

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

Cr.A. No.616-P/2014
with Murder Reference No.17/2014

Date of hearing: **12.05.2015**

Appellant (s) : **Mohabat Khan by Barrister Zahoor ul Haq.**

Respondent (s) : **Nemo for complainant, and State by Mian Arshad Jan, AAG.**

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Mohabat

Khan aged 83 years, sentenced to death under section 302 (b) PPC, for committing the Qatl-e-Amd of Fida Muhammad deceased, and to pay Rs.7,00,000/-, as compensation to LRs of the deceased, in terms of S.544-A Cr.P.C. or in default thereof to undergo 06 months S.I. further, by learned Additional Sessions Judge-IV, Swabi, vide judgment dated 10.11.2014, has filed this appeal challenging his conviction and sentence. A Reference under section 374 Cr.P.C. has also been sent by the learned Trial Court for confirmation of death sentence. This common

judgment will govern both, the appeal as well as the reference.

2. On 21.06.2009 at 2100 hours, complainant Saleem Khan (PW.13), in company of dead body of his deceased brother Fida Muhamamd Khan, reported to local police in Casualty of Topi hospital Swabi, that on the fateful day he alongwith his deceased brother while returning from Topi Bazaar, met their uncle Mohabat Khan (appellant-convict herein), near the house of one Jans Khan, situated in Mohallah Sana Khel; that the deceased demanded return of his loan Rs.5,00,000/- from the appellant, on which he infuriated and give dagger blows to the deceased one after the other, which resulted into his death on the spot. Report of the complainant was reduced into writing in the shape of murasila Exh.PA/1, by Abdul Mateen ASI (PW.9), on the basis of which FIR No.325 dated 21.06.2009 under section 302 PPC was registered at Police Station Topi, against the accused. He prepared injury sheet and inquest report of the deceased Exh.PW.9/1 and

Exh.PW.9/2, and referred his death body to the mortuary for postmortem examination.

3. Dr. Fazal Qadar SMO (PW.10), conducted autopsy on the dead body of the deceased on 21.06.2009 at 8.45 p.m. and found the following injuries on his person:-

1. Stab wound 3 x ½ cm at left medial lower chest at the level of 8th intercostals space.

2. Stab wound 3 x ½ c.m. on left side of abdomen, 3 c.m. lateral to umbilicus.

Abdomen, walls, peritoneum, small intestine, damaged.

Walls, pleurae, left lung, pericardium, heart and blood vessels as well as thorax injured.

Opinion:- According to opinion of the Medical Officer, death of the deceased occurred due to stab wounds, causing damage to the heart, left lung, blood vessels and small intestines.

4. Muhammad Shoaib SI (PW.14), proceeded to the spot and prepared site plan

Exh.PW.14/1 at the instance of eyewitness/complainant. During spot inspection, he secured bloodstained earth from the place attributed to the deceased vide recovery memo Exh.PW.14/2. Vide recovery memo Exh.PW.14/3, he took into possession an electric tube-light from the spot. Similarly, vide recovery memo Exh.PW.4/1, he took into possession the last worn bloodstained attires of the deceased having cut marks. He sent the bloodstained clothes and earth to the FSL, report whereof is Exh.PK, initiated proceedings under sections 204 and 87 Cr.P.C. against the appellant and after completion of investigation, he handed over case file to SHO, who submitted challan in terms of S.512 Cr.P.C. against the appellant.

5. On arrest of the appellant, supplementary challan was submitted against him before the learned Trial Court, where he was formally charge sheeted, to which he pleaded not guilty and claimed Trial. To prove its case, prosecution examined as many as fourteen witnesses. After closure of the prosecution evidence, statement of the appellant was

recorded under section 342 Cr.P.C., wherein he denied the prosecution allegations and professed his innocence. He, however, declined to be examined on oath under section 340 (2) Cr.P.C. or to produce defence evidence. On conclusion of trial, the learned Trial Court convicted and sentenced, as mentioned above.

6. Learned counsel for the appellant-convict while arguing the case on merits half heartedly, lastly submitted that keeping in view the extreme old aged of the appellant as 83 years, non-proof of motive, premeditation and intention of the appellant to commit the crime coupled with the fact that what actually happened just before the incident which at the spur of moment provoked the appellant, penalty of death awarded by the learned Trial Court to the appellant, seems to be a harsh one, as such stressed for reduction of the same. In support of his contention he placed reliance on case titled, **“Muhammad Ishaque Khan and others Vs the State and others” (PLD 1994 Supreme Court 259)**, case titled, **“Muhammad Tariq Vs**

the State” (2003 SCMR 531), this Court judgment in case titled, “Muhammad Aslam Shah Vs the State” (PLJ 1993 Cr.C. (Peshawar) 276) (DB), and case titled, “Nazir Ahmad and another Vs the State” (2013 P Cr L J 505).

7. Complainant was afforded an opportunity to engage a counsel, but he on 28.04.2015, stated at the bar that being a destitute, he could not engage a counsel, therefore, would rely on the arguments of learned AAG. AAG contended that prosecution has proved the guilt of the appellant up to the hilt through cogent and confidence inspiring evidence and there is no mitigating circumstance which may warrant lesser sentence; that mere extreme old age of the appellant cannot be a ground of awarding lesser sentence. He while supporting the impugned judgment sought dismissal of the appeal.

8. We have heard the arguments advanced from either side and perused the record carefully.

9. Record divulges that complainant Saleem Khan has directly and singularly charged the appellant for committing the murder of his nephew Fida Muhammad by giving him dagger blows on vital parts of his body. The incident took place at 20.00 hours, which has been reported with promptitude at 2100 hours i.e. within an hour, eliminating any possibility of consultation, deliberation and concoction. Appellant is the real uncle of the complainant and nothing is on the record even to show previous ill will of the complainant with the appellant, therefore, it does not appeal to a prudent mind that he he would let off the real culprit of murder of his brother by implicating his innocent real uncle.

10. Saleem Khan complainant while appearing as PW.13, furnished the ocular account of the incident which is straightforward, trustworthy and confidence inspiring supported by medical evidence in the shape of testimony of the Medical Officer, who conducted autopsy on the dead body of the deceased, according to which the deceased met

unnatural death because of stab wounds on vital part of his body, like heart and abdomen. Recovery of blood from place of the deceased on the spot, his bloodstained garments having cut marks, coupled with positive Serologist report Exh.PK qua the bloodstained articles, squarely corroborate the ocular account. Eyewitness Saleem Khan has been subjected to taxing and comb searching cross-examination by a skillful hand, but nothing beneficial to defence could be extracted from him. He remained stuck on his stance and defence failed to create any dent in his testimony on any vital aspect of the incident so as to render his presence on the spot with the deceased at the time of incident as doubtful.

11. Moreso, appellant being real uncle of the deceased, instead of giving shoulder to the “Jinaza” of the deceased, went into hiding for considerable period, therefore, his unexplained abscondance, in the circumstances, is another corroborative piece of circumstantial evidence supporting the direct evidence.

12. In light of the above discussed evidence, we are firm in our view that it was the appellant who committed the murder of his deceased nephew Faida Muhammad by giving him dagger blows, hence, the learned Trial Court was quite justified by holding him guilty of the murder. The findings of the learned Trial Court qua guilt of the appellant being based on proper appreciation of evidence, is not open to any interference.

13. Now the moot point for determination before us is what should be the quantum of sentence to meet the ends of justice. On the face of record, the appellant is an old man of 83 years and such extreme age can be considered by itself as an infirmity. Besides, no shred of evidence, much less tangible, is on record to prove to show the immediate cause of this untoward incident. As per complainant's version deceased and the appellant met by chance on the way, where the deceased demanded his loan, as a result the appellant infuriated and give him dagger blows but this stance of the complainant does not appeal to our mind as on

mere demand of a loan, a real uncle cannot be expected to take the life of his nephew. What actually happened just little before the incident, which provoked the appellant, has been suppressed by the complainant. The peculiar facts and circumstances of the case suggests that on refusal of demand of loan by the appellant, the deceased might have exchanged hot words or abusing language with the appellant, by virtue of which the appellant being the real uncle of the deceased, might not have controlled his temper keeping in view the offensive language and disrespectful conduct of his nephew, which resulted this untoward incident. There is no evidence to prove that appellant was specially waiting for the deceased at the place of the incident having prior plan to do him away. Rather, the deceased and appellant met by chance on the way; and what actually happened in a spur of moment, which resulted in this unfortunate incident, shrouded in mystery. We deem this as a sufficient mitigating circumstance coupled with extreme old age of the appellant, for reduction in his

sentence. Reliance placed on cases titled, “**Muhammad Ishaque Khan and others Vs The State and others**” (PLD 1994 Supreme Court 259), “**Muhammad Tariq Vs the State**” (2003 SCMR 531) and **Muhammad Aslam Shah Vs the State**” (PLJ 1993 (Peshawar) 276.

14. For what has been discussed above, we maintain conviction of the appellant under section 302 (b) PPC, however, reduce/convert his sentence from penalty of death to imprisonment for life. The amount of compensation as awarded by the learned Trial Court shall remain intact. Benefit of S.382-B Cr.P.C. is extended to the appellant.

15. With the above modification in the sentence of the appellant, this appeal stands dismissed.

16. The murder reference is accordingly answered in the **negative.**

Announced.
12.05.2015

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