

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

**Cr.A.No.103-A of 2012 with Murder**  
**Reference No.5-A/2012.**

Date of hearing: 05.12.2019.

M/s Astaghfirullah, Syed Abdul Fayaz and Jalal-ud-Din Akbar Azam Khan Gara, advocates for the appellant.

Mr.Muhammad Shabbir, advocate for the complainant.

Ms.Sofia Noreen, AAG for the State.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** Through this judgment, we shall also decide Cr.A.No. 163-A of 2019 titled "Amir Afzal Vs. The State" as both the appeals have arisen from same FIR bearing No.160 dated 01.05.2010 under sections 302/324/34 PPC of Police Station Kalabat Town Ship Haripur, whereby appellants Muqaddar Shah and Amir Afzal have been convicted under section 302 (b) PPC and sentenced to death on three counts with payment of fine of Rs.2,00,000/- on three counts or in default whereof to suffer imprisonment for six months on each count vide separate judgments dated 08.08.2012 and 23.05.2019 of the learned Additional Sessions Judge-II, Haripur and

Judge, Criminal Model Court, Haripur, respectively. The convicts have filed their appeals whereas the learned trial court has sent murder references for confirmation or otherwise of the death sentences. We propose to decide the appeals and the references through this single judgment.

2. Brief facts of the case are that on 01.05.2010, Sajjad Ahmad (PW-11) reported to ASI Riasat Khan (PW-9) in the emergency ward of DHQ Hospital Haripur to the effect that on the day of occurrence at about 09.30 hours he, his father Safdar Zaman, brothers Akhtar Zaman, Mukhtiar Ahmad alias Tahir and Shafique were unloading wheat bags from the trolley, in front of their house, when in the meantime appellants Amir Afzal and his nephew Muqadar Shah came there duly armed with klashnikovs and started altercation with his father on which they all entreated them for forgiveness but they did not accept the request and with their weapons opened firing at them. According to the FIR (Ex.PA), with the fire shots of Amir Afzal, father of the complainant, namely, Safdar Zaman and

brother Mukhtiar Ahmad were hit whereas with the fire shot of Muqadar Shah brother of the complainant, namely, Akhtar Zaman was hit. It is also in the FIR that with the fire shots of the appellants one Sher Bahadar, a nearby shopkeeper, too was hit. All the injured were shifted to the hospital for their treatment but father of the complainant and his two brothers succumbed to their injuries and breathed their last on the way to hospital.

3. Initially, appellant Muqadar Shah was arrested, who was put to face the trial and ultimately was convicted and sentenced vide judgment dated 08.08.2018 as mentioned above, who then assailed his conviction and sentence through his appeal bearing No.103-A of 2012. During pendency of his appeal, co-accused Amir Afzal was arrested and criminal appeal of Muqadar Shah was adjourned sine die and the case record was sent to the learned trial court for conclusion of trial of co-accused Amir Afzal, which trial was concluded and he too was convicted and sentenced through judgment dated 25.05.2019 as mentioned above.

4. Arguments heard and record gone through.

5. In order to prove its case, prosecution examined 14/15 witnesses. Eye version account of the case has been furnished by complainant Sajjad Ahmad, who appeared as PW-11 and also by Shafique, who testified as PW-12. No doubt, both the eyewitnesses are closely related to the victims but it has been held umpteenth times by the superior courts that evidence of a closely related eyewitness cannot be discarded on the sole ground of his being a close relative of the victim if otherwise the evidence so furnished rings true and is corroborated by circumstantial evidence of the case. In the context of the above, we appreciate the evidence furnished by PW-11 and 12.

6. While appearing as PW-11, complainant of the case deposed that on the day of occurrence, he, his father and three brothers were unloading wheat from a trolley in front of their house, which was brought from the threshing floor in gunny bags and in

the meanwhile, both the appellants came there duly armed with klashnikovs and after some altercation they started firing at them with which his father Safdar Zaman and two brothers, namely, Mukhtiar Ahmad and Akhtar Zaman were hit while they escaped unhurt. Besides, in the FIR description of weapons of the offence has also been given by the complainant coupled with assigning separate role of firing to each of the appellants viz-a-viz their targets. No doubt, the defence through cross-examination has tried to exclude presence of PW-11 on the spot at the time of occurrence for his being at Islamabad but the suggestions qua non-presence of the complainant on the spot at the relevant time do not hold any water as the occurrence took place at 9.30 am and was reported in the hospital at 10.15 am, i.e. within a period of 45 minutes, which prompt lodging of the FIR by PW-11 was not possible had he not been present on the spot at the time of occurrence. Besides, within a period of less than an hour, a person cannot reach Haripur from Islamabad. Moreso, it reflects from the record that on the day of occurrence, PW-11

was present in his village as he was on leave from his unit.

7. In addition, PW-12, Shafique Ahmad too has testified by deposing that he, his father and brothers were busy in the process of unloading the wheat bags from the trolley, which was parked in front of their house when both the appellants came there duly armed with their klashnikovs and unleashed firing at them with which his father and two brothers were hit, who breathed their last while being taken to the hospital. The ocular account furnished by the eyewitnesses has been corroborated by medical examinations of the three deceased and also supported by the site plan Ex.PB, wherefrom the Investigating Officer has recovered five empties of 7.62 bore. Also from the site plan the Investigating Officer took into possession bloodstained earth from the places of all the three victims.

8. Another pronounced aspect of the case is that the occurrence had taken place in front of the house of the eyewitnesses, who were residing therein with the victims jointly and at the relevant time were

unloading the wheat from the trolley, therefore, their presence on the spot was quite natural.

9. Furthermore, as there is no blood feud of the eyewitnesses with the appellants, therefore, there does not arise any question for their false implication. It is well settled that substitution of an actual culprit for an innocent person is a rare phenomena because no prudent person would ever let the actual wrongdoer scot-free and replace him for the one, who had no nexus with the crime.

10. Learned counsel for the appellants also contended with vehemence that escaping unhurt of both the eyewitnesses is reflective of the fact that they were not present on the spot at the time of occurrence and that they were planted as prosecution witnesses subsequently in order to put life in the prosecution case. Ibid submission of the learned defence counsel too is of no help to the appellants as firing at a particular person is choice of the targettor. It is up to the firer either to fire at one or two targets to quench his thirst. So receiving no

injury by the eyewitnesses does not mean that they were not present on the spot at the time of occurrence. Be that as it may, it is on record that when the firing started, the eyewitnesses took refuge behind the trolley, wherefrom the wheat was being unloaded by the complainant side at the time of occurrence.

11. Thorough and careful examination of the case record would show that the prosecution has proved its case against both the appellants through worth reliable and trustworthy evidence. Involvement of the appellants has been proved beyond any shadow of doubt. The learned trial court has appreciated the prosecution evidence in its true perspective and correctly convicted the appellants to which no exception could be taken by this court. However, regarding the sentence awarded to the appellants, we are not in agreement with the learned trial court as there is no material on the record to show that what had happened on the spot before the occurrence. It reflects from the record that prior to the occurrence there had been altercation between the appellants and the



victims and it is not known that what prompted the appellants to unleash the indiscriminate firing. Whether the victims' side was responsible for aggravating the situation or the appellants did so, which aspect of the case can be taken and considered as a mitigating circumstance necessitating reduction in the sentences awarded to the appellants. Besides, the appellants on their just arrival to the spot did not open firing at the victims and, as per record, they first talked to the opposite side and when it did not yield any result, then they took the law into their hands. In such like circumstances, the case set up against the appellants could not be termed as rare of the rarest cases wherein death sentence is to be awarded.

12. For what has been discussed above, we partially allow this and the connected appeal, maintain conviction of the appellants on three counts but reduce their sentence from death to imprisonment for life on three counts with benefit under section 382-B Cr.P.C. We also reduce the amount of compensation from Rs.2,00,000/- to

Rs.1,00,000/- each on three counts payable to legal heirs of the deceased or in default whereof the appellants shall further suffer simple imprisonment of six months.

13. The murder references are answered in negative.

**JUDGE**

**JUDGE**

**Announced.**

**05.12.2019.**

Sadiq Shah PS (DB) Hon'ble Mr.Justice Lal Jan Khattak & Hon'ble Mr.Justice Abdul Shakoor.