

*Judgment Sheet*

IN THE PESHAWAR HIGH COURT, ABBOTTABAD  
BENCH  
JUDICIAL DEPARTMENT

*Cr. Appeal No. 254-A/2021*

**JUDGMENT**

Date of hearing.....28.02.2022.....

Appellant (Iqbal Khan) By Mr. Javed Khan Tanoli, Advocate.

Respondent. (State) By Mr. Sajid-ur-Rehman Khan, Assistant A.G  
and (Complainant) By Mr. Naseer Ahmad Khan  
Tanoli, Advocate.

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WIQAR AHMAD, J.- According to prosecution story, as narrated in FIR (Ex.PA), it was on 15.05.2016 at 09:30 hours when complainant of the case namely Mst. Shehnaz Bibi (PW-09) while reporting the crime to Munir Ahmad (PW-06) at Emergency Ward of DHQ Hospital Abbottabad alleged that on the fateful day at 09:00 hours her deceased son (Muhammad Qasim) had been going to market and when he reached near house of Muhammad Nazir (PW-10), there Muhammad Nazir had been altercating with Muhammad Iqbal (appellant). The latter had made firing upon Muhammad Nazir (PW-10) and her son Muhammad Qasim (deceased than alive), as a result of which, her son had received injury on his head. As per crime report, when the

injured was being shifted to hospital, he had succumbed to the injuries and died on the way. The occurrence was stated to have also been witnessed by Muhammad Awais (PW-11) and Muhammad Nazir (PW-10) beside other people present at the spot. On report of the complainant, *Murasila* (Ex.PB) was drafted by Munir Ahmad, SI (PW-06) which was sent to Police Station, whereupon the ibid FIR (Ex.PA) was registered.

2. After completion of investigation, challan was submitted before learned trial court. Appellant was put to trial before the court of learned Additional Sessions Judge-IV / Judge CP/ JC Abbottabad in case FIR No. 235 dated 15.05.2016 registered under Section 302 PPC at Police Station City Abbottabad. Formal charge was framed against appellant, to which he pleaded not guilty and claimed trial. In order to prove its case, prosecution produced twelve (12) witnesses, whereafter accused was examined under Section 342 Cr.P.C. He denied the allegations and professed innocence, however, he neither opted to be examined on oath nor produced evidence in his defence. After having been found guilty for committing murder of

deceased Qasim Khan, at the conclusion of trial, he was convicted under Section 302 (b) PPC and sentenced to life imprisonment besides being burdened with compensation amounting to Rs.5,00,000/-, payable to legal heirs of deceased under Section 544-A Cr.P.C or in default of suffer further six (06) months S.I, vide impugned judgment dated 29.11.2021. He has also been convicted under Section 324 PPC for attempting at the life of Nazir Khan and sentenced to ten (10) years R.I with a fine of Rs.1,00,000/- or in default to suffer three (03) months S.I. All the sentences were ordered to run concurrently with benefit of Section 382-B Cr.P.C. Since the complainant has also filed **Criminal Revision No.15-A/2022** for enhancement of sentence of the appellant, therefore, we propose to decide both these matters together through this single judgment.

3. We have heard arguments of learned counsel for the parties as well as learned Assistant Advocate General and gone through the record.

4. Perusal of record reveals that prosecution has been relying upon eyewitness account of the occurrence offered by Muhammad Nazir (PW-10)

and Muhammad Awais (PW-11). The corroboratory evidence included recovery of weapon of offence on pointation of the appellant and its matching report with the empties recovered from the spot.

5. Complainant of the case was not an eyewitness. She was mother of the deceased, who was examined as PW-09. In her first report as well as in examination-in-chief she has stated that her son had left his house for the market on 15.05.2016 at 09:00 hours and when he had reached near house of one Muhammad Iqbal, there Muhammad Nazir (PW-10) and appellant (Muhammad Iqbal) had been altercating with each other. Appellant was further alleged to have made firing as a result of which her son Qasim Khan (deceased) got hit on his head. The occurrence was also stated to have been witnessed by Muhammad Awais (PW-11), beside Muhammad Nazir (PW-10). She was briefly cross-examined but nothing could be brought from her mouth, showing existence of any malafide or previous enmity with the appellant. Muhammad Nazir was examined as PW-10. He has stated in his examination-in-chief that

appellant had beaten wife and children of the witness, a day before the occurrence i.e. on 14.05.2016 regarding which he had also submitted an application in the police station, a copy of which was exhibited as Ex.PW-10/1. He has statedly left his house on 15.05.2016 at 09:00 hours and while going towards his under construction house, he had met Muhammad Iqbal (appellant) who had felt enraged and threatened him due to lodging of report against him. Appellant was also alleged to have started firing at the witness, one of which had hit the deceased on his head, resulting into his death. He has also stated that mother of the deceased reached at the place of occurrence thereafter she had been informed about the occurrence and she had also subsequently lodged report at DHQ Hospital, after shifting of the deceased to hospital. In the cross-examination, main focus of the cross-examiner had been on the fact that this witness had not stated in his 161 Cr.P.C statement that appellant had threatened him and that he had not mentioned in his 164 Cr.P.C statement that the other PW Muhammad Awais had also witnessed the occurrence. Except suggestions and its

denial, nothing beneficial to the case of appellant could be solicited from his mouth by the cross-examiner. So far as not naming other eyewitness in 161 Cr.P.C statement is concerned, it is important to be noted that presence of said PW had been mentioned by complainant while lodging first report of the occurrence. The inquest report also indicated his presence at the time of handing over dead body of the deceased at the hospital. In the site plan, Investigating Officer of the case has also marked his presence at point No.3. The site plan had also been prepared on joint pointation of both the eyewitnesses. Statement of one of the eyewitness namely Muhammad Nazir (PW-10) had been recorded under Section 161 Cr.P.C on the first day of occurrence while statement of Muhammad Awais (PW-11) had been recorded by the Investigating Officer on second day of occurrence. In such circumstances, mere omission to name the other PW in 161 Cr.P.C statement of Muhammad Nazir (PW-10) would not make much difference. Statement of other eyewitness namely, Muhammad Awais has also remained fully consistent and confidence inspiring. Presence of

both the PWs stood well established. Their testimonies have also remained consistent *inter se* regarding the mode and manner of occurrence. Same is also corroborated by arrest of the accused on the day of occurrence alongwith a licensed 30-bore pistol recovered vide recovery memo Ex.PW-4/1. Two empties of 30-bore, recovered vide recovery memo Ex.PW-6/2 from the spot, had also been sent to FSL on 15.05.2016 for the purpose of comparison, report received therefrom was in affirmative and providing sufficient corroboration to case of prosecution.

6. Medico-legal report was also supporting case of prosecution. Dr. Syed Imtiaz Shah while deposing as PW-05 has stated that deceased had been brought before him on 15.05.2016 at 10:30 hours by Constable Zubair No. 05 and that on his examination he had found the following injuries on his person;

**Injuries.**

1. *An entry wound of 1 x ½ inches with fractured of under lying bone in present over the left forehead. 3 x ½ inches above the left eye brow with oozing of fresh blood with inverted*

*margins. Under lying bony crepitus is felt.*

2. *An exit wound of ½ x ½ inches is present over the scalp in occipital region just to the right of mid line of occipital region. Everted margins with brain matter coming out of the exit wound. Oozing of fresh blood on exit wound.*

*Peri orbital blackening around both eyes and swelling."*

7. It was a case of single accused to whom complainant had not been inimical earlier. No reason existed why should he be substituted for the real culprit. Substitution in such like cases is a rare phenomena. Reliance may here be placed on judgment of Hon'ble Supreme Court of Pakistan delivered in the case of "*Muhammad Sadiq Vs. The State*" reported as **2022 SCMR 690**. Evidence of prosecution has remained fully consistent against the appellant, establishing his culpability beyond reasonable doubt. Case of the prosecution was supported by medico-legal evidence and also corroborated by evidence of recovery of weapon of offence and its matching FSL report. The learned trial court has rightly found him guilty for commission of the offence



and accordingly convicted him under Section 302 (b) PPC.

8. There remains no doubt about the criminal liability ensued by the appellant for committing Qatl-e-Amd. As per story of prosecution, he was not having any motive for killing the deceased and had in fact been aiming his pistol on Muhammad Nazir (PW-10) for killing him but due to fate or missing of fire the deceased had been done to death. He had in fact intended to kill Muhammad Nazir but had killed deceased Qasim in the affair. It was a case of transferred malice for which legislature has already put in place Section 301 PPC. Said provision of law being relevant here is reproduced for ready reference;


***“301. Causing death of person other than the person whose death was intended:***

*Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to be likely to cause, such an act committed by the offender shall be liable for Qatl-e-Amd.”*

9. Law has left no room for doubt that if a person intends killing of one person but kills

another as the result of firing so made, he shall be treated to have committed Qatl-e-Amd of the deceased. "Where a defendant intends to kill or cause serious injury to one victim, V1" as held by Supreme Court of United Kingdom in the case of R Vs. Gnango reported as **2012 SCMR 1442** "but accidentally kills another, V2, he will be guilty of the murder of V2. The basis of this liability is customarily described as "transferred malice", although a better description might be "transferred mens rea". The doctrine applies to secondary parties as it does to principal offenders. Thus if D2 attempts to aid, abet, counsel or procure D1 to murder V1 but D1, intending to kill V1, accidentally kills V2 instead, D2 will be guilty of the murder of V2."

10. Similarly, Hon'ble Supreme Court of Pakistan while delivering its verdict in the case of "*Abdullah Khan Vs. Sahib Dad Khan & others*" reported as **1977 SCMR 186** has also held;



*"Sahib Dad fired thrice and this showed that he was determined to kill PW Abdullah. Rafiullah, however, intervened and he was hit and killed. The facts of the case, therefore, fall squarely within the terms of Section 301 of the Code, and Sahib Dad must be held guilty of*

*murder unde Section 302 of the Code although he never intended to kill Rafiullah."*

Further reliance in this respect may also be placed on the judgment rendered by Hon'ble Supreme Court of India in the case of *"Jagpal Singh & others Vs. The State of Punjab"* reported as **AIR 1991 SC 982** as well as in the case of *"Shankarla Kachrabhai & others Vs. State of Gujarat"* reported as **AIR 1965 SC 1260**.

11. In light of what has been discussed above, the sentence awarded to appellant under Section 302 (b) PPC by learned trial court was also found in accordance with law and resultantly, this appeal being without any substance is hereby dismissed.

12. So far as criminal revision bearing No. 15-A/2022 is concerned, it is important to be noted that appellant was not having a motive for commission of the offence. He had just made two (02) fires and that also at an occasion where PW Muhammad Nazir had been altercating with him. We have no record regarding the sort of altercation they were having at the relevant time. In such circumstances, award of alternate punishment of life imprisonment was found

justified and the revision petition, mentioned above, was found divested of any force which is also dismissed.

Heard & Announced On:  
28.02.2023.

Prepared & Signed On:  
27.03.2023.

  
JUDGE  
  
JUDGE

*Justices Wiqar Ahmad and Kamran Hayat Miankhol*

/'Satt. CS. ' /