

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



Cr.J.A No.62-B of 2-013.

JUDGMENT

Date of hearing 06.10.2015

Appellant Petitioner *Shamim Khan Gho Yasrullah Jan*

By Amirullah Zado and Amirullah Dawan Ahs,


Respondent *State By Saif ur Rehman, Subhask A.D.G.*

Abdul Muttasim ul Bannu, Subhask A.D.G. and Javedullah Khan Ahs,

MUHAMMAD YOUNIS THANEEM, J.-

Through this single judgment we intend to dispose of instant Cr.J.A No.62-B/2013 and Criminal Revision No.22-B/2013, as both are outcome the same impugned judgment dated 26.2.2013 of learned Additional Sessions Judge-1, Bannu in case FIR No.101 dated 12.9.2011 under

- a) Under section 302 (b) PPC and sentenced to rigorous life imprisonment as Tazir
- b) Liable to pay Rs.1,00,000/- (one lac) as compensation under section 544-A Cr.P.C to be paid to the legal heir of deceased or in default

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thereof the accused has to further undergo for a period of 06 months simple imprisonment.

Hence, benefit of section 382-B Cr.P.C. is extended to accused.

2. Brief facts of the case as per FIR are that on 12.9.2011, complainant, Sairullah Khan lodged a report in the emergency ward of Civil Hospital, Bannu to the effect that on the day of occurrence he alongwith his wife Mst. Akhtar Bano, his brother Shamim and Wahidullah were present in their house, situated in Land Khujari, when in the meanwhile hard words were exchanged between his wife and his brothers Shamim and Wahidullah, on this Wahidullah commanded to his brother Shamim for firing at his wife, who in compliance fired at his wife with 30 bore pistol, as a result of which his wife sustained injuries and fell down on the ground. Both the accused fled away from the spot and when he attended his wife, she was expired by then. Motive behind the occurrence was stated to be exchanged of hard words and on the report of the complainant case under section 302 PPC vide FIR No.101 dated 12.9.2011 was registered

W. S. Khan
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[Signature]

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against the accused/appellant and other co-accused for the commission of the alleged offence.

3. Prosecution to prove its case produced 09 witnesses among them PW-3 is Lady Dr. Shafiqah Khial, who conducted medical autopsy on dead body and she endorsed the PM report as Ex:PW3/1 and following wounds were found;

- i) One fire entry wound size 1/4" x 1/4" near left ear.
- ii) One fire exit wound size 1/4" x 1/4" on posterior aspect of neck.
- iii) One fire entry wound on left side upper lip.
- iv) One fire exit wound on right side upper lip size 1/4".

In her opinion, deceased died due to firearm injuries. Noze and neck bone fractured. She also endorsed the injury sheet and inquest report being signed by her marked as Ex:PW3/2 and Ex:PW3/3.

4. Investigation commenced after registration of case upon 'Murasila' Ex:PW4/1 and FIR Ex:PW1/1, I.O prepared site plan on the pointation of complainant as Ex:PW7/1, collected blood stained earth from the place of deceased, and one empty of 30 bore pistol was taken into possession marked as P-1 vide recovery memo Ex:PW5/1, result of FSL about blood stained earth was found human

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blood same FSL report was endorsed by him as Ex:PW7/4, examination of crime empty was sent to FSL and report is placed as Ex:PW7/6.

5. While PW-1 is Gul Janan ASI, who on receipt of 'Murasila' registered the case vide FIR No.101 Ex:PW1/1. Statement of complainant recorded as PW-5, while the statement of real brother of deceased namely Jehanzeb Khan recorded as PW-6.

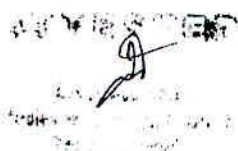
6. Learned counsel for the appellant vehemently argued that the impugned judgment of the trial Court is the result of misreading and non-reading of evidence; that the testimony of PW-5 is full of contradictions and discrepancies while ocular account is belied by medical evidence as well as circumstantial evidence and the site plan; that the learned trial Court has not taken the legal aspect of the case that PW-5 is the husband of deceased and interested witness and accused cannot be convicted upon the sole evidence of this single witness. Moreover, motive and previous enmity not proved so the learned trial Court has erred in law while convicting the appellant by awarding life imprisonment, hence, the impugned judgment is liable to reversal and accused be acquitted.

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7. On the other hand, learned A.A.G assisted by learned counsel for complainant have strongly opposed the arguments, advanced by the learned counsel for the appellant by submitting that the appellant fled away from the spot alongwith absconding co-accused who are directly charged in promptly lodged FIR for murder of deceased lady. The occurrence is a broad day light and question of misidentification did not arise accused having common intention which has been proved through cogent, coherent and confidence inspiring ocular evidence supported by circumstantial evidence in the shape of various recoveries from the crime venue as well as through medical evidence, thus, he has rightly been convicted by the learned trial Court. They further argued that FSL report of blood stained earth recovered empty P-1 from the place of deceased are in line with the prosecution case. Moreover, there is no legal impediment that conviction could not be judged upon the evidence of single witness and same single witness is natural, trustworthy and of full credence could be relied upon, hence, the case against the accused/appellant is fully established. In support of criminal revision, learned counsel contended that prosecution has proved the guilt of



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the appellant upto the hilt and in the circumstances, the punishment of accused may be enhanced by awarding him death penalty for such a brutal murder.

8. We have heard and considered the submissions of learned counsel for the parties and the learned A.A.G for the State and gone through the record.

9. From the perusal of record it reveals that the crime reported was committed inside the residential house of private respondents. Appellant, co-accused and complainant are real brother inter se while deceased lady Mst. Akhtar Bano was the wife of complainant. Both the accused decamped from the spot but accused Shamim Khan was arrested on 15.9.2011 while accused Wahidullah after occurrence absconded and was proceeded under section 512 Cr.P.C on 29.11.2011. All the witnesses referred above were subjected to a taxing cross-examination but defence failed for bringing on record some inconsistency in the statement of prosecution witnesses about the main story. We have found nothing in their testimony to create any suspicion the benefit of which could be extended to appellant.

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Bannu Bench

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10. PW-5 is complainant in whose presence incidence occurred. His credibility could not brushed aside only on the ground that deceased was his wife and had falsely implicated the two accused who are his real brothers, hence was put to severe cross-examination at length but defence failed to shatter his veracity. Moreover, from the other circumstantial and corroborating evidence on record his presence at the place of occurrence but the incident as narrated in the FIR had been proved. There is no need of so many witnesses but single witness is enough if upon deep examining his evidence is found believable and confidence inspiring that can be relied upon. So in this regard arguments of learned counsel for appellant have no force that complainant evidence is not believable.

11. The learned trial Judge, while giving the judgment impugned herein, has attended each and every piece of evidence with judicial care and caution and after proper appreciation of the same evidence on record had reached to the conclusion that prosecution has succeeded to bring guilt at home to the accused/appellant beyond reasonable doubt but the only mitigating circumstance that occurrence took place all of sudden within the house as co-accused Wahidullah upon altercation with his deceased

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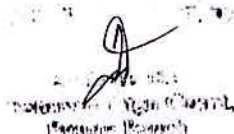


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'Bhabhi' at the spur of moment commanded his brother Shamim Khan to kill her who by acting upon the said command had killed her, escaped the proper judicial indulgence by the learned trial Court.

12. From the perusal of FIR; statement of eyewitness and findings of learned trial Court below, it clearly showed that there was no background of ill-will or bitterness between the accused/appellant and deceased lady or her husband/complainant, the incident erupted all of sudden without any premeditation as it was alright before occurrence and complainant while deposed he stated nothing about previous ill-will of slightest nature among his brothers, his wife and him, so the present case was one of sudden provocation and altercation which resulted into unfortunate incident.

13. For the dispensation of criminal justice specially cases involving capital punishment high degree of care and caution is required while analyzing and examining the evidence of witnesses about oral account of the incident as well as material collected and brought on record as evidence.



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14. It is competence and quality of evidence which has to be taken into consideration and its reliability upon the touchstone of principles enunciated by the Honourable Supreme Court of Pakistan. The evidence of husband of deceased lady against his real brothers in a promptly lodged FIR supported by other circumstantial evidence like medical report, result of Forensic Science Laboratory cannot be discarded only on the ground that complainant was husband of deceased lady so to treat him an interested witness. In this regard wisdom is derived from the judgment of Honourable Supreme Court in case titled "Muhammad Mansha Vs The State" cited as 2001 SCMR 199 the relevant portion of judgment about competence and about single witness laid down is as under:-

"Interested witness is one who has a motive to falsely implicate an accused or has some previous enmity to involve a person malafidely. No rule of law that statement of an interested witness cannot be taken into consideration without corroboration and uncorroborated version can be relied in context with other circumstances of a particular case."

In the same judgment conviction can be awarded on the basis of sole witness is also reproduced for guidance as below:-


 14/11/2001
 Section 143

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"A bare perusal would reveal that the language as employed in the 'said Article 17(1)(b) is free from any ambiguity and no scholarly interpretation is required. The provisions as reproduced hereinabove of the said Article would make it abundant clear that particular number of witnesses shall not be required for the proof of any fact meaning thereby that a fact can be proved only by a single witness "it is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality witnesses, case where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case, for the prosecution. The Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a facts". (Principles and Digest of the Law of Evidence by M. Monir, page 1458)."

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15. So after careful examination of the evidence on record and the solitary statement of PW-5 and other corroborating evidence in shape of site plan, postmortem report, results of FSL, are the proof that the evidence of sole witness of the occurrence is worth credence, dependable and consistent and the learned trial Court has correctly appreciated the evidence by convicting the accused/appellant.

16. Now the other question for determination before this Court is as to whether the unfortunate murder of deceased lady was preplanned and premeditated act of offence or same thing happened which resulted into sudden quarrel of and the said incident. So from the perusal of FIR and entire record, we are of the considered view that the occurrence took place at the spur of moment due to some sudden altercation and provocation which could be treated as a mitigating circumstance in the case for reduction of the sentence, awarded to the appellant.

17. Thus, we hold that the case against appellant/accused fell within the purview of provisions of section 302 (c) PPC and not under section 302 (b) PPC, hence, sentence is converted from section 302 (b) PPC to



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section 302 (c) PPC. Consequently, the conviction of accused/appellant awarded by learned trial Court upheld, however, the sentence is reduced from rigorous life imprisonment to 15 years rigorous imprisonment while the other part of sentence as to compensation to be paid to the legal heirs amounting to Rs.1,00,000/- (one lac) and in default to further undergo six months simple imprisonment and benefit of section 382-B Cr.P.C is maintained. In this regard wisdom is derived from the judgment of Honourable Supreme Court of Pakistan in case titled as "Azmatullah Vs The State" reported in 2014 SCMR 1178.

18. So in the light of above discussion, this criminal jail appeal is partially allowed and the impugned judgment is modified in the above terms while criminal revision petition No.22-B/2013 is hereby dismissed.

Announced
06.10.2015.

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

Exd. No. 1

Peshawar High Court Sana Bench
Authorized Under Article 87 of
the Constitution Order 1994

IN THE PESHAWAR HIGH COURT
BANNU BENCH.

Cr. Revision No.22 -B of 2013
Sairullah Khan Vs Shamim Khan etc.



JUDGMENT

Date of hearing 06.10.2015

Appellant-Petitioner Sairullah Khan By Muhammad

Chohan, Advocate and Sairullah Khan, Advocate

Respondent State By Saifur Rahman, Advocate AG

Shamim Khan By Amirul Haq, Advocate and Arifullah Khan, Advocate

MUHAMMAD YOUNIS TRANEEM, J.-- Vide

our detail judgment of the even date in the connected

Cr.A No. 62-B/2013 titled Shamim Khan Vs State, this

criminal revision stands dismissed.

Announced
06.10.2015.

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JUDGE

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RECEIVED TO THE COURT

14/12/15