

JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)
J.Cr.A No. 189-M/2022

Ubaid Khan son of Misal Khan.....(Appellant)

V/S

The State through A.A.G.....(Respondent)

Present: Barrister Asad-ur-Rehman, for the accused/
appellant.

Syed Sultanat Khan, Astt: A.G, for the State.

Muhammad Sajid, the complainant, in person.

Dates of hearing: 17.10.2023

JUDGMENT

SHAHID KHAN, J.- Through the subject criminal appeal, the accused/appellant, Ubaid Khan has challenged the judgment, vide which his conviction & sentence has been ordered by the learned Additional Sessions Judge/Model Criminal Trial Court Malakand, Batkhela, dated, 31.05.2022, in respect of case FIR No. 93 dated, 17.10.2020, U/S 302 PPC, P.S, F.S. S, (Thana), District Malakand.

2. Reportedly, the complainant, Muhammad Sajid reported the subject event to the local police at emergency ward, Thana hospital in terms that on the fateful day, he (complainant) along with his mother, Mst. Chaman Bibi (deceased) & other inmates were

present in their residential unit, whereas, their father was out of station. On the relevant date, day & time, his brother, Ubaid Khan (the accused/appellant herein) started altercation with his mother on the domestic issues. His brother, Ubaid Khan duly armed with an axe hit his mother Mst. Chaman Bibi on her head. As a result of the axe blow, she was severely injured, fell-down on the ground and died on the spot. The heartbreaking event was witnessed by the inmates i.e. the complainant and his sister, Mst. Irum Bibi. Motive for the commission of offence was stated to be a domestic dispute (گھریلو تنازعہ).

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3. In view of the report of the complainant, the '*Murasila*' (Ex. PA/1) was drafted which culminated into the *ibid* FIR (Ex. PA) registered against the accused/appellant at P.S concerned.

4. Upon arrest of the accused/appellant followed by completion of investigation, *challan* was drawn and was sent-up for trial to the learned trial Court. Accused/appellant was confronted with the statement of

allegations through formal charge-sheet to which he pleaded not guilty and claimed trial.

5. To substantiate the guilt of the accused/appellant, the prosecution furnished its account consist of the statements of nine (09) witnesses. The accused was confronted with the evidence so furnished through statement of accused within the meaning of section 342 Cr.P.C.

6. On conclusion of the proceedings/ trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the accused/appellant and the learned counsel for the complainant/learned State counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the appellant/accused through cogent & worth reliable evidence, as such, the accused was convicted & sentenced as follows;-


U/S 302 (b) PPC as *T'azir* & sentenced to imprisonment for life, along with compensation in the sum of Rs. 500,000/- (five hundred thousand), U/S 544-A Cr.P.C, in default of payment of the compensation, the accused shall further undergo six months imprisonment. The compensation shall be recoverable as arrears of land revenue from the person & estate of accused.

The accused/appellant has also been extended the benefit of section 382-B Cr.P.C.

7. It obliged the appellant/accused to approach this Court through the subject Jail criminal appeal

8. Learned counsel for the accused/appellant as well as the learned Astt: A.G for the State have been heard at a length and the record gone through with their valuable assistance.

9. There is no denial at all that in the subject event the accused/appellant, Ubaid Khan has been charged by the complainant/respondent for committing the murder of his real mother Mst. Chaman Bibi and that too inside their residential unit in the presence of other inmates i.e. legal heirs of the deceased son & daughter. Needless to highlight that the accused/appellant and the complainant are real brothers *inter-se*, therefore, there is no chance of misidentification or false implication qua the guilt of the accused/appellant coupled with the fact that not only the matter was reported to the local police with utmost promptitude i.e. within one hour



but in the event in hand a single accused was charged for inflicting axe blow injury on the head of his real mother.

10. Other than the above, in the case in hand the ocular-account has been furnished by the complainant, Muhammad Sajid. He appeared in the witness-box as PW-6 and Mst. Irum Bibi, daughter of the deceased, she recorded her statement as PW-5. The testimonies of both the witnesses are quite natural as they have narrated the real facts in respect of the murder of their mother at the hands of nobody else but their real bother i.e. the accused/appellant. Both the witnesses overcome the searching & lengthy examination-in-cross of the learned defence counsel but the probative worth of their accounts qua the guilt of the accused/appellant could not be shattered in any manner, whatsoever. It is an admitted fact on both ends that the subject event has taken place inside the house of the complainant-party and the accused/appellant is also not a stranger to the aggrieved party as he is



nobody else but the real brother of the complainant, therefore, the presence of PW-5 & PW-6 being inmates of the same house could not be excluded on any stretch of imagination. In the circumstances, if the assailant was stranger to the complainant-party then the situation might have been different altogether, which is not the case here, therefore, in view of the peculiar facts & circumstances of the subject event the accounts of both the eyewitnesses are prima facie in line with the version of the prosecution. Even otherwise, it is a common custom, culture and tradition that inhabitants of the joint family do reside in their common residential unit and on this score, the presence of the male & female inmates in their house is quite natural & appealable to a prudent mind, as such, the presence of PW-5 & PW-6 at the scene of occurrence could neither be underestimated, doubted or excluded. In a situation akin to the present one, the Apex Court in case titled "Muhammad Akbar alias Bhola & others v/s The State & others"



reported as 2019 SCMR 2036 had taken into consideration the ocular account of three eye-witness, out of whom two of them were natural witnesses being inmates of the same house, wherein the occurrence had taken place. Similarly, in case titled "Muhammad Ashraf v/s The State" reported as 2021 SCMR 758, the Apex Court has also affirmed the same rational by observing that witnesses being inmates of the premise themselves had no axe to grind against the accused nor were expected to swap the actual offender with an innocent person, as there was nothing on the record to even obliquely entertain any theory of substitution.

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11. As far as the account of PW-7, Misal Khan, (husband of the deceased lady Mst. Chaman Bibi) is concerned, suffice it to say, he denied his presence at the spot at the relevant time as he was working as watchmen in the CNG station. It was also the stance of the complainant that on the fateful day when his mother was done to death by his brother, his father i.e. Misal Khan (PW-7) was not

present in their house. PW-7 was not only declared hostile witness on the request of the learned State counsel but he was also cross-examined by the prosecution, therefore, the non-presence of PW-7 at the scene of crime at the relevant time would be of no consequence qua the guilt of the accused/appellant especially in presence of the testimonies of the other two eyewitnesses, who were also inmates of the same house where the occurrence has taken place.



12. In the circumstances, the direct account of the witnesses being not only the inmates of the house but also members of the same family, identity of the assailant by the natural witnesses can no way be underestimated rather the remote chance of even misidentification can safely be excluded.

13. The medical evidence furnished by PW-1, Dr. Ali Muhammad further boost & substantiates the version of the prosecution. As per medical-legal report of the deceased, Ex.PW-1/1 the cause of death of the deceased was Head trauma and the nature of wound

was blunt, which is exactly in consonance with the story of the prosecution for the reason that the appellant/accused is facing the allegations to have given blow of the handle/lever of the axe to his mother, resulted into her unnatural death. The medical evidence on this score further boost & supports the stance of the prosecution. Even otherwise, it is well settled that corroboration by itself is only rule of caution and not a rule of law. If testimony of an eyewitness is found reliable & trustworthy then there is hardly any need to look for any corroboration. In this regard, reliance is placed on the case law titled "Muhammad Waris v/s The State" reported as 2008 SCMR 784. Similarly, it was also held by the Apex Court in case titled "Shafat Ali & others v/s The State" reported as PLD 2005 Supreme Court 288 that as far as medical evidence or expert's opinion was concerned, it was always treated to be confirmatory in nature and if there was ocular account fully reliable in support of incident,

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then the minor contradictions in medical and ocular account, if any, could be outweighed.

14. The case in hand is also having sufficient circumstantial evidence in the form of recovery of weapon of offence i.e. axe, allegedly recovered on the pointation of the complainant and blood stained garments of the deceased as well as that of the complainant/respondent, therefore, the circumstantial evidence further provides added vigor to the story of the prosecution.



15. The prosecution has also been able to establish motive which was stated to be a domestic dispute (گھریلو تنازعہ), therefore, on this score too, the case of the prosecution find its positive support from the said angle.

16. As a result of cumulative effect of evidence of the prosecution, the Court has reached to the conclusion that the accused/appellant has rightly been found guilty of commission of the offence, however, his sentence of life imprisonment requires a rethinking. It is part of the record & as highlighted by the learned counsel for the appellant/accused that the

occurrence took place at the spur of the moment and as per medico-legal report of the deceased, Ex. PW-1/1 a wound (4-5 cm) was found on temporal region with hematoma but no active bleeding and "bone was not exposed", therefore, prima facie it seems that the accused/appellant was having no premeditation or intention to harm his mother or for that matter inflicted a life-threatening injury on her person rather it appears that the occurrence took place at the spur of the moment coupled with the fact that the deceased had received a single blow, as highlighted above. It is also part of the record and as evident from the eye-account of PW-5, Mst. Irum Bibi that the accused/appellant after the unfortunate incident took his injured mother in his lap and accompanied her dead body to the hospital. In order to inculcate the natural conduct & repentance of the accused/appellant over his sin after the commission of the offence, the relevant part of examination-in-chief of PW-5 is reproduced as under;-

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برادر ام ملزم نے کلہاڑی گرا کر مقتولہ کو گود میں لے لیا لیکن والدہ ام موقع پر جان بحق ہوئی اور اس کے بعد ملزم ہمارے ساتھ گاڑی میں سوار ہو کر ہسپتال جا رہے تھے۔ کہ ہسپتال کے قریب ملزم گاڑی سے اتر کر کہیں چلا گیا۔

No doubt, the Statute is clear enough regarding the quantum of sentence but it shall not skip the attention of the Court that normal punishment under the Statute shall be another fatal blow to the bereaved family, has lost their mother followed by their brother, as such, in the peculiar facts & circumstances of the event lesser punishment shall meet the ends of justice.

17. During the course of investigation, the Investigation Officer collected garments of the accused/appellant vide recovery memo, Ex. PW-8/3, which was also having blood spots (خون کے دھبے) allegedly of the deceased, Mst. Chaman Bibi, therefore, it shows that he did not escape from the venue of crime i.e. the house in question rather he took his injured mother in his lap (گود) and thereafter accompanied her dead body to the hospital, as such, the very conduct & demeanor of the accused/appellant is quite natural. On all counts, all these minor weaknesses & lacunas in the evidence of prosecution, as discussed hereinabove, may not be taken as a justification for the out-right acquittal of the accused/appellant, but such

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weaknesses may be considered for reduction of the sentence as held by the Apex Court in case titled "Mst. Bevi v/s Ghulam Shabbir and another" reported as "1980 SCMR 859", wherein, it has been observed;-

"It has been held in some cases that the principle underlying the concept of benefit of doubt can in addition to the consideration of question of guilt or otherwise, be pressed also in matter of sentence. As a definite motive was asserted against the respondent and the same has failed, keeping in view all the circumstances of this case, it would not be necessary to impose the capita' punishment. Therefore while finding him guilty; under section 302, P. P. C. he is sentenced to transportation for life should be awarded as compensation."

A similar rational has also been

expounded by the Apex Court in case titled

"Mir Muhammad alias Miro v/s The State"

reported as 2009 SCMR 1188. Further

reliance may also be placed on judgments in

case titled "Muhammad Ayaz Khan v/s

Murtaza and other" reported as 2008 SCMR 984

and case titled "Kamran Ullah v/s The State and

another" reported as 2020 SCMR 1214.

18. Similarly, in eventuality when an accused person committed an offence without any premeditation or planning and in the heat of a free-fight had struck the deceased with a single blow. In such circumstances, his case would come within clause (c) of section 302, PPC.

Conviction of accused recorded U/S 302 (b) PPC was altered to one U/S 302 (c) PPC and consequently, his sentence of life imprisonment was reduced to ten years imprisonment. Reference can be made to the case law Titled "Zeeshan alias Shani V/S The State (PLD 2017 Supreme Court 165). Needless to highlight that in the event in hand, the accused/appellant was also confronted with the same set of allegations, as not only the occurrence took at the spur of the moment but the deceased had also received a single blow. All such circumstances are taken as sufficient justification for reduction of the sentence from the normal penalty of life imprisonment to ten years imprisonment.

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19. In view of the above discussion and exposition of law, the subject criminal appeal is partially allowed to the extent that the sentence of life imprisonment awarded to the accused/appellant, Ubaid Khan, U/S 302 (b) PPC is reduced to ten (10) years imprisonment within the meaning of section 302 (c) PPC. The benefit of section 382-B Cr.P.C is also extended to the appellant/accused, whereas, the rest of the impugned order/judgment dated 31.05.2022 to

the extent of imposition of compensation in the sum of Rs. 500,000/- (five hundred thousand), payable to the legal heirs of the deceased, shall remain intact.

Date of announcement
Dt. 17.10.2023


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