

**Judgment Sheet**  
**PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
*(Judicial Department)*

Cr.A. No.11-D/2020.

Muhammad Farhan Tariq  
Vs.  
The State etc.

**JUDGMENT**

For Appellant: Mr. Abdul Latif Khan Baloch,  
Advocate.

For State: Mr. Rehmatullah, Asstt: A.G.

For Respondent: Muhammad Ismail Alizai, Advocate.

Date of hearing: 02.3.2022.

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**MUHAMMAD FAHEEM WALI, J.-** This

judgment shall also dispose of the connected Criminal Revision No.09-D/2020, as both the matters are the outcome of one and the same judgment dated 03.3.2020, rendered by learned Additional Sessions Judge/Judge Model Criminal Trial Court, D.I.Khan, whereby the appellant was convicted under section 302(b) of Pakistan Penal Code for committing *qatl-i-amd* of Alamzeb and sentenced to life imprisonment with compensation of Rs.10,00,000/- (ten lac) to be paid to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. or in default thereof, to undergo simple imprisonment for six months. He



was also convicted under section 201 PPC and sentenced to seven years rigorous imprisonment with fine of Rs.50,000/- (fifty thousand) or in default thereof, to undergo one month simple imprisonment. Further convicted under section 202 PPC and sentenced to undergo six months rigorous imprisonment with fine of Rs.10,000/- or in default thereof, to suffer simple imprisonment for ten days. All the sentences were ordered to run concurrently. Benefit of section 382-B, Cr.P.C was extended to the convict/appellant.

2. The prosecution story as disclosed in the FIR, registered on the basis of *murasila*, in brief, is that on 21.8.2017 at 15:05 hours, Muhammad Farhan Tariq (the appellant), while accompanying the dead body of Alamzeb son of Aurangzeb, reported the matter to the local police at emergency room of civil hospital, D.I.Khan, to the effect that on the fateful day, he alongwith said Aurangzeb, while riding on a motorbike were coming from "Bandh" of Indus River and at about 2:25 PM, when they reached to a thoroughfare situated within limits of Chah Piyare Wala, meanwhile, two persons riding on a motorcycle



CG-125 came behind and started firing, as a result whereof, he sustained injury on his left arm, while his companion Alamzeb died on the spot. He stated that if brought before him, he could identify the assailants, however, no motive was disclosed in the report. Besides him, the occurrence was stated to be witnessed by other people present on the spot. He charged unknown accused for the commission of offence.

3. It is pertinent to mention that on 23.8.2017, father of the deceased recorded his statement under Section 164, Cr.P.C. before the Court of Judicial Magistrate, Paharpur/MOD, where he charged the appellant for commission of the offence and introduced one Munir Ahmad son of Bashir Ahmad, Caste Awan, resident of Thoya Siyal to have witnessed the occurrence. In view of the above statement, the appellant was arrayed as an accused. On 19.9.2017, statement of afore-named Munir Ahmad was recorded under Section 164, Cr.P.C. where he narrated quite different story of the incident contrary to the story mentioned by the accused in the initial report.



4. On completion of the investigation, complete challan against the accused was submitted before the learned trial Court where at the commencement of trial, the prosecution produced and examined as many as sixteen (16) witnesses, whereafter, statement of the accused under section 342 Cr.P.C, was recorded wherein he professed innocence and false implication, however, he did not wish to be examined under section 340(2) Cr.P.C, but opted to produce ward record, record of the hospital as well as the discharge slip issued by the surgical ward, which the accused had placed on file alongwith his application for summoning the clerk of DHQ Hospital, D.I.Khan, in which respect Samiullah MLC Clerk was examined as DW-1, who produced relevant record as Ex. DW 1/1 and Ex.D-1. On conclusion of trial, the learned trial after hearing arguments, convicted the appellant and sentenced him, as mentioned in the earlier part of the judgment, which has been assailed by the appellant through the instant criminal appeal, whereas the connected criminal revision has been filed for enhancement of sentence.



4. We have heard the learned counsel representing the appellant, the learned State Counsel assisted by learned private counsel at length and with their valuable assistance, the record was gone through.

5. In the present case, two stories in respect of the incident have been introduced. Firstly, the matter was reported by the accused/appellant himself by stating that on the eventful day, he alongwith the deceased, while riding on a motorbike were coming from "Bandh" of Indus River and at about 2:25 PM, when they reached on a thoroughfare situated within limits of Chah Piyare Wala, meanwhile, two persons riding on a motorcycle CG-125 came behind and started firing, as a result whereof, he sustained injury on his left arm, while his companion Alamzeb died on the spot. Second story of the incident was introduced by father of the deceased (PW-4), who on 23.8.2017, recorded his statement under Section 164, Cr.P.C. before the Court of Judicial Magistrate, Paharpur/MOD, where he charged the appellant for the commission of offence and stated that one Munir Ahmad (PW-7) had seen the occurrence. While going through the record and



evidence on file, we did not come across any independent evidence of unimpeachable nature in support of the story narrated by the accused, however, in view of second version of the incident, we would like to refer the statements of Aurangzeb, father of the deceased, and Munir Ahmad (maternal uncle of the deceased), who were examined as PW-4 & PW-7, respectively. Deceased was son of PW-4 and on 21.8.2017, PW-4 was at his job station, when he received information that his son was taken to the hospital, upon which he reached there and found his son lying dead. PW-4 stated that in the next morning, PW-7 informed him that he had seen the accused while killing his son by firing, so he alongwith PW-7 visited police station Cantt: where he charged the accused. He was produced by the local police before the Court of Judicial Magistrate, where his statement under section 164, Cr.P.C. was recorded. PW-4 further stated that the Investigating Officer had visited his house where statements of his wife and daughters were recorded. During course of investigation, PW-4 presented to the Investigating Officer letters from the accused to the deceased and his wife containing



threatening material alongwith one live round of .30 bore. However, in cross-examination, he admitted that he was not the eyewitness of the occurrence. He stated that PW Munir Ahmad was his relative. Munir Ahmad was examined as PW-7, who stated that he was motorcycle mechanic by profession and was running his shop at Fuwara Chowk D.I.Khan; that his daughter Hadia Tabasum was studying in Education Zoom Academy and he used to pick and drop her on his motorbike from his house to the academy; that on the day of occurrence at about 2:15 hours, he left his shop to pick up his daughter from his house; that at about 2:20 PM, when he was passing through the marginal Band in front of street leading to Chah Piyara Wala, he noticed that accused Farhan Tariq was holding his pistol aimed at the deceased, while the motorcycle belonging to the deceased was parked nearby. He stated that as he was attempting to stop there, he saw that accused fired at the deceased with his pistol which hit the deceased who after receiving the injury fell to the ground, he shouted at the accused 'Yeh Kia Kya' upon which the accused aimed his pistol at him and due to fear he moved his motorcycle ahead to



save himself, and then heard another shot considering it to have been fired at him, he accelerated speed of his motorcycle and instead of going to his house, he went to the house of his friend namely Muhammad Hafeez, situated in Mohallah Khakwani, D.I.Khan City. He further stated that due to anxiety and fear, he remained at the house of his friend until late at night, whereafter, he returned to his house and slept under great stress; that in the next morning, he went to the house of father of the deceased and narrated the incident, upon which father of the deceased contacted police on phone who was directed to visit police station alongwith him; that he narrated the above facts to the police officer who recorded his statement. During spot inspection, PW-7 pointed out the spot to the Investigating Officer. During cross examination, he admitted that the deceased was his sister's son and his house is situated in village Thoya Siyal close to the road of Marginal Band. He admitted that while going to his house a road leads from Shobra Chowk through Met Office commonly known as Mosmiat Office, however, he self stated that another road through Kachi Paind Khan and Marginal Band also





leads to his house. He voluntarily stated that on the day of occurrence he had taken the Marginal Band Road. He also admitted it correct that on the way from Marginal Band to the house of his friend Hafeez, there are number of check posts where police remained present. He admitted that there is also a police post at the entrance of Muslim Bazaar, however, he did not stop nor disclose anything to police official of said post. He stated that he did not return to his workshop. He did not disclose the fact of having seen the occurrence to anyone until next morning. He also did not even disclose the same to anybody in the house of Hafeez Khakwani, self stated, that he was under severe fear, therefore, did not talk to anyone about the occurrence until next morning. He also did not inform anybody on telephone or mobile about the occurrence. In view of statement of PW-7, Muhammad Hafeez Khakwani was the best evidence to corroborate his testimony, but he was not cited as witness in the calendar of witnesses, as admitted by the Investigating Officer (PW-10) in his cross examination. Needless to mention that story of the incident was allegedly told to PW-4 by PW-7 and in order to corroborate his



testimony, Muhammad Hafeez Khakwani was never associated with the investigation nor was examined before the Court to ascertain the fact that after the occurrence, he spent a night at the house of his friend Muhammad Hafeez Khakwani.

7. In addition to the above, the case was investigated by Inamullah Khan Inspector, who was examined as PW-10. During the spot inspection he prepared site plan Ex. PB at his own observation. He secured blood through cotton from the place of the deceased. He took into possession two freshly discharged empty shells of .30 bore lying in the street at the crime scene. He also took into possession a motorcycle belonging to the deceased, one J-5 Samsung mobile set belonging to the accused. He also detected a .30 bore pistol alongwith fit magazine having two live rounds, lying at a garbage heap in a vacant plot belonging to one Qadir, which on checking was suspected to be the weapon of offence. He took finger prints of the accused then injured, admitted in civil hospital, through Head Proficient Naveed Babar. He stated to have secured blood and gun powder residue from right hand of the accused.



He took into possession medico legal documents alongwith blood stained shirt belonging to the accused sent by the doctor through constable Seeratullah, having a bullet cut mark and its left arm portion was cut by the doctor. On 22.8.2017, father of the deceased appeared before this witness and produced certain letters of threats with live round of .30 bore, allegedly sent by the accused to the deceased and his family. He stated that on the same date, PW Muneer Ahmad pointed out the place of occurrence to him vide his note on the site plan. He stated that during course of investigation, he came to know that the accused had purchased the recovered pistol from the Muhammad Farhan Nawaz, who was working as Munshi at Marwat Arms Dealer, Mehsood Market D.I.Khan, therefore, he summoned said Muhammad Farhan Nawaz to the police station and took into possession a licence copy of .30 bore pistol in his name of Muhammad Farhan Nawaz, and the same alongwith attested copy of page from sale Register of Marwat Arm dealer was exhibited as Ex.P-12. He stated that PW Muhammad Farhan Nawaz disclosed that he had earlier sold his 30 bore pistol bearing



No.853 alongwith five live rounds of same bore to the convict/appellant at Rs.6000/-. His statement was also recorded by the Investigating Officer. PW-10 prepared list of legal heirs of the deceased and recorded statements of PWs under section 161, Cr.P.C. He produced father of the deceased before the Judicial Magistrate for recording his statement under section 164, Cr.P.C. He arrested the accused and issued card of arrest. He also took into possession AIOU exam copy of PTC course belonging to the accused for the purpose of comparison of hand writing of the letters written by the accused with the deceased and his mother. He placed on file the FSL report in respect of matching of latent print of the recovered pistol. He also placed on file photographs taken during investigation including those taken during spot inspection and pointation of place of occurrence by the accused. He stated that a joint investigation team was constituted for investigation of the instant case. He applied for physical custody of the accused and three days physical custody in respect of the accused was granted. He recorded statement of the accused u/s



161, Cr.P.C. wherein the accused confessed his guilt. He made additions to the site plan on pointation of the accused and prepared pointation memo. He also placed on file the FSL report Ex. PK/1 in respect of .30 bore pistol, two empties of same bore and the gun powder residue secured from the hand of the accused. He also issued information memo in respect of addition of offence under section 15 Arms Act. He also placed on file the FSL report Ex. PK/2 in respect of parcels No.1 and 9. He produced PWs Muneer Ahmad and Farhan Nawaz for recording their statements u/s 164, Cr.P.C. before the Judicial Magistrate, D.I.Khan and placed their statements on file. He placed on file the report of Finger Prints Expert Ex. PK/3. He placed on file attested copies of daily diary regarding his departure and return to the police station in respect of pointation of place of occurrence by the accused. He placed on file Figer Print Card of accused and photocopies of letters sent by the accused. He stated that during the course of investigation, Bashir Hussain SI received extraction report from FSL Computer Lab Peshawar pertaining to messages



sent/received through mobile sets. After completion of investigation, he handed over the case file to the then SHO for submission of challan against the accused. This witness was cross-examined where he stated that in this case Muneer Ahmad was the sole eyewitness of the occurrence, who went to the house of Hafeez Khakwani after the occurrence, but he did not record statement of said Hafeez Khakwani or any other family member of his family to confirm the factum of coming and presence of said Muneer Ahmad PW to their house. In view of the above, the second story as portrayed by the prosecution ends here, being disbelieved, for the reason that the ocular account so narrated could not be relied upon being too fictional and uncorroborated.



8. Now the prosecution is left with recovery of .30 bore pistol assigned to the appellant to have allegedly used the same in the commission of offence. In this respect, Muhammad Farhan Nawaz Munshi at Marwat Arms Dealer shop was examined as PW-14, where he stated that during those days, he was working as Munshi at shop of Marwat Arms Dealer; that accused/appellant was well known to

him being his friend, who was asking from him since six months prior to the occurrence to give him some pistol; that few days prior to the occurrence, the appellant came to his shop and he gave him .30 bore pistol No.853 alongwith five live cartridges against Rs.6000/-, as the accused claimed to have valid licence, so on 20.8.2017, the pistol was sold by him to the accused, who was directed to remove licence number of PW-14 and to print his licence number on the pistol. He stated that the accused demanded for the pistol urgently for his safety. PW-14 further stated that he did not know as to what for the accused was purchasing pistol from him. He stated that during investigation, his statement was recorded by the police as well as before the Magistrate. During cross examination, a question was put to him regarding identification parade of the pistol in question to which he replied that the police did not conduct any identification parade and never asked him to pick up his pistol in any such identification parade. He also admitted that .30 bore pistols are openly available in the market and these can be easily purchased by someone in the open



market. In view of the above, it was necessary to put the recovered pistol to identification parade to ascertain that it was the same pistol which the convict/appellant had purchased from PW-14, more particularly when the number of said pistol was deciphered. In the circumstances, recovery of pistol could not be used against the appellant for sustaining conviction on a capital charge. Hence, we have been left with no option but to discard the matching report of FSL from consideration.

9. Yet there is another aspect of the case i.e. securing of blood and gun powder from right hand of the accused/appellant, in that respect Naveed HC was examined as PW-3. He was also associated with the investigation and in his presence the Investigating Officer took into possession .30 bore pistol with two bullets in its magazine duly fitted and one bullet loaded in its chamber. He was asked by the Investigating Officer to secure said pistol which he did accordingly and packed the same into a box and delivered to the Investigating Officer, however, during cross-examination, he stated that the Investigating Officer had indicated it by pointing out the same in a





plot and asked him to preserve it which he did accordingly. He stated to have obtained the finger prints as well as the blood and gun powder at the hands of the appellant while he was admitted in the hospital, however, he did not ask any doctor or ward attendant to be the witness of said proceedings, which fact is also admitted by Chan Shah S.I PW-6, during cross examination. In such eventuality, when none from the ward staff was examined to support the testimony of PW-3, therefore, securing of gun powder from the accused could not be believed, what to talk of the positive FSL report in that regard.



10. In addition to the above, on 21.8.2017 at 2:40 PM, the appellant was medically examined by Dr. Naseem Ullah PW-9. On said date at about 3:15 PM, this witness conducted autopsy on the dead body of the deceased. He observed an entry wound of firearm on left cheek, size 1/5x1/5 inch with its exit on right side of occiput, size 1/2x1/2. Scalp, skull, membranes of brain spinal cord were injured. During cross examination, he stated that in case of both the deceased as well as injured, there was no blackening and charring marks etc. We are conscious of the fact

that according to medical jurisprudence, charring marks, with pistol's fire can be caused from a distance of six inches. In the present case, no charring marks or blackening was observed by the doctor PW-9, which belies the stance of prosecution. As per prosecution version, if the accused had fired from a close distance at the deceased as well as inflicted injury to himself, then in that eventuality, PW-9 must have noticed blackening and charring marks, which is not the case here.

11. Besides the above, Samiullah MLC Clerk was examined as DW-1, who produced ward record pertaining to the appellant. During cross examination, this witness was confronted with the injuries sustained by the appellant. According to record produced by this witness there was one entry wound on post surface of left arm and the other exit wound on anterior surface of left arm with fracture of left humerus. According to Ex. DW 1/1, only one firearm injury at left arm with radial nerve injury has been shown. This witness admitted that no facility is available at DHQ Teaching Hospital for safe keeping of articles mentioned in



Ex.D-1, which are merely lying unsecured in a cupboard of the office.

13. The learned trial Court has not appreciated the evidence in its true perspective and thereby fell in error by convicting the appellant. We have minutely perused the judgment under challenge through all angles, which cannot face the test of judicious scrutiny and the same invites attention of this Court for interference.

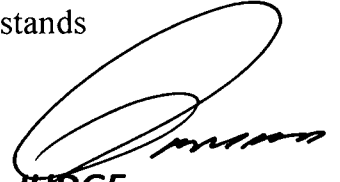
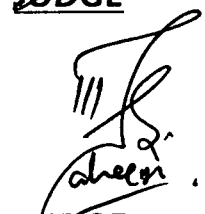
14. Accumulative effect of the whole aspects taken into consideration, leads us to only conclusion that the prosecution has miserably failed to establish the case against the appellant, otherwise to extend benefit of doubt so many circumstances are not required to be brought forth. The instant criminal appeal is, therefore, allowed, the impugned judgment is set aside, resultantly, the appellant is acquitted of the charges levelled against him. He shall be released forthwith, if not required to be detained in connection with any other case. Since we have set aside the conviction and sentence awarded to the appellant, therefore, the connected criminal revision for



enhancement of sentence has become infructuous  
which stands dismissed accordingly.

14. Above are the detailed reasons of our short  
order announced on 02.3.2022, which is reproduced  
herein below:-

“For reasons to be recorded later in the  
detailed judgment, this appeal is allowed,  
conviction and sentence awarded to the  
appellant vide judgment dated 03.3.2020,  
rendered by learned Additional Sessions  
Judge/Judge Model Criminal Trial Court,  
D.I.Khan, is set aside, resultantly,  
appellant Muhammad Farhan Tariq is  
acquitted of the charges levelled against  
him. He be released forthwith, if not  
required to be detained in connection with  
any other criminal case. While connected  
Criminal Revision No.09-D/2020, for  
enhancement of sentence stands  
dismissed”.

  
JUDGE  
  
JUDGE

(D.B)  
Hon'ble Mr. Justice S.M. Attique Shah  
Hon'ble Mr. Justice Muhammad Faheem Wali

(Kifayat/PS\*)

Office  
For  
14/3