

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

**Crl. Appeal No.123-P/2012**  
**with Murder Reference No.3 of 2012.**

Shabib Hussain son of Muhammad Hanif,  
resident of Shalozan Parachinar Kurram Agency..

Appellant (s)

**VERSUS**

The State etc

Respondent (s)

For Appellant :-	<u>Mr. Jalal ud Din Akbar-e-Azam Gara,</u> <u>Advocate.</u>
State :-	<u>Mr. Mujahid Ali, AAG.</u>
For Respondent :-	<u>Mr. Muhammad Saeed Khan, Advocate.</u>
Date of hearing:	<b><u>08.10.2019</u></b>

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** This criminal appeal filed by appellant Shabib Hussain is directed against the judgment dated 03.03.2012, passed by the learned trial Court/Judge Anti Terrorism Court-III, Peshawar, whereby the appellant having been found guilty of committing the '*Qatl-e-Amd*' of Muhammad Aslam Farooqi (A religious Scholar/Leader of Sipah-e-Sahaba), has been convicted under section 302 (b) PPC read with section 7 Anti Terrorism Act, 1997, and sentenced to death and to pay a fine of Rs.10,00,000/-, as compensation to LRs of deceased and in default thereof to undergo 02 years imprisonment in case FIR No.415 dated 12.08.2007, registered under sections 302/324 PPC, S.7 Anti

Terrorism Act, 1997 and section 15 of the West Pakistan Arms Ordinance, 1965, at Police Station Shah Qabool.

2. For confirmation of death sentence of the convict, the learned trial Court has also sent **Murder Reference No. 03 of 2012** in terms of section 374 Cr.PC.

3. Since, both the matters are the outcome of one and the same judgment of the learned trial Court; therefore, we propose to decide the same through this common judgment.

4. As per contents of FIR, on 12.08.2007, on receipt of information regarding murder, Imtiaz Khan SHO (PW.11) along with other police officials reached the spot i.e. *Mohallah Naqashbandi Jehangir Pura* road, where complainant Alamzeb (PW-1) , reported him to the effect that on the fateful day i.e. 12.08.2007, he along with his brother, namely, Muhammad Aslam Farooqi “local leader of Sepah-e-Sahaba”, when returned from Bazaar and reached street of their house, known, as *Mohallah Naqashband*, a young boy duly armed with firearm present there opened indiscriminate fire at them, as a result, his brother got hit and fell on the ground, while he luckily remained unscathed; that he overpowered the culprit alongwith 30 bore crime pistol, two magazines, one containing 6 live rounds and another containing an empty and a live round. On search his further search, a license copy of the pistol No PAK-51, a driving license and NIC No. 21302-4209562-7, in his name were recovered, which the complainant handed over to Imtiaz

Khan SHO along with the culprit and the crime pistol who took the same into possession. He arrested the culprit vide arrest Card Exh.PW.11/1, who disclosed his name as Shabib Hussain (the appellant). PW.11 drafted the report of complainant in the shape of Murasila Ex.PA/1 wherein the complainant charged the appellant for murder of the deceased on sectarian ground that appellant belongs to Shia sect whereas, the deceased was the leader of Sefh-e-Suhaba. On the basis of Murasila FIR (Ex.PA) mentioned above was registered against the appellant at Police Station Shah Qabool. The deceased injured succumbed to the injuries, therefore, Safdar Khan IHC prepared his injury sheet and inquest report and shifted his dead body to the mortuary under the escort of Jehanzeb Constable for postmortem examination. PW.11 took into possession the 30 bore crime pistol No.7715 having an empty in its chamber along with two magazines and other articles mentioned above Exh.P.1 to Exh.P.9 vide recovery memo Exh.PW.9/1. Dr. Iftikhar MO KTH (PW.13) conducted autopsy on the dead body of the deceased on 12.08.2007 at 1.00 p.m. and opined the cause of death of the deceased to be the firearm injuries to his brain, liver, right lung and chest.

**5.** Munir Khan SI PW.14 conducted investigation in the case, he proceeded to the spot and prepared site plan Exh.PB at the pointation of the complainant. During spot inspection he secured bloodstained earth from the place of

the deceased and 05 crime empties of 30 bore from the place of the appellant vide recovery memo Exh.PW.5/1 and sealed the same in parcels. Vide recovery memo Exh.PW.4/1, he took into possession the last worn bloodstained garments of the deceased. Vide recovery memo Exh.PW.8/4 he took into possession spent bullet Exh.P.11 sent by the doctor, after postmortem examination of the deceased. He also took into possession the parcels containing the crime pistols and articles recovered from personal possession of the appellant by complainant Alamzeb at the time of his arrest.. The mobile SIM No.0344-98517 of the appellant was also taken into possession by the I.O. vide recovery memo Exh.PW.8/3 and its CDR data vide memo Exh.Mark.A. During interrogation, the appellant in his statement under section 161 Cr.P.C. named Syed Abid Ali, Farhd Ali, Nabi Hussain, Hashim and Syed Ishfaq Hussain to be his co-accused in the commission of offence, out of whom accused Syed Abdid Ali and Farad Ali were also arrested.

6. On completion of investigation, complete *challan* was submitted against the appellant and co-accused Abid Ali and Farhad Ali. They all were jointly tried and on conclusion whereby the learned trial Court, after hearing both the sides acquitted co-accused Syed Abid Ali and Farhad Ali, however, convicted and sentenced the appellant as mentioned above vide judgment, impugned in the instant appeal.

7. Initially, appeal of the appellant was decided by this Court vide judgment on 09.4.2015, whereby his conviction and sentence was set aside and the case was remanded to Anti Terrorism Court Abbottabad for trial denovo, however, the judgment of this Court was set aside by the august Apex Court vide judgment dated 6.10.2015 passed in **Criminal Appeal No. 22 of 2015**, resultantly, was remanded to this Court for decision afresh on merits. On 26.5.2016, this Court again remanded the case to the learned trial Court for *de novo* trial on the ground of defective charge. The complainant being dissatisfied assailed the judgment of this Court dated 26.5.2016 before the Hon'ble supreme Court in **Criminal Appeal No. 583 of 2018**, which was allowed, consequently, the judgment of this Court was set aside and the case was remanded again to this Court for decision on merit.

8. Arguments of learned counsel for the parties heard and record perused with their valuable assistance.

9. It appears from record that the occurrence has taken place at 11.00 a.m. which has been reported with promptitude at 11.15 a.m. Imtiaz Khan SHO (PW.11), in cross-examination has deposed that on receipt of information about the occurrence he along with other police officials reached the spot within five minutes, where complainant Alamzeb Khan (PW.1), handed over him the appellant along with crime weapon and reported him about the occurrence. The promptly lodged report of the

occurrence eliminates the possibility of consultation and deliberation on behalf of the complainant with any other person to falsely charge the appellant. Besides, the appellant was unknown to the complainant as he is resident of Mohallah Naqshband Peshawar while the appellant is the resident of Parachinar. Both, complainant and the appellant belong to different religious sects. It appears from record that the deceased was a local leader of Seph-e-Shaba while the appellant hails from Shia sect. Alam Zeb complainant while appearing as PW.1 reiterated the ocular account of the occurrence as set forth by him in his initial report. Similarly, Arshad (PW.2), has also furnished the ocular account of the occurrence, who deposed that he was running business of medicine; that on the day of occurrence at about 11.00 a.m. he was going to bazaar. In the way he saw Aslam Farooq deceased and Alamzeb complainant and in the meanwhile, a person fired at them with pistol, as a result, the deceased got hit, injured and fell down on the ground while Alamzeb escaped unhurt. The complainant apprehended the culprit there and then at the spot along with crime pistol. Other people also attracted to the spot. In cross-examination he deposed that he is next door neighbor of the complainant and at the time of occurrence he was going to Bazaar from his house and was in the street in which the occurrence took place. He explained that at the time of occurrence the deceased along

with complainant was coming to home from Bazaar while he was on the way to Bazaar, hence, he was facing towards them; that after firing the complainant caught hold of the accused and he also helped him; that accused fired 5/6 shots at the deceased; that police arrived at the spot after 10/15 minutes and the accused was handed over to them. Both the eyewitnesses named have corroborated each other on all important aspects of the case i.e. the day, date time and place of occurrence as well as the mode and manner in which the occurrence took place and arrest of the appellant red handed at the spot along with crime weapon. Both the witnesses have been subjected to taxing cross-examination by the defence but nothing beneficial to the appellant could be extracted from their mouths. Similarly, Imtiaz Khan SHO (PW.11), in his statement has also corroborated the ocular account of the eyewitnesses to the extent of arrest of the appellant by the eyewitnesses and thereafter his handing over to PW.11 along with crime pistol. The positive serologist report about the bloodstained earth recovered from the spot and the bloodstained clothes of the deceased confirm the crime spot to be the same as alleged by the eyewitnesses. An iota of evidence has not been brought by the appellant to prove any ulterior motive on the part of the complainant warranting his false implication. There exists no reason as to why the complainant will substitute the real culprit of murder of his deceased brother

by falsely implicating an unknown innocent person from Parachina Kurram. Admittedly, substitution of real culprit charged directly and singularly is a rare phenomenon in the system of criminal justice. Reference in this regard can be made to case titled, “**Allah Ditta Vs the State**” (PLD 2002 Supreme Court 52) and case titled, “**Muhammad Iqbal Vs the State**” (PLD 2001 Supreme Court 222). Recovery of driving license and CNIC of the appellant at the time of arrest further corroborate the ocular account. The autopsy report of the deceased where he has sustained firearm injuries on various parts of his body having similar dimension, as a result, the deceased met his unnatural death, also supports the ocular account.

**10.** The five crime empties of 30 bore pistol and a spent bullet duly recovered from appellant, were sent to the FSL along with recovered crime pistol No.7715, which as per report Exh.PZ/1, have been fired from 30 bore pistol No. 7715. This strong corroborative piece of circumstantial evidence fully corroborates the ocular account and strengthens the prosecution case.

**11.** Sufficient evidence has been brought on record by the prosecution which proves that the deceased was a religious scholar and prominent leader of Sipah-e-Sahaba, whereas the appellant belongs to Shia sect, therefore, murder of the deceased for the purpose of advancing a religious and sectarian cause is sufficient to prove the act



of the appellant as terrorism. Coming of the appellant from Parachinar Kurram Agency to Peshawar and committing murder of the deceased proves the occurrence to be well planned by the appellant, therefore, there exists no mitigating circumstance to warrant lesser sentence. In this view of the matter, the learned trial Court while appreciating the evidence in its true perspective, has reached to a right conclusion by holding the appellant guilty of the offence and awarding him the capital sentence to which no exception can be taken.

**12.** Resultantly, this appeal being meritless is hereby dismissed. Murder Reference No.3 of 2012, sent by the learned trial Court is answered in the “Affirmative” and death sentence of the appellant/convict is confirmed.

Announced;  
**08.10.2019**

**JUDGE**

**JUDGE**

*DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and  
Hon'ble Mr. Justice Ahmad Ali.*

