

JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.A No. 220-P/2016

(1) *Zahid Hameed son of Abdul Hameed (Appellant)*
Versus

(1) *Siraj Shah son of Pirzada*
(2) *The State*

(Respondents)

Present:

Mr. Jala-ud-Din Akbar Azam Khan (Gara),
Advocate for the appellant.

Mr. Astaghfirullah, Advocate for the respondent
No. 1/complainant.

Mr. Rab Nawaz Khan, A.A.G. for the State.

Cr.R No. 42-P/2016

Siraj Shah son Pirzada.

(Petitioner)

Versus

(1) *Zahid Hameed son of Abdul Hameed*
(2) *The State*

(Respondents)

Present:

Mr. Astaghfirullah, Advocate for the petitioner.

Mr. Jala-ud-Din Akbar Azam Khan (Gara),
Advocate, for the accused/respondent.

Mr. Rab Nawaz Khan, A.A.G for the State.

Cr.R No. 83-P/2016

The State through A.A.G

(Petitioner)

Versus

Zahid Hameed son of Abdul Hameed

(Respondents)

Present:

Mr. Rab Nawaz Khan, A.A.G for the petitioner.

Mr. Jala-ud-Din Akbar Azam Khan (Gara),
Advocate, for the accused/respondent.

Date of hearing: **12.09.2019**

CONSOLIDATED
JUDGMENT

Nawab (D.B.)

Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Mr. Justice Wiqar Ahmad

WIQAR AHMAD, J.- Through this single judgment, we intend to decide this criminal appeal bearing No. 220-P/2016 as well as connected criminal revisions bearing No. 42-P and 83-P of 2016, as all these matters emanate from one and the same judgment dated 29.02.2016 given by the learned Additional Sessions Judge IV Kohat, in case F.I.R No. 48 dated 25.02.2012 registered under section 302 of the Pakistan Penal Code, 1860 (hereinafter referred as "**PPC**") at Police Station KDA District Kohat. Through the impugned judgment, the appellant namely Zahid Hameed was convicted under section 302 (b) PPC and sentenced to life imprisonment along with payment of compensation of Rs.3,00,000/- (three hundred thousand) payable to the legal heirs of the deceased under section 544-A of the Criminal Procedure Code, 1898 (hereinafter referred to as "**Cr.P.C**"), or in default thereof, he was ordered to undergo further six (6) months simple imprisonment. The said compensation was ordered to be recovered as arrears of land revenue. The accused/appellant was, however extended the benefit of section 382-B Cr.P.C.

2. As per prosecution story, on 25.02.2012 at 13:05 hours Nisar Islam, IHC along with other police 'Nafri' were on routine patrolling of the area, when they received information about presence of a dead body at KDA hospital Kohat. When they reached KDA hospital, uncle of the deceased Siraj who was present with the dead body, lodged the report to the effect that he along with his nephew Farman were riding on a motorcycle, whereas Naimat Jamal (deceased) was riding another motorcycle and were going towards sector 1 of KDA. Naimat Jamal was a few paces ahead of them and when the complainant-party reached near gate No. 1 of KDA, the accused/appellant Zahid Hameed who was already present there, drew out his pistol and started firing upon Naimat Jamal. Due to firing of the accused, the deceased fell down from his motorcycle and died at the spot. The complainant also advanced a specific motive which was stated to be a dispute over woman-folk. The 'Murasila' was drafted in the hospital and was sent to the police station for registration of FIR and accordingly the subject FIR was registered against the accused at the

police station concerned.

3. Investigation was started in the case by the local police of police station KDA Kohat and on conclusion of the same, complete *challan* was put in Court. During trial, the prosecution produced as many as twelve (12) witnesses whose statements were recorded and placed on file. On close of the prosecution evidence, accused/appellant was examined under section 342, Cr.P.C, who denied the charges in general terms and took the defence of insanity of mind. He opted to produce evidence in his defence under section 340 (2) Cr.P.C and requested for summoning of Lt. Col. Dr. Sohail Ali, who was stated to have treated the accused at CMH Kohat earlier. By then he had got transferred from CMH Kohat and his attendance could not be procured, however one Maj. Syed Shah Khalid appeared and stated before the learned trial Court that as per their policy five years old record is destroyed, therefore, no record of treatment of appellant was found in the CMH, he, however, has produced a certificate which was placed on file.

4. On conclusion of the trial, the learned Additional Sessions Judge Kohat, convicted and sentenced the accused/appellant for life imprisonment and fine, as stated above, vide the judgment impugned herein.

5. The learned counsel for the accused/appellant restricted his arguments to the defence of unsoundness of mind of the accused and submitted in alternative that the accused/appellant is also entitled to the benefit of section 302 (c) PPC. In support of the aforementioned stance, he argued that when the accused was examined by the medical board on 25.04.2013 he was not found capable of facing trial because of his mental illness. Subsequently, on 13.03.2014 the accused was re-examined through another medical board, who opined that the accused was capable of facing trial, whereafter, trial of the accused was resumed. The learned counsel also drew our attention towards the answers given to questions No. 13,14 and 15 by the accused in his statement recorded under section 342 Cr.P.C and submitted that the accused had taken the defence of unsoundness of mind as he had been

suffering from Schizophrenia at the relevant time. The learned counsel also placed reliance on the statement of Dr. Muhammad Tariq recorded as CW-1 and a certificate of treatment produced from CMH Kohat as well as the documents produced by the accused in his statement recorded under section 342 Cr.P.C and contended that all the evidence establishes the fact that the accused had committed the offence under a delusionary state of mind produced by his disease of Schizophrenia, which stood proved on the record.

6. The learned counsel for the complainant vehemently opposed the learned counsel for the accused/appellant and submitted that the circumstances in which the offence had been committed coupled with the existence of a motive on part of the accused shows that the accused had committed the offence with a definite intention and making of mind which would never have been possible, had the accused suffered from Schizophrenia. He did not, however, lay much stress on his revision for enhancement of the sentence of the accused in the circumstances of the case. Same

was the case with the learned Additional Advocate General, who adopted the arguments of the learned counsel for complainant and added that the accused had committed the offence in a planned manner and thus he had rightly been convicted by the learned trial Court. He did not lay much stress also on the revision petition filed by the State for enhancement of the sentence.

7. We have heard arguments of the learned counsel for the accused/appellant, learned counsel for the complainant, learned A.A.G appearing on behalf of the State and gone through the record of the case with their able assistance.

8. Perusal of the record reveals that the accused/appellant has been directly named by the complainant in a promptly lodged FIR for the commission of the offence. The version of prosecution is also supported by ocular testimony of the eye-witness Siraj, who is complainant of the present case and testified as PW-9. While the other eye-witness of the occurrence namely Farman was abandoned by the prosecution. Soon after the occurrence, when the accused was on the run he was arrested

and weapon of offence was also recovered from him. The weapon of offence was sent to the FSL along with the 4 empties recovered from the spot and one crime bullet. The Forensic Science Laboratory vide its two separate reports Ex. PW- 2/1 and Ex. PW-2/2 confirmed that the crime bullet recovered from the body of the deceased as well as 4 empties recovered from the spot had been fired from the 9 mm pistol recovered from the accused soon after the occurrence. The arrest and recovery of weapon of offence stood proved on record. The accused had also confessed his guilt before the Court of learned Judicial Magistrate Kohat. Mr. Ikramullah, Judicial Magistrate-V Kohat also testified in support of the confessional statement of the accused as PW-8. Nothing favourable to the accused could be extracted from his mouth during the course of cross-examination. In circumstances of the case given above, the prosecution have been successful to prove guilt of the accused beyond any shadow of doubt through direct as well as corroborative evidence.

9. While analyzing the evidence relating to the defence of unsoundness of mind, it is important

to note that the accused was shown to have been suffering from a mental disease namely Schizophrenia. "F.C. Redlich & Daniel X. Freedman in "The theory and Practice of Psychiatry" (1966 Edition)" describes the varying degree of intensity of illness and its nature in the following words;

Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living

Calcutta High Court in the case of "Smt. Rita Roy v/s Sitesh Chandra AIR 1982 (Calcutta) 138" held that each case of Schizophrenia has to be considered on its own merits. The doctor while appearing as CW-1 has also explained the nature of the illness of the accused i.e. Schizophrenia, during the cross-examination conducted by the learned counsel for the accused/appellant in the following words;

"It is correct that as per medical literature Schizophrenia is chronic service brain disorder in which the patient hears voices believe the media and broadcast the words that someone is trying to harm him. Self-stated that all these symptoms are not necessarily present in every Schizophrenia patient. It is correct that there are chances that Schizophrenia patient may not

differentiate between reality and imagination. It is correct that at time Schizophrenia patient loses touch with reality. It is correct that Schizophrenia is not completely curable however it is a treatable disorder though it is not 100% curable. It is correct that Schizophrenia patient can face relapse at any time and he can lose his touch with reality."

When the doctor was cross-examined by the learned counsel for the complainant, the said witness further elaborated the disease of Schizophrenia as follows;

"It is correct that at the time of my latest examination, I have found the accused mentally stable and capable of facing trial. It is correct that medical board has assured that accused was mentally fit. There are two hormonal changes during Schizophrenia. Schizophrenia can be episodic as well as chronic. It is correct that the interval between disorder cannot be determined by doctor. It may be long or short. It is correct that the disorder like post-traumatic stress disorder, stress induced psychosis, can occur after some horrifying accident. There is possibility that the accused is suffered from mental disorder due to the occurrence, he has been charged for."

It is clear that the nature of disease from which the accused/appellant was suffering was not permanent in nature. It has sufficiently been explained in the medical literature as well as dictums of the Hon'ble superior courts that the disease of Schizophrenia is occasional and comes in durations

and intervals. In this regard, reliance is placed on the case of "Mst. Safia Bano v/s Home Department Govt: of Punjab and others" reported as "PLD 2017 Supreme Court 18", wherein the Hon'ble Court formed the following view;

Thus, schizophrenia is not a permanent mental disorder, rather imbalance, increasing or decreasing, depending the level of stress. In recent years, the prognosis has been improved with drugs, by vigorous psychological and social managements, and rehabilitation. It is, therefore, a recoverable disease, which, in all the cases, does not fall within the definition of "mental disorder" as defined in the Mental Health Ordinance, 2001.

10. From the evidence particularly the statement of CW-I including cross-examinations conducted by the accused and complainant side, it is proved rather an admitted position that the accused in the instant case had been living a normal life with the aid of psychiatric treatment and medications. There has to be intervals in his life when he was not in control of his senses while on the other occasion he happened to be a normal individual. In such a situation, the burden of proof lay on the accused to establish that he had been suffering from lunacy at the crucial time of commission of the offence and that he had lost control of his senses at the relevant

time. Unsoundness of mind, has been brought in general exceptions from acquiring criminal liability by section 84 PPC. The burden of proof for establishing the fact that a case falls under the general exceptions lies on the persons taking the defence thereof. Reliance in this respect is placed on the case of "Iftikhar Ahmad v/s The State" reported as "2005 SCMR 272"

11. Now we have to see that whether the accused/appellant has been successful in proving that he had been suffering from insanity at the time of commission of the offence or not. In this respect, he has once been examined by a medical board pursuant to the application submitted by the learned counsel appearing on his behalf in the trial Court. The said examination was carried on 25.04.2013, the report of which was produced before the trial Court as CW-1/1. The said report is reproduced as under for ready reference;

"The Standing Medical Board is of the opinion that the accused suffers from chronic Schizophrenia. He is still thought disorder, deluded. He needs treatment in a secure place prison. At the moment, he does not understand the nature of crime, its consequences, proceedings of the Court and is unfit to plead in the Court of law. He will be reviewed by the board after six

months. Due to potential risk of dangerousness, he possess to the family and public, he needs to be secure unit like prison."

Later on, on 13.03.2014 the accused was re-examined and found fit for facing trial by the competent medical board, report of which was placed on file as Ex. CW-1/4. Opinion of the said medical board is reproduced hereunder as follows;

"Standing medical board is of the opinion that accused suffers from chronic Schizophrenia illness which a major mental disease. The accused has been on anti-psychotic medication for the last one year. The accused has responded to medication. At the moment, the accused is in remission. He understands the nature of his crime, its consequences and court proceedings. Therefore, he is fit to plead in the Court of law. However, Schizophrenia illness is chronic and relapsing illness. The accused needs to be on anti-psychotic medication for foreseeable future. The Hon'ble Court may dispose of his case under relevant act."

It was in-fact after report of the second medical board on 13.03.2014 when the trial of the accused was conducted, during which, no further objection was ever raised regarding mental condition of the accused/appellant till conclusion of the trial and even thereafter.

12. The accused/appellant in order to prove the fact of lunacy relied upon the statement of CW-1, a certificate produced by one Maj. Syed Shah Khalid

before the learned trial Court and available on page No. 90 of the paper book of appeal and the record of medical treatment exhibited as D-1 (consisting of 16 sheets) by the accused in his statement recorded under section 342 Cr.P.C. From none of the evidence mentioned above, it could be ascertained that at the time of commission of offence the accused had been suffering from insanity or unsoundness of mind so as to enable him to bring his case under the ambit of general exceptions as provided by section 84 of the PPC. CW-1 in his examination-in-chief has narrated stories of the constitution and proceedings of the two medical boards constituted in the case in hand. From his cross-examinations, as stated earlier, one fact is evident that the accused was suffering from Schizophrenia, which produced delusional state of mind at times with substantial intervals. When the accused was not suffering from the said state of mind then he used to be a normal person. He also stated in the cross-examination conducted by the learned counsel for the complainant that at the time of the last examination of the accused he had been found mentally stable and capable of facing trial. From the statement of CW-1 it could nowhere be gathered that at the time of commission of the offence the accused had been suffering from insanity. The record of medical treatment

exhibited by the accused as D-I coupled with a certificate produced by Maj. Syed Shah Khalid establishes the fact only that the accused had been suffering from chronic Schizophrenia and it did not establish the fact that the accused had been suffering from phenomena of unsoundness of mind at the time of commission of the offence. The burden of proof that lied on the accused/appellant for acquiring the benefit of section 84 PPC could not be discharged by him. The circumstances of the case also show that the offence was committed in a well thought out manner and with a definite intention of mind. The accused had armed himself with a 9 mm pistol, traveled a considerable distance from the place of his residence to a place where the presence of the complainant and deceased was expected, positioned himself, aimed at his target and achieved his objectives. Motive was also existing on his part. He has given a complete and correct narration of the occurrence, motive and developments taking place at that time and after the occurrence, in his confessional statement, Ex. PW-8/1. He has also replied the questions put to him by the Magistrate and recorded in the memorandum of inquiry Ex. PW-8/2. All the attending circumstances

and the evidence thereof produced in the case in hand shows that the accused had not been suffering from the lunatic interval at the time of the commission of the offence.

13. Regarding the stance for extending the benefit of section 302 (c) PPC to the accused, it is important to mention that the accused was found to have committed the offence in a well thought out manner and with a definite motive and intention at the time when he had not been suffering from a delusional state of mind. The fact that the accused had been suffering from mental disease generally has been taken into account by the learned trial Court and considered it as a mitigating circumstance in fixing the sentence of the accused. He has not been awarded the normal penalty of death and his sentence was chosen to be life imprisonment by the learned trial Court due to the only reason that the accused had been suffering from mental illness generally. In the circumstances of the case, we do not find any reason to treat the case of the accused/appellant under section 302 (c) PPC.

14. For the reasons mentioned above, the sentence of life imprisonment has rightly been awarded to the appellant/accused by the learned trial

Court, no justification exists for enhancing the sentence either. Resultantly, the appeal in hand as well as criminal revisions bearing No. 42-P and 83-P of 2016 are also dismissed.

Announced
Dt. 12.09.2019


JUDGE


JUDGE