

Ph: 9082235  
Fax: 9220406

**REGISTERED**

No.Crl.A.526/2015 -SCJ (Imp.)  
**SUPREME COURT OF PAKISTAN**

Islamabad, dated 16<sup>th</sup> April, 2016

From

The Registrar,  
Supreme Court of Pakistan,  
**Islamabad.**

To

The Registrar,  
Peshawar High Court,  
**Peshawar**

**Subject: CRIMINAL APPEAL NO. 526 OF 2015**

Nawab Khan s/o Azeem Khan

Versus

- i. The State
- ii. Mustaqeem s/o Amant Khan

**On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 06.10.2015 in Crl.A. 584-P/2014 in case FIR No. 1256 dated 25.10.2003 registered at P.S. Hoti, District Mardan.**

Dear Sir,

In continuation of this Court's letter of even number dated 22.12.2015, I am directed to enclose herewith a certified copy of the Judgment of this Court dated **12.04.2016 partly allowing** the above cited Criminal Appeal **in the terms stated therein** for information and further necessary action.

I am further directed to return herewith the original record of the High Court received vide your letter No. **175/Judl:** dated **07.01.2016**.

Please acknowledge receipt of this letter alongwith its enclosure immediately.

Encl:

**Judgment:  
O/Record of High Court**

Yours faithfully,

(NAZAR ABBAS)  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

PESHAWAR HIGH COURT PESHAWAR	
Receipt No.	6455
Date	20/4/16
For action	
Signature	

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE ASIF SAEED KHAN KHOSA  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE TARIQ PARVEZ

CRIMINAL APPEAL NO 526 OF 2015

(On appeal from the judgment dated 06.10.2015  
passed by the Peshawar High Court, Peshawar in  
Criminal Appeal No.584-P/2014 and Murder  
Reference No.16-P/2014.)

Nawab Khan

... Appellant

Versus

1. The State
2. Mustaqeem

... Respondents

For the Appellant:

Ch. Abdul Aziz, ASC.

For the respondent:

Mr. Zulfiqar A. Bhutta, ASC.

For the State:

Mr. Zahid Yousaf, ASC.

Date of Hearing:

12.4.2016

J U D G M E N T

TARIQ PARVEZ, J.- Against judgment dated  
6.10.2015 passed by the Peshawar High Court, Peshawar in  
Criminal Appeal No.584-P of 2014, leave to appeal was granted by  
this Court on 17.12.2015, *inter alia*, to consider that where  
account of incident has been furnished by Nawab Khan, compliant  
(PW-6) and Haji Ihsan ud Din (PW-7) out of whom former i.e. PW-6  
had the stamp of injuries on his person and to their testimony  
sufficient corroboration was furnished by medical evidence;  
whether the High Court was justified in recording acquittal of  
Nawab Khan, respondent.

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Court Associate  
Supreme Court of Pakistan  
Islamabad

2. Brief facts of the case as taken from the FIR exht. PA/1 are that occurrence took place at 8.35 a.m. on 25.10.2003 reported by Nawab Khan (PW-6) at 8.50 a.m. for an offence under Section 302/324/34 PPC when he has taken his deceased son namely Jawad Hussain who was then injured to the causality ward of Mardan Hospital and reported that he along with his deceased son and his grandson Shah Faisal (not produced) had left their house for bazaar and when reached the place of occurrence they found Mustaqeem, respondent along with Arshad and Amanat Khan his acquitted co-accused who all were armed with Kalashnikovs. They caught hold of him and started giving him butt blows of the Kalashnikovs and was being rescued by his deceased son Jawad Hussain and grandson Shah Faisal, on this the accused started firing at them. With the fire-shot of respondent Mustaqeem, Jawad Hussain was fatally hit whereas he himself and Shah Faisal sustained injuries as a result of beating.

Motive for the offence was that an evening preceding the day of occurrence an altercation took place between complainant and the accused party and hence, the crime.

3. At the trial held before the learned Additional Sessions Judge-IV at Mardan the prosecution led its evidence relying on the ocular account, motive, recoveries, medical evidence and abscondence of the accused whereon the learned trial Court vide judgment dated 25.10.2014 awarded death sentence to respondent, Mustaqeem under Section 302 (b) PPC with payment of compensation of Rs.1,00,000/- and in default six months S.I. The respondent was also convicted for an offence under Section 324 PPC for attempting at the life of the complainant and Shah

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Supreme Court of Pakistan  
Dated

Faisal eyewitness and was sentenced to seven years R.I. on two counts with a fine of Rs.50,000/- and in default to suffer six month S.I. He was however, extended benefit of Section 382-B Cr.P.C.

4. Aggrieved of the judgment of conviction and sentence by the trial Court, Mustaqeem respondent filed Criminal Appeal before the Peshawar High Court, Peshawar which was heard along with Murder Reference sent by the learned trial Court under Section 374 of the Cr.P.C. and vide judgment dated 6.10.2015 the appellant therein now respondent before us was acquitted of the charge and Murder Reference was answered in negative.

5. We have heard learned counsel for the appellant at sufficient length and also learned counsel appearing for Mustakeem, respondent who himself is not in attendance and also counsel appearing on behalf of the State.

6. Learned counsel appearing for the appellant has argued that the learned Division Bench of the Peshawar High Court has erred in law and facts by allowing the appeal of the respondent by holding that medical report of the Doctor conducting postmortem runs contrary to the ocular account and that no tangible evidence has been led in proof of motive. It is argued that the learned High Court has ignored the fact that complaint Nawab Khan though father of deceased Jawad Hussain himself has sustained injuries on his person which by itself is proof of his presence on the spot which statement could not disbelieved without any valid ground. Learned counsel further submits that occurrence in this case has taken place on 25.10.2003, whereas the respondent was arrested in the year 2013

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thus, he remained outlaw for about ten years which will furnish decisive corroboration in the instant case to the testimony of the injured witness namely, Nawab Khan who has no hostility against the respondent. Learning counsel appearing for the State adopted the arguments made and advanced by the learned counsel for the appellant.

7. Rebutting the submissions made by the learned counsel for the respondent it is argued that the prosecution has failed to prove the charge of Qatl-i-Amd against the respondent because although occurrence has taken place in a busy bazaar at day time but except Nawab Khan (PW-6) who is father of the deceased and Haji Ihsan ud Din (PW-7) who is son-in-law of the complainant no independent witness has been cited or produced. He argued that best evidence which could have been furnished by Shah Faisal another injured eyewitness has been withheld therefore, presumption against the prosecution has to be withdrawn that Shah Faisal though grandson of the complainant, he would not have supported the case of the complainant. It is argued that if the motive has been disbelieved by the learned High Court then there was no reason for the respondent to commit an offence of Qatl-i-Amd of deceased Jawad Hussain for no reason. Learned counsel further argued that it has been rightly noticed by the learned Division Bench of the High Court that the entrance wound on the person of the deceased as against exit wound were on the higher level, therefore, even the venue of crime will be doubtful and so will be presence of the complainant.

8. We have thoroughly examined the submissions made by the learned counsel for the parties and have independently

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scrutinized the entire evidence that was before the trial Court as well as the High Court. We will agree with the learned counsel for the respondents that there was a meager motive regarding dispute of payment of Rs.165 only which can not be held to be sufficient motive for committing crime of Qatl-i-Amd but we are in disagreement with the findings recorded by the learned High Court for disbelieving the injured witness namely, Nawab Khan only on a ground that the entrance wounds were on the higher level on the body of the deceased as against exit wounds such difference of level can be explained for multiple reasons i.e. when a bullet enters into the body and adopts a route in bony area there is always likelihood of deflection of the bullets which may makes exit wounds towards either upper or the lower side, which can also because when person is confronted with a firearms like Kalashnikov it is natural for him to change his physical position either by turning or by bending and in such event there is likelihood of entrance and correspondence exit not to be in the same line and level.

9. The occurrence has started initially with beating the complainant by the respondent and his two acquitted co-accused and it was only when his deceased son Jawad Hussain and his grandson Shah Faisal intervened, thereafter all the accused are said to have resorted to firing but Mustaqeem, respondent is charged solely for causing effective fire-shots.

10. So many objections have been taken as to the presence of Haji Ihsan ud Din (PW-7) who initially was not either in the company of the deceased nor the complainant but whose shop is said to be located in the vicinity of the crime. Although he has

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stood to test of cross-examination successfully but for the safe administration of criminal justice, even if his presence is doubtful but the presence of Nawab Khan (PW-6) cannot be doubted on any ground whatsoever. The leaving of house by the father with the deceased son is natural, further supported by factum of injuries on the person of Nawab Khan (PW-6) as observed by the doctor are not stated to be self-inflicted and when the statement of Nawab Khan (PW-6) is supported by medical evidence as deceased has sustained number of firearms injuries and also because not only empties were recovered from the spot but bullet marks were found on the wall of common *hujra* situated at the spot which confirms the venue of the crime, and when crime is reported within fifteen minutes will exclude the possibility of consultation and false implication.

The accused admittedly remained an outlaw and was declared proclaimed offender from year 2003 to year 2013 and this prolong abscondence will lend support to the charge against him.

11. In view of above, we are satisfied to hold that the charge of offence of Qatl-i-Amd stand proved against respondent Mustaqeem through the testimony of Nawab Khan (PW-6) who himself has sustained injury and has no reason to bring false charge against respondent Mustaqeem and when Mustaqeem remained a proclaimed offender for an unexplained period of ten years.

12. We find that the finding of guilt recorded by learned trial Court was correct but not the sentence awarded and we hold that the finding recorded by the learned Division Bench of the

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Peshawar High Court are not sustainable which has accepted the appeal of the respondent who was convicted by the trial Court.

13. Keeping in view all facts, we find that the case against Mustakeem, respondent is proved, he is accordingly convicted under Section 302(b) PPC but considering the circumstances and events preceding the actual firing, we find that it is a case where penalty of death is not called for because when the occurrence started there appears to be no intention of causing Qatl-e-Amd except when during the beating the deceased intervened to rescue his father and there is every likelihood of retaliation shown by the deceased which prompted Mustaqeem, respondent to fire at him. In these circumstances, we award sentence of life imprisonment to respondent Mustaqeem under Section 302 (b) PPC with compensation amount of Rs.1,00,000/- under Section 544-A Cr.P.C. and in default of payment to suffer six months S.I. Compensation amount shall be recovered as arrears of land revenue. The accused/respondent is also extended the benefit of Section 382-B Cr. P. C.

14. As far as conviction and sentence recorded under Section 324 PPC on two counts is concerned, because Shah Faisal has not appeared in support of his injuries so on that count no conviction can be recorded. The conviction and sentence under Section 324 PPC to the extent of injuries on the person of Nawab Khan, complainant is concerned the same are caused by butt that too by three accused named in the FIR but no one of the accused is specified as to who among them caused injury to the complainant, therefore, the benefit of doubt is extended to the present respondent and he is acquitted of that charge.

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Sgt. the Court of Pakistan  
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15. The learned trial Court is directed that it shall issue process for the arrest of accused respondent who on arrest shall be sent to jail to undergo sentence awarded by this Court, through this judgment.

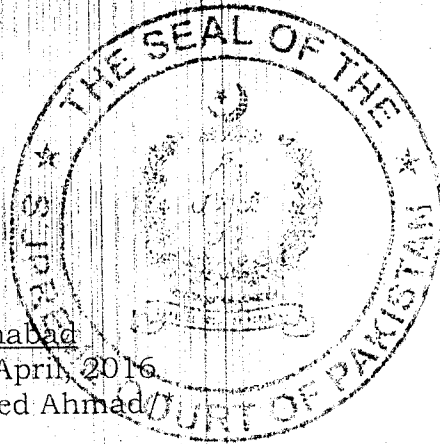
With these observations this appeal is partly allowed in the above terms.

Sd/- Asif Saeed Khan Khosa, J  
Sd/- Maqbool Baqar, J  
Sd/- Tariq Parvez, J

Certified to be True Copy

Court Associate  
Supreme Court of Pakistan  
Islamabad

Islamabad  
12<sup>th</sup> April, 2016  
Naveed Ahmad



"NOT APPROVED FOR REPORTING"