}$ X $\frac{1}{4}$ size, with an exit on the lateral side, and of $\frac{1}{3}$ X $\frac{1}{3}$ size. Charring marks were found on the entry

wound. During investigation, Sher Wali Khan was found innocent and appellant was found to have caused a self inflicted injury on his left leg. On the direction of the trial Court, fresh challan against the appellant under section 337-II, PPC, was submitted. However, at the time of final judgment, it found that *mens rea* being missing in the case, it acquitted the appellant under section 249-A, Cr.PC. Irrespective of the factum of acquittal, it is fully established that the appellant registered the cross case in which his injury was found as self inflicted and the complainant Sher Wali Khan was found innocent. In his statement under section 342, Cr.PC, the appellant was confronted with the cross case. Astonishingly, he denied having registered that case. He furnished contradictory replies: terming the allegation in the murasila as incorrect and based on mala fide, on the one side, and stating that he was injured as a result of firing made by the complainant, on the other. He even termed incorrect the motive being dispute over womenfolk. It follows that the appellant, to the extent of the cross case, didn't offer honest replies. Hence, the appellant himself established his presence on the place of the incident by registering the cross case.

CONCLUSION AND THE VERDICT:

15. The conclusion of the above reappraisal of the prosecution evidence is that the incident took place inside the

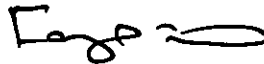
house of the complainant party; the presence of the complainant, the deceased and both the injured and of the appellant is fully established. The cross case further strengthens the presence of all of them. The complainant and the injured Gul Qasim Jana furnished ocular account of the incident which is direct, firm, categorical and confidence inspiring. They were not substantially shattered during cross examination. The non-examination of the injured Ms. Mala Bibi is not damaging to the prosecution case. The reason is that she was a stranger; an afghan woman who perhaps avoided to involve herself in the family dispute between the parties. Moreover, prosecution has produced all the material witnesses in order to bring home the guilt of the appellant. In the case of Haq Nawaz v. The State (2000 SCMR 785), the prosecution had examined the complainant, besides two other eye witnesses, mentioned in the FIR. However, it did not produce an injured witness. The defence agitated this aspect before the Supreme Court. While considering the plea, the Supreme Court held that non-production of the injured witness or other eye witnesses named in the FIR was of no consequence, as the prosecution was not bound to examine all the witnesses cited in the case. In the peculiar facts and circumstances of the case, the presence of Ms. Amreena also has no negative impact on the prosecution






case. The reason is that the occurrence of the incident has been duly and materially proved.

16. For the aforesaid reasons, we are firm in our view that the learned trial court has evaluated the evidence on file in its true perspective and has come to a correct conclusion, which is unexceptionable. The conclusions drawn and reasons given are cogent and convincing which find complete support from record of the case. These are neither arbitrary nor perverse or fanciful. Learned counsel for the appellant could not point out any material to interfere with the impugned judgment. Consequently, this appeal being devoid of any merit, is hereby dismissed.

Announced
14.06.2023
(Ghafoor Zaman)


JUDGE


JUDGE


26 JUN 2023


(D.B)
Hon'ble Mr. Justice Fazal Subhan
Hon'ble Mr. Justice Dr. Khurshid Iqbal