

PESHAWAR HIGH COURT, BANNU BENCH.
(Judicial Department).

Cr.A No. 130-B of 2018 with
Murder Reference No. 06-B of 2018

Arsalan
Versus
The State & Farman Ali Shah etc.

JUDGMENT

Date of hearing: **03.12.2019.**

For Appellants: **Mr. Sultan Mehmood Khan Advocate.**

For State: **Mr. Shahid Hameed Ourashi Addl: A.G.**

For Respondents: **Mr. Muhammad Rashid Khan**
Dirma Khel Advocate.

SAHIBZADA ASADULLAH, J.- This criminal appeal is directed against the judgment dated 30.07.2018 passed by learned Additional Sessions Judge-III, Bannu, whereby appellant Arsalan was convicted under section 302(b) P.P.C and sentenced to death. He shall be handed by the neck till he is dead. The convict shall also pay Rs.200000/- (two lac) as compensation in terms of section 544-A of the Cr.P.C to the legal heirs of deceased or in default thereof, he shall undergo six-months simple imprisonment. He was further convicted under section 392 P.P.C and sentenced to 10 years rigorous imprisonment with fine of Rs.20000/- or in default thereof, to further undergo six months SI. He was also convicted under section 411 P.P.C and sentenced

to three years rigorous imprisonment with fine of Rs.5000/- or in default thereof, the convict shall further undergo three months simple imprisonment. All the sentences were ordered to run concurrently. Benefit of section 382-B, Cr.P.C. was also extended to the convict/appellant. Alongwith this appeal, we shall also decide the Murder Reference No. 06-B/2018 sent by learned trial Court for confirmation of the death sentence awarded to the appellant.

2. According to contents of F.I.R, it is mentioned that complainant Farman Ali Shah, on 04.02.2015 at 17.15 hours, alongwith his nephew injured Uman Ali Shah, in the emergency room of civil hospital, Bannu, reported the matter to Shalil Khan ASI (PW-2), that he alongwith his nephew Uman Ali Shah had gone to the house of their relative and were on the way back to their home riding on motorcycle driven by Uman Ali Shah, while the complainant was sitting on pillion and when reached link road near the house of Sabz Ali situated at Kotka Muhibbullah, at about 16.30 hours, the convict/ appellant Arsalan already present there signaled to stop, when Uman Ali Shah stopped the motorcycle the convict/ appellant immediately pulled out .30 bore pistol from the fold of his shalwar and tried to snatch, motorcycle, mobile and motorcycle, which was resisted by Uman Ali Shah, at

which the convict/ appellant fired at him, as a result of which Uman Ali Shah hit, sustained severe injuries and fell down. The convict/ appellant snatched Nokia Mobile-C-3, Laptop and Motorcycle superstar and decamped from the spot on the said Motorcycle. Complainant being disable could do nothing. The complainant immediately shifted the then injured to the hospital, where his report was reduced in shape of *Murasila* (Ex: PW2/2). Mr. Shalil Khan ASI vide his application (Ex:PW2/1) sought opinion from the doctor regarding the capability to speak the injured, but he was opined to be unconscious and unable to talk. He prepared injury sheet (Ex:PW2/3). Sent the injured to the doctor under the escort of constable Bakhtiar Ali No.427 (PW-05) Sent the *Murasila* to the Police Station, through constable Muhammad Akram No.134, where the contents of *Murasila* were incorporated in shape of F.I.R (Ex:PW3/1) by Hashim Ali Khan ASI (PW-3) and copy of the same was sent to the Mirdaraz Khan SI (PW-12), who visited the spot and prepared site-plan (Ex:PB) on the pointation of complainant. Took into possession blood stained pebbles from the place of the then injured vide memo (Ex:PW6/1) and four empties of .30 bore vide memo (Ex:PW6/2). The injured during his treatment at LRH Peshawar, succumbed to the injuries. He also prepared recovery memo regarding bloodstained garments of the

deceased vide memo (Ex:PW 6/3). On the day of occurrence i.e. 04.02.2015 the S.H.O Saadullah Khan (PW-5), arrested the convict/ appellant and recovered snatched articles vide memo (Ex:PW5/2) and crime weapon, for which F.I.R No.79 was registered against him. Regarding snatched articles identification parade was conducted on 06.02.2015 by Mr. Ijaz-ul-Haq Judicial Magistrate, Bannu (PW-10), while crime empties and recovered crime weapon were sent to F.S.L. and its report (Ex:PK) which was in positive was placed on file. After completion of investigation complete challan was submitted against the convict/ appellant.

3. Accused was produced in custody before the learned trial Court. After complying formalities under section 265-C Cr.P.C., he was charge-sheeted, to which he pleaded not guilty and claimed trial. The prosecution in order to prove guilt produced and examined witnesses and closed prosecution evidence. Learned trial Court recorded statement of accused under section 342 Cr.P.C, wherein he professed his innocence, neither he wished to produce defence evidence nor opted to be examined on oath as provided under section 340(2) Cr.P.C. Learned trial Court, after hearing arguments of learned counsels for the parties, vide impugned judgment dated 10.07.2018, convicted and sentenced the appellant and

sent murder reference for confirmation of his death sentence. Hence, the instant criminal appeal as well as murder reference.

4. Arguments of learned counsels for the parties heard and the record gone through with their valuable assistance.

5. The unfortunate incident occurred on 04.02.2015 at 1630 hours, when the complainant alongwith the deceased was on his way back from the house of his relative Jehanzeb Khan. The accused/appellant, while standing on the roadside, signaled Uman Ali Shah to stop, who stopped, the accused forwarded and took out .30 bore pistol from the folds of his Shalwar and tried to snatch the laptop and mobile from the deceased, the deceased being a young boy offered resistance, so the accused opened firing which hit the deceased on various parts of the body and fall down. The accused took the laptop and mobile of the deceased and decamped by using the motorcycle of the deceased. The injured was rushed there and then to the hospital, where the complainant reported the matter to the police.

6. At the very outset, learned counsel for the defence stressed that the appellant was innocent and falsely implicated; that there was no motive to commit the offence; that the complainant was not present with the deceased and

that the arrest and recoveries were fabricated and planted and lastly he questioned the sentence awarded.

7. We heard the learned counsel with patience, the record reveals that the deceased was brutally murdered that too for the sake of a laptop and mobile phone and the complainant reported the matter with promptitude to the local police when the deceased was injured and unconscious. The complainant narrated the incident as he saw and the arrival soon after the incident with injured to the hospital excluded the chances of consultation and deliberation and false charge. The learned counsel pointed out that the injured was brought by the local police to the hospital as the name of the complainant figures nowhere in the medico-legal report but his this submission gained no ground as the deceased in injured condition was rushed to the hospital and at 05.10 p.m he was placed before the doctor. The report was made by the complainant well within 45 minutes of the occurrence.

8. The complainant was examined as PW-6 and he was cross-examined at length, but the defence could not succeed to bring anything favourable from his mouth. He was never questioned and never suggested that the charge was brought against the accused owing to some previous grudge. The complainant from the very beginning stated that there was no motive.

In case titled Saeed and 2 others Vs. The State
(2003 SCMR 747), it was held that:-

“The evidence of eye-witnesses was not suffering from any material defect or contained any describable contradiction and discrepancy to create a slight doubt regarding the guilt of the petitioners. We find that motive in the present case was not shrouded in mystery as contended by the learned counsel and in any case, the weakness and insufficiency of motive or absence of motive in such-like cases, cannot be considered as a mitigating circumstance for lesser penalty’.

9. The purpose of the accused was manifest from the fact that soon after the occurrence he fled on motorcycle of the deceased and took away the laptop and mobile Nokia of the deceased. The accused was so hardened that at 08.00 p.m, he was arrested from guava garden and the snatched articles were recovered from his possession. The prosecution went with the investigation honestly and the defence could not point out any dent or *mala fide*. The complainant produced the registration of the motorcycle and also the purchased receipts of both the laptop and Nokia mobile. The prosecution was so careful that even identification parade was arranged, where all the recovered articles were got identified from the complainant that too before the Judicial Magistrate. The Magistrate was examined as PW-10, who was put to searching cross-examination but nothing adverse could be extracted from him.

10. The Investigating Officer recovered blood-stained pebbles and four empties of .30 bore from the spot. At the time of arrest .30 bore pistol was also recovered from possession of the accused, which was sent alongwith the recovered empties to F.S.L for chemical analysis and the report was received in positive, which corroborate the prosecution story.

In case titled Nizamuddin Vs. The state (2010 SCMR 1752), it was held that:-

"6. Coming to the question of delay in sending crime weapon and crime empties, admittedly, the crime empties were recovered on the day of incident and the crime weapon was recovered on 17-7-1996. It appears that the same were, however, sent to Chemical Examiner on 24-7-1996 with considerable delay but such delay shall not, in the facts and circumstances of this case, overweigh the ocular evidence found in line with and supported by the medical evidence".

11. The deceased, then injured, when reached to the hospital was unconscious and the scribe submitted application to the doctor for his opinion regarding the capability to talk, which was endorsed by the doctor noting that the injured was unconscious. The deceased then injured was referred to Peshawar and was hospitalized in Lady Reading Hospital, but he lost the battle of his life on the next day i.e. on 05.02.2014, and after the postmortem examination the dead-body was brought back to the village. The seat of injuries supported the

stance of the complainant as the deceased had received the firearm injuries from his front and so the medical was in harmony with the ocular account.

In case titled Nizamuddin Vs. The state (2010 SCMR 1752), it was held that:

"Thus we do not find any conflict in between ocular and medical evidence which, rather is corroborative on date, time of the incident' and the seat of injury. Learned counsel took a plea in his arguments that the eye-witnesses were interested witnesses. There is no denial that the complainant is brother of the deceased while two other eye-witnesses, namely, Sakhawat Hussain and Muhammad Sharif are their cousins but, it is well-settled that mere relationship does not hold a witness interested to a party and we find nothing to hold them so. On the contrary we find their ocular evidence unbiased, consistent in material aspects and more so reliable".

12. The deceased was a young boy and was near to complete his education and was the hope for his family. The brutal act of the appellant has choked the very hopes of a poor father. Though the learned counsel lastly focused on the quantum of sentence, but the brutal act of the accused deserves no leniency, as the prosecution has successfully proved the case against the accused and the normal penalty provided for the offence of *qatl-e-amd* is death. After assessing the prosecution case from all angles, we come to the safe conclusion that the judgment of the trial Court is based

on proper appreciation of evidence and is well reasoned,
hence warrants no interference.

13. Resultantly, this appeal being devoid of merits is
dismissed and the murder reference is answered in positive.

Announced:

Dt: 03.12.2019


Azam/P.S


JUDGE


JUDGE

(D.B)

Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Mr. Justice Sahibzada Asadullah.


17/11/2019