

***JUDGEMENT SHEET***  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH**

*(Judicial Department)*

**Cr.A No.408-B of 2016.**

**Abdul Kamal alias Kamal Khan**  
**Vs**  
**The State and another.**

**JUDGEMENT**

Date of hearing 13.10.2017

Appellant-Petitioner: **By Rasheed Khan**  
**Dirma Khel, Advocate.**

Respondent: **State By Shahid Hameed**  
**Qureshi, Addl: AG & Others**  
**by Hujjat Ullah Khan,**  
**Advocate.**

**ABDUL SHAKOOR, J.-** This appeal is directed against the judgment dated 10.11.2016, passed by the Additional Sessions Judge, Lakki Marwat, whereby appellant Abdul Kamal alias Kamal Khan was convicted and sentenced under section 302 (b) PPC to imprisonment for life for charge of committing Qatl-e-amd of Rahmanullah with payment of Rs.2,00,000/-(two lacs) as

compensation under section 544-A Cr.P.C to the legal heirs of deceased and in default thereto to undergo simple imprisonment for six months. Benefit of section 382-B Cr.P.C was extended to the accused/appellant.

2               Precisely, the facts of the prosecution case, as per FIR, are that on 02.8.2012 at 1815 hours complainant Muhammad Mir brought dead body of Rehman Ullah (his son) to the Police Station Tajori and lodged a report to the effect that he, his son Rehmanullah and nephew Bilal Khan on 02.8.2012 were going to the house of Zangi Khan, in order to enquire about his health, Deceased was going ahead while the complainant and his nephew followed him. At about 1630 hours when they were crossing the shop of accused/appellant, on a thoroughfare, accused Kamal Khan duly armed with Kalashnikov emerged from his shop and started firing at his son Rehmanullah with the intention to commit his

qatl-e-amd, as a result of which his son was hit and succumbed to his injuries on the spot. Due to empty handed the complainant party could do nothing. The accused after commission of the offence decamped from the spot. Motive behind the occurrence was stated that 15 days prior to the present occurrence, cross firing had taken place between the accused and the deceased, which was not reported in police station for the reason that matter was patched up.

3. After completion of investigation complete challan under section 512 Cr.P.C against the accused was put in Court as he was absconding by then. After arrest of the accused, prosecution submitted supplementary challan against him for trial on 14.6.2014. Accused was summoned. On his appearance before the trial Court, provisions of section 265-Cr.P.C were complied with and thereafter formal charge was

framed against him, to which he pleaded not guilty and claimed trial.

4. Trial commenced and the prosecution in order to prove its case examined as many as nine witnesses. After closure of the prosecution evidence, statement of the accused was recorded under section 342 Cr.P.C, wherein he pleaded innocence, however, he neither wished to produce evidence in defence nor to be examined on oath under section 340(2) Cr.P.C. After conclusion of the trial, the learned trial Court after hearing arguments of the learned Special Public Prosecutor, assisted by learned counsel for the complainant and learned counsel for the accused, convicted and sentenced him as mentioned above.

5. Feeling aggrieved by the judgment of the learned trial Court, Abdul Kamal alias Kamal Khan , the appellant impugned the same through filing instant Cr. Appeal No.408-B/2016 while the complainant preferred a criminal revision No.52-

B/2016 for enhancement of the sentences awarded to the accused/convicts. Hence both the appeal and revision petition are decided through this common judgment because both the appeal and revision petition have arisen out of the same judgment and FIR and the questions of facts and law in both the cases are identical.

6. Learned counsel for the appellant argued that impugned judgment of the learned Trial Court is against the law, facts and evidence available on record; that the complainant and eye witness failed to establish their presence on the spot through some strong physical circumstance; that there is considerable delay in lodging the FIR which was made in Police Station Tajori, District Lakki Marwat, which is at a distance of 5/6 kms from the place of occurrence; which suggest that neither the occurrence has taken place in the mode and manner as advanced by the prosecution and furthermore the said FIR is a result of consultation

and deliberation, after procurement of complainant and eye witness in the case in hand; that there was no motive for the accused/appellant to commit murder of the deceased as the complainant party has clearly stated that the alleged motive has already been compromised. He further argued that the medical evidence is in complete contrast to the story set up in the FIR and circumstantial evidence does not support the prosecution version. He lastly argued that the instant appeal deserve to be allowed and the accused/appellant be acquitted from the charges alleged against him.

7. Conversely, learned AAG assisted by learned counsel for the complainant argued that appellant is directly charged for effective firing at the deceased; that ocular account furnished by the PWs is straightforward and confidence inspiring which is corroborated by medical evidence, site plan, recoveries of blood and empties from the

spot; that the occurrence has been reported within two hours after arranging the Datsun; that the FSL report also corroborates the prosecution case by elaborating that the firing has been made from one and the same weapons of 7.62 bore; that the prosecution has successfully proved the guilt of the appellant through overwhelming evidence available on record and sought dismissal of the appeal of the appellant and also prayed for enhancement of the conviction.

8. Valuable arguments of learned counsel for the parties and AAG representing the State heard and record perused.

9. The occurrence in this case took place at 04.30 hours while the report was lodged at Police Station on the same day at 06.15 hours. It is clear from the FIR that the occurrence has taken place 5/6 kms away from the Police Station. Now it is to be seen whether the explanation offered by the complainant in cross-examination

for lodging the complaint, after the delay of 01 hour and 45 minutes, when the police station was 5/6 kilometers away from the place of occurrence which distance ordinarily could be covered through vehicle within 10 minutes was convincing. He in cross-examination with regard to the above said delay in lodging FIR stated that just after the death of his son, a cot/charpie was arranged from the house of Mir Ali, co-villager whose house was near to the place of occurrence and deceased was put on it. It is very obvious by that time he was bleeding. He further stated that after putting the deceased on the cot, he went in search of Datsun from the Adda but he did not find any Datsun, then he proceeded to nearby village for getting Datsun through bike which was driven by one Syed Wali. It is not explained as to how much time he consumed in arranging the vehicle for taking his son to police station for lodging a report which admittedly has been



lodged at 06.15 p.m. It is unbelievable that on the availability of so many other persons of his village, who as per his statement were attracted to the place of occurrence and gathered around the deceased, complainant being father, would leave his son there and go all alone for search of Datsun. In such a situation a father could not keep his senses in order and would act, as complainant offered justification for covering the delay, which occasioned in lodging the FIR. The complainant, in order to substantiate his story, which he put forward for mitigating the effect of delay, caused in lodging the FIR, did not produce Syed Wali, who allegedly took him for search of Datsun, as witness to verify the same and likewise the driver of Datsun, on which the deceased was taken to police station for lodging the FIR. The justification so offered for mitigating the effect of delay, caused in lodging the FIR, does not appeal to a prudent mind and additionally, as stated above,

was not substantiated by Syed Wali and Driver of the Datsun, due to the reason of their non-citing and producing them as prosecution witnesses. As such, the complainant miserably failed to explain the justification of delay caused in lodging the FIR, which was fatal for the prosecution case; as in the absence of explanation of delay it is mystery where deceased remained for such a long time after the commission of the alleged occurrence, this, proves the manner and mode as advanced by the prosecution about the alleged occurrence is not true. The unexplained delay in lodging the FIR creates serious doubt about the complainant Muhammad Mir (PW-6) and Hazrat Bilal (PW-7) as eye witnesses of occurrence. In such circumstances, it was the bounded duty of the prosecution to prove the physical presence of the alleged eye witnesses at the place of occurrence, for which the prosecution remained unsuccessful. In this respect reliance can be made

on case titled **“Jehad Ali Vs. Riaz Ali and another” (2014 Cr.L.J 1559).**

10. It is also an admitted position that complainant and the other eye witness namely Hazrat Bilal are closely related to the deceased did not go to hospital along with the deceased, for his post mortem, which in the circumstances, appears to be unnatural, as the deceased was the only son of complainant (PW-6). This aspect of the case has also shaken the story of prosecution for believing it to be true. The other eye witness namely Hazrat Bial (PW-7) instead of going to hospital along with his first cousin has gone to his house, as he himself has stated in his cross-examination that when police party came at the spot, he was called there, from his house. He further stated that he remained with the investigation officer from 07.15 p.m to 11.30 p.m; whereas PW-8 Abdur Rehman SI (I.O) allegedly visited the spot after chalking out the FIR against

the accused/appellant and remained there for 45 minutes. The Statement of PW-7 Hazrat Bilal, the alleged eye witness of the occurrence, that he remained with the Investigation Officer for about 04 hours has been belied by the I.O that he (I.O) remained there on the spot for 45 minutes only. It has proven that the alleged eye-witness has not witnessed the alleged recoveries from the place of occurrence, vice versa, it also belies to the statement of the investigation officer that he proceeded to the place of occurrence at 07.15 p.m and remained there for 45 minutes. So, the statement of complainant (PW-6) and Hazrat Bilal (PW-7) as eye witnesses, particularly, in view of unjustified and unexplained delay, in lodging the FIR and the contradictions between the timing of post mortem report and the FIR has created serious doubt regarding their physical presence on the place of occurrence. Reliance in this respect can be placed on case titled

**“Muhammad Javed Vs. The State” (2016 SCMR 2021).**

11. As per the contents of the FIR at about 1630 hours when the complainant party was crossing the shop of accused/appellant, on a thoroughfare, accused Kamal Khan duly armed with Kalashnikov came out from his shop and made firing at the deceased, as a result of which he was hit and died on the spot but the perusal of post mortem report Ex.PM reveals the probable time that elapsed between injury and death is 2 to 3 hour and between death and PM is 1 hours, which clearly suggest that the occurrence has not taken place in the mode and manner as set up by the prosecution.

12. It has been observed by this Court that the occurrence in this case had taken place in village Abadi on a thoroughfare, surrounded by houses but only two persons have been cited eye witnesses i.e. Muhammad Mir (PW-6) and Hazrat

Bilal (PW-7) who being closely related to the deceased, were not only interested but the motive set up for the commission of the offence by the accused/appellant also shows that they were inimical towards him.

13. It is settled law that for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right. Reference is made to case "**Muhammad Akram v. State**" (2009 SCMR 230). The above discussed facts and circumstances of the case creates serious doubt regarding the prosecution of proving the guilt of the appellant beyond the reasonable doubt, as material facts favouring the appellant, were not considered by the learned trial Court, while appraising the evidence of the prosecution. In the

absence of truthful, trustworthy and reliable and confidence inspiring evidence, the learned trial Court has wrongly not extended the benefit of doubt to the accused/appellant.

14. In view of the above discussion, the instant criminal appeal is accepted, the impugned judgment of conviction and sentence dated 10.11.2016, rendered by learned Additional Sessions Judge-I, Lakki Marwat is set aside and consequently appellant Abdul Kamal alias Kamal Khan involved in case FIR No.240 dated 02.8.2012 under sections 302 PPC, Police Station Tajori, Lakki Marwat is acquitted of the charge leveled against him. He be set at liberty forthwith, if not required in any other criminal case.

Announced  
13.10.2017

*JUDGE.*

*JUDGE.*

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