

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr.A.No.23-B/2015

JUDGMENT

Date of hearing.....11.4.2017.....

Appellant-petitioner: **Farid Khan by Arif Ullah Khan, Awan,**

Advocate.

Respondent: **State by Shahid Hameed Qureshi, A.A.G along**

with Shah Hussain Khan, Advocate.

MUHAMMAD AYUB KHAN, J.- Appellant Farid Khan faced

trial in case FIR No.164 dated 23.5.1994 registered under

Sections 302/34 PPC at Police Station Ghoriwala, Bannu and

vide judgment dated 02.9.1999 of learned Judge Special Court/

Additional Sessions Judge, Bannu, he was convicted and

sentenced as under:-

“under Section 302(b) PPC--- to life imprisonment (on two counts) alongwith compensation of Rs.50,000/- (two counts) under Section 544-A Cr.PC, to be paid to the legal heirs of both the deceased or in default thereof to undergo six months S.I on each count.

Benefit of Section 382-B Cr.PC was extended to him.

Both the sentences were ordered to run consecutively”.

2. Feeling dis-satisfied with the judgment dated 02.9.1999, the appellant filed the present Cr.A.No.23-B/2015.

3. Appellant Farid Khan also faced trial in case FIR No.165 dated 25.5.1994 registered under Sections 302/324/353 PPC at Police Station Ghoriwala, District Bannu, and vide judgment dated 04.8.1997 of learned Special Judge, Bannu, he was convicted and sentenced as under:-

“Under Section 302 PPC--- to life imprisonment (on two counts) alongwith compensation of Rs.50,000/- (two counts) under Section 544-A Cr.PC to be paid to the legal heirs of both the deceased or in default thereof to undergo further six months S.I.

Benefit of Section 382-B Cr.PC was extended to him.

Both the sentences were ordered to run consecutively”.

4. Against this judgment of conviction and sentence dated 04.8.1997, the appellant filed J.Cr.A.No.24-B/2015. Since

both the matters are interconnected and for the following reasons, both the appeals i.e. Cr.A.No.23-B/2015 and J.Cr.A.No.24-B/2015 are being disposed of through this single judgment.

5. On 23.5.1994 at 1730 hours, complainant Saifullah Khan (PW-3) made report to PW-9 Dost Muhammad Khan SHO on the spot that on the eventful day he alongwith his son Sultan Khan were present in the *baithak* (chowk) of village. One Aziz-ur-Rahman, partner and working as *mistry* with his son at D.I.Khan, came there at '*pashin qaza vela*' and sat alongwith his son on a cot. The complainant went to the house and brought tea when in the meanwhile appellant Farid Khan armed with Kalashnikov and co-accused Zahoor Khan (empty handed) came there and sat near to them on cot. The complainant offered them tea, the appellant did not accept while co-accused Zahoor Khan after taking tea, shook hand with them and left. Having covering few paces, the appellant suddenly returned and started firing with his Kalashnikov on Aziz-ur-Rahman. As a result, Aziz-ur-Rahman and his son Sultan Khan got hit and died on the spot. After the occurrence both the accused ran away. The occurrence was stated to be witnessed by co-villagers. On the report of the

complainant *murasila* (Ex.PA/1) was drafted and sent to the Police Station. Hence, FIR No.164 dated 23.5.1994 under Sections 302/34 PPC was registered at Police Station Ghoriwala, Bannu.

6. In connection with case FIR No.223 dated 03.7.1993 under Sections 302/324/34 PPC Police Station Ghoriwala, Bannu and case FIR No.164 dated 23.5.1994 under Sections 302/34 PPC of same Police Station, the local police received information regarding presence of appellant in his house. Meharban Khan ASI (PW-7) alongwith Muhammad Iqbal IHC No.903, Salim Khan HC No.1140, Rustam LHC No.792 (PW-8), Naqibullah No.104, Naeemullah No.38, Sher Ali Shah No.1159, Umar Ayaz No.1158 (PW-9), Nasrullah No.879, Sarwar Jan No.246 and Gullom No.832 armed with Kalashnikovs cordoned off the house of the appellant. Complainant Meharban Khan ASI, Muhammad Iqbal IHC No.903, Naqibullah No.104 and Umar Ayaz No.1158 entered the house. The appellant armed with Kalashnikov came out of his residential room and started firing with intention to kill the police party. As a result, Muhammad Iqbal IHC No.903 and Naqibullah

No.104 got hit and fell on the ground while complainant and Constable Umar Ayaz escaped unhurt. The police party also retaliated the firing but the appellant escaped and disappeared in 'abadi'. Naqibullah FC No.104 died on the spot while Muhammad Iqbal No.903 was shifted to the hospital in injured condition where later on he also succumbed to his injuries. *Murasila* (Ex.PA/1) was drafted and sent to the police station. Hence, case FIR No.165 dated 25.5.1994 under Sections 302/324/353 PPC was registered at Police Station Ghoriwala, Bannu.

7. After completion of investigation, in case FIR No.164 challan was submitted against the appellant and co-accused Zahoor Khan before the learned trial Court and the trial culminated into acquittal of co-accused Zahoor Khan and conviction of the present appellant, who was sentenced as above, vide judgment dated 02.9.1999.

8. Similarly, on completion of investigation, in case FIR No.165, challan was submitted against the appellant before the learned trial Court and on conclusion of trial he was

convicted and sentenced as mentioned above vide judgment dated 04.8.1997.

9. At the very outset, when learned counsel for the appellant was confronted with the situation that both the appeals having been filed on 25.02.2015 challenging the judgments dated 02.9.1999 and 04.8.1997, are hopelessly time barred and the delay has not been properly explained, he frankly conceded that he would not press the appeal on merits but requested that the sentences awarded to the appellant may be ordered to run concurrently as required under section 35 read with section 397 Cr.P.C. The learned Addl: A.G. for the State assisted by private counsel for the complainant half-heartedly refuted the arguments of learned counsel for the appellant.

10. As the learned counsel for the appellant did not press the appeals on merits, therefore, we will refrain from discussing merits of the case. The record reveals that while pronouncing conviction and sentences of the appellant in both the cases, the learned trial Court has ordered that all the sentences shall run consecutively. In this respect the apex Court

in case titled “Shah Hussain Vs. The State” reported as (PLD 2009 Supreme Court 460), held that:-

“A perusal of proviso (a) to subsection (2) of section 35, Cr.PC., indicates that it prohibits the giving of consecutive sentence in one trial beyond the period of fourteen years, the maximum sentence, short of the death sentence, which could be imposed on an offender before the promulgation of the Law Reforms Ordinance, 1972. The said provision (section 35, Cr.PC) appears to be in consonance with the scheme and intendment of the Pakistan Penal Code that an offender should only suffer the maximum sentence of imprisonment for any heinous crime (as it stood until 1972) which should not exceed fourteen years. Therefore, the imposition of the sentence of life imprisonment (which means 25 years’ R.I., plus seven years’ R.I. under section 307, PPC would be inconsistent with the intendment of the provisions of proviso (a) to subsection (2) of section 35, Cr.PC, inasmuch as the maximum punishment prescribed for heinous offences shall be exceeded. The difficulty in this case can be overcome if the sentences awarded to the appellant in respect of the two convictions under section 302, PPC and under section 307, PPC in one and the same trial are directed to run concurrently instead of running consecutively”.

11. Likewise, Section 397 of the Criminal Procedure Code, 1898 provides that:

“When a person already undergoing a sentence of imprisonment or imprisonment for life is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.”

12. In this respect the Apex Court in case titled, *“Mst. Shahista Bibi and another Vs. Superintendent Central Jail, Mach and 2 others”* reported as PLD 2015 Supreme Court 15, held that:

“Besides the provisions of section 35, Cr.P.C. the provisions of section 397, Cr.P.C. altogether provide entirely a different proposition widening the scope of discretion of the Court to direct that sentences of imprisonment or that of life imprisonment awarded at the same trial or at two different trials but successively,

shall run concurrently. Once the Legislation has conferred the above discretion in the Court then in hardship cases, Courts are required to seriously take into consideration the same to the benefit of the accused so that to minimize and liquidate the hardship treatment, the accused person is to get and to liquidate the same as far as possible. In a situation like the present one, the Court of law cannot fold up its hands to deny the benefit of the said beneficial provision to an accused person because denial in such a case would amount to a ruthless treatment to him/her and he/she would certainly die while undergoing such long imprisonment in prison. Thus, the benefit conferred upon the appellant/appellants through amnesty given by the Government, if the benefit of directing the sentences to run concurrently is denied to him/them, would brought at naught and ultimately the object of the same would be squarely defeated and that too, under the circumstances when the provision of S.397, Cr.P.C. confers wide discretion on the Court and unfettered one to extend such benefit to the accused in a case of peculiar nature like the present one. Thus, construing the beneficial provision in favour of the accused would clearly meet the ends of justice and interpreting the same to the

contrary would certainly defeat the same”.

In this regard reliance is also placed on case titled, “*Ali Fouzan Vs. The State and others*” reported in **2013 P Cr.LJ 652.**

13. For what has been discussed above, both the appeals are dismissed. However, it is held that all the sentences awarded to appellant Farid Khan in case FIR 164 and FIR No.165 are to run concurrently. Office is directed to send a copy of this judgment immediately to the Superintendent Jail, Bannu, who is directed to do the needful at his end, in accordance with law.

Announced.
Dt:11.4.2017.

JUDGE

JUDGE