

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Jail Crl. Appeal No.873-P/2019

Shahid Ullah son of Rasool Khan,
r/o Zor Kandi Shabqadar District Charsadda.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Appellant :-	<u>Mr. Danyal Khan Chamkani, Advocate</u>
For State :-	<u>Mr. Mujahid Ali Khan, AAG.</u>
For complainant :-	<u>in person.</u>
Date of hearing:	<u>31.10.2019</u>

ORDER

ROOH-UL-AMIN KHAN, J:- This Jail criminal appeal, filed by Shahid Ullah son of Rasool Khan, the appellant, is directed against the judgment dated 24.06.2019, of learned Additional Sessions Judge/Judge Model Criminal Trial Court, Charsadda, whereby he has been convicted under section 302 (b) PPC and sentenced to imprisonment for life as ta'azir and to pay Rs.4,00,000/-, as compensation to legal heirs of Aman Ullah deceased in terms of section 544-A Cr.P.C. and in default thereof to undergo 06 months simple imprisonment, in case FIR No.315 dated 29.06.2016, under section 302 PPC, Police Station Shabqadar, District Charsadda. Benefit of section 382-B Cr.P.C. has been extended to him.

2. The prosecution case is that on 29.06.2016 at 1815 hours, complainant Zahid Ullah (PW.6), in company of his

injured son Aman Ullah, who was semi conscious, reported to Daud Jan HC (PW.2) in THQ hospital Shabqadar to the effect that on the fateful day he was present on a thoroughfare near a shop, situated in Zor Kanday. His son Aman Ullah and Shahid (the appellant) were also present in the aforesaid shop. At 1750 hours there was argument on some issue between his son and the appellant which resulted a brawl in between them. In order to separate them, he (complainant) rushed towards them, but in the meantime, the appellant gave knife (Chaqo) blows to Aman Ullah on left side of his chest, as a result, he got severely injured. After commission of the offence, the appellant made his escape good from the spot. He (complainant) charged the appellant for commission of the offence. Report of complainant was recorded in the shape of Murasila Exh.PA by Daud Jan HC (PW.2), on the basis of which FIR mentioned above was registered against the appellant. He (PW.2), prepared injury sheet of the injured Aman Ullah Exh.PW.2/1 and referred him for medical examination. Dr. Khalil Khan (PW.11) examined him on and noticed a sharp cut wound on right shoulder and a sharp deep wound on left side below clavicles of the deceased then injured. After giving first aid, the injured was referred to LRH, Peshawar, but he succumbed to injuries, therefore, PW.11 conducted autopsy on the dead body and opined death of the deceased due to sharp

wounds causing major blood vessels resulting into heavy bleeding.

3. Liaqat Khan DSP (PW.5) conducted investigation in the case, who proceeded to the spot and prepared site plan Exh.PB on the pointation of the complainant. During spot inspection, he secured bloodstained earth from the place of the deceased then injured vide recovery memo Exh.sPW.5/1 in presence of witnesses. Vide recovery memo Exh.PW.4/1 he took into possession the last worn bloodstained garments of the deceased then injured and sent the same along with blood secured from the spot to the FSL for chemical analysis report whereof is Exh.PZ. He captured photographs of the crime spot Exh.PW.5/6 to Exh.PW.5/10, initiated proceedings under sections 204 and 87 Cr.P.C. against the appellant and recorded statements of the PWs. On 09.09.2016 the appellant was arrested by Muhammad Saeed Khan SHO vide arrest card Exh.PW.5/13 and was handed over to the I.O (PW.5), who after obtaining his physical custody, interrogated him and on his pointation recovered the crime knife from a drain/water course vide pointation memo Exh.PW.5/15. As the appellant had confessed his guilt before the media and his confession was shown on live TV Channel by Anchor Yousaf Jan, therefore, PW.5 obtained the said video saved in a memory card Exh.P.4. On completion of investigation,

he handed over case file to SHO who submitted challan against the appellant before the learned trial Court.

4. On receipt of challan by the learned trial Court, the appellant was formally charge sheeted to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as eleven 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 evidence in defence. On conclusion of trial, the learned trial Court, after hearing both the sides convicted and sentenced the appellant as mentioned above, hence, this appeal.

5. Arguments of learned counsel for the parties heard and record perused.

6. Record depicts that occurrence has taken place on 29.06.2016 at 1750 hours which has been reported with promptitude at 1815 hours i.e. within 25 minutes which eliminates the possibility of consultation and deliberation on the part of complainant in charging the appellant. Complainant Zahidullah (PW.6) in his initial report as well as in the statement before Court has directly and singularly charged the appellant for murder of his son. Admittedly, substitution of an accused charged singularly in a murder charge is a rear phonon, particularly, when there is no

evidence about previous enmity of ill will between the parties. Complainant while appearing as PW.6 reiterated the same story of the offence as set forth by him in his initial report. In his initial report he had not disclosed about the motive rather he was so straightforward that he disclosed that arguments between the appellant and deceased resulted into a brawl and then the occurrence but he did not know the motive between the deceased and appellant. In cross-examination, it was brought from his mouth by the defence that the issue between the deceased and appellant was over a pigeon.

7. Umair is the shopkeeper of the shop in front of which the occurrence has taken place. He is eyewitness of the hot words taken place between the appellant and the deceased over return of pigeon. Admittedly, PW Umair is not related to the deceased rather he was the friend of appellant. He while appearing as PW.10 has furnished the following statement:-

“Accused Shahid Ali had friendly relations with me and often came to my shop. I was fond of pigeons and having so many pigeons in which one pigeon was captured by Aman Ullah deceased and he was not ready to return my pigeon. On the day of occurrence I was present in my shop and accused Shahid Ali came to my shop to whom I narrated the whole story regarding the pigeon and after

sometime I found deceased Aman ullah in front of my shop. Accused Shahid Ali also went near to him and asked about the pigeon and also stated him to give back the pigeon back to me and on this they both started altercation and resulted in fight. Accused Shahid Ali took out his knife and started knife blows on deceased Aman Ullah, as a result of which he received severe injuries on his body.”

The complainant and PW Umair have been subjected to lengthy and taxing cross-examination but nothing beneficial to defence could be extracted from their mouths. Rather they remained stuck to their stance and corroborated each other on all material particulars of the occurrence. Their testimonies got support from the medical evidence furnished by Dr. Khalil Khan (PW.11). According to his statement the two sharp wounds, one on right upper arm and another on left side below clavicle of the deceased resulted into the unnatural death. The positive Serologist report qua the blood stained earth secured from the spot and the bloodstained last worn clothes of the deceased, proves the place of the occurrence as alleged by the prosecution. Similarly, recovery of the crime knife on the pointation of the appellant strongly corroborates the ocular account of the prosecution. Unexplained absconsion of the appellant, soon after the occurrence, is yet another circumstantial piece of evidence which if taken along with

direct evidence would be sufficient to prove the guilty conscious of the appellant.

8. For what has been discussed above, the prosecution has proved the guilt of the appellant up to the hilt through cogent and confidence inspiring direct evidence corroborated by strong circumstantial evidence in the shape of recoveries, referred above coupled with medical evidence. In this view of the matter, the learned trial Court has arrived at a right conclusion by holding the appellant guilty of murder of Aman Ullah deceased. However, keeping in view the peculiar facts and circumstances of the case, we are not agreed with the sentence of life imprisonment awarded to the appellant by the learned trial Court, because it is manifest from the record that the occurrence was the result of sudden flare up. It has been established from the prosecution evidence that before inflicting knife blows on the person of the deceased, there was exchange of hot words on return of pigeon of Umair between the appellant and the deceased, which resulted into a sudden fight during which course the appellant gave knife blows to the deceased. The occurrence has taken place without premeditation and the appellant has inflicted knife blow to the deceased in heat of passion without taking undue advantage or acting in a cruel manner, rather after inflicting the knife blow to the deceased, the appellant took heels from the spot. Motive

was between shopkeeper PW Umair and the deceased over a pigeon. Appellant was the friend of said Umair and when Umair complained the appellant that deceased is not ready to return his pigeon, he confronted with the deceased over the said issue, meaning thereby that the appellant had no personal motive with the deceased, rather what happened between the appellant and the deceased were sudden events without any pre-mediation and plan. Not inflicting any knife blow by the appellant to the deceased during exchange of hot words before the occurrence and his later action during the brawl, are sufficient circumstances to prove that he has acted in the course of sudden quarrel and fight. Bare reading of the FIR would suggests that incident has occurred by chance, because when Umair narrated the story of missing his pigeon or stealing his pigeon by the deceased, the unfortunate deceased emerged in front of shop of Umair, where the appellant demanded the return of pigeon to Umair, which resulted into a sudden fight and the appellant in heat of passion inflicted a knife blow on the left side below clavicle of the deceased but misfortunately , ruptured the main blood vessels which caused severe bleeding and resulted into death of the deceased. In view of the above observations, case of the appellant falls within the ambit of section 302(c) PPC and not 302 (b) PPC.

9. Resultantly, the impugned judgment of the learned trial Court is modified in the manner that conviction of the

appellant under section 302 (b) PPC is converted into section 302(c) PPC, resultantly, his sentence is reduced from life imprisonment to 10 years R.I. and to pay Rs.2,00,000/- as compensation to LRs of the deceased in terms of section 544-A Cr.P.C. and in default of payment thereof to undergo 03 months S.I. Benefit of section 382-B Cr.P.C. already extended to the appellant is kept intact.

10. With the above modification in the conviction and sentence of the appellant, this appeal is disposed of accordingly.

Announced:

31.10.2019

M.Siraj Afridi PS

JUDGE

JUDGE

DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and
Hon'ble Mr. Justice Ishtiaq Ibrahim.