

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.A.No.60-D/2022

Jan Muhammad & another

Versus

The State and another


JUDGMENT

For appellants: M/S Qurban Ali Khan and
Akhundzada Muhammad
Aamir Khan Babar,
Advocates.

For respondents: Mr. Rahmatullah, Asstt:
A.G. for State.

Mr. Shah Shujaullah,
Advocate for respondent
No.2.

Date of hearing: **02.3.2023.**

 **SHAHID KHAN, J.-** Through the subject appeal, Jan Muhammad & Ali Muhammad, hereinafter, the appellants/accused, have called in question legality & validity of the judgment, dated, 15.9.2022, of learned Additional Sessions Judge-VI, D.I.Khan, whereby, on conclusion of trial, in case FIR No.557, dated, 03.6.2018, under Sections 302/34 PPC, of police station Cantt, D.I.Khan, recorded their conviction under Sections 302(b) PPC and sentenced them for life

imprisonment with compensation of Rs.2,00,000/- under Section 544-A Cr.PC, or in default thereof to further undergo six months simple imprisonment. However, benefit of Section 382-B Cr.PC was extended accordingly.

2. The complainant has also filed Cr.Rev.No.02-D/2023 for enhancement of sentence of the appellants/accused, both these matters, being the outcome of one and same trial, therefore, are to be disposed of by way of this single judgment.

3. The prosecution's case, as set forth in the crime report, is that on 03.6.2018 at 0730 hours, complainant Abdur Rashid brought the dead body of his father Atta Gul and reported the matter at Emergency Room of Civil Hospital, D.I.Khan to the effect that on the eventful date, day & time (03.6.2018 at 0630 hours), his father riding on motorcycle bearing registration No.FF-2474/DIK, while the complainant and his brother Khalid, riding on a bicycle, were proceeding to their cloth's shop, situated in Pir Zain-ud-Din Market, Tank Adda, D.I.Khan. When they reached thoroughfare Wandah Mochianwala, the

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appellants/accused Jan Muhammad and Ali Muhammad, duly equipped with pistols, arrived/emerged there and started firing at his father with intention to commit his Qatl-i-Amd. As a result of it, he got hit and injured. His father has also made firing with his pistol in self defence, as a result of it, the appellant/accused Jan Muhammad got injured. When the complainant and his brother take care of their father, he succumbed to his injuries. After the occurrence, the appellants/accused fled away. Motive for the occurrence is alleged as previous blood feud. The report of the complainant was reduced into writing in the shape of murasila which culminated into registration of ibid FIR.

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4. On completion of the investigation, challan was drawn within the meaning of Section 173 Cr.PC and after doing the needful, it was sent up to the Court of competent jurisdiction for trial accordingly.

5. On commencement of trial, copies of the evidence (oral and documentary) were delivered to the appellants/accused within the meaning of Section 265-C Cr.PC, followed by,

confronted them with the set of allegations through a formal charge. They denied the subject allegations, pleaded not guilty and claimed trial.

6. The prosecution, to bring home charge against the appellants/accused, produced twelve (12) witnesses to substantiate its version. At the closure of the prosecution's account, the appellants/accused were confronted with the evidence so furnished through formal questionnaires within the meaning of Section 342 Cr.PC, to which they professed innocence and claimed to have been falsely implicated in the subject case. However, they neither wished to be examined on Oath as required under Section 340(2) Cr.PC nor intended to produce evidence in defence. On conclusion of trial, scanning of record with due assistance of learned counsel for the parties and learned prosecutor, the learned trial Court/Additional Sessions Judge-VI, D.I.Khan, arrived at the conclusion that the prosecution has successfully proved its case against the appellants/accused without any shadow of doubt, hence, vide impugned



judgment, dated, 15.9.2022, recorded their conviction, as referred to above.

7. We have heard the arguments of the learned counsel for the parties as well as learned Asstt: A.G. representing the State and have gone through the record of the case.

8. The record reflects that on the same day i.e. 03.6.2018 at 0705 hours, the appellant/accused Jan Muhammad also lodged a report vide FIR No.556, dated, 03.6.2018, under Section 324 PPC, at police station Cantt, D.I.Khan, to the effect that on the eventful day, he on his motorcycle bearing registration No.BKL-8719 came to meet his brother Ali Muhammad. At about 0630 hours, he was proceeding on his motorcycle and when reached thoroughfare Wandah Mochianwala, the deceased Atta Gul arrived near him on his motorcycle and started firing at him with his pistol with intention to commit his Qatl-i-Amd, as a result of it, he got injured. He also retaliated the firing due to which Atta Gul got hit and died on the spot. Motive for the occurrence is alleged as previous blood feud.

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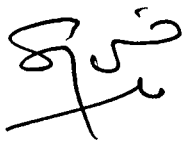
9. Both the FIRs No.556 & 557 confirm the occurrence and presence of the appellant/accused Jan Muhammad and the deceased Atta Gul on the spot.

10. According to PW-10 Dr. Bilal Sher, Medical Officer, on 03.6.2018 at about 08:00 a.m. he conducted postmortem of the deceased Atta Gul and issued postmortem report as Ex.PM. The postmortem report of the deceased reflects that the deceased had received six firearm shots entry wounds at chest & abdomen and six exit wounds on the back. The postmortem report of deceased established the fact that his death was unnatural as the deceased received fire arm injuries on his person. Even otherwise, the defence has also not disputed the unnatural death of deceased.

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11. The ocular evidence has been furnished by the complainant Abdur Rashid (PW-3) and his brother Khalid Umar (PW-4). They reiterated the contents of FIR in their respective statements. In their statements they specifically stated that the accused Jan

Muhammad and Ali Muhammad duly equipped with pistols made firing at their father with their pistols, as a result of it, he got hit and died on the spot. They also stated that their father also made firing at the accused in self defence due to which accused Jan Muhammad got injured. These witnesses fully corroborated the contents of FIR. These witnesses have also correctly narrated the date, time, the place of occurrence and the manner of occurrence, while despite lengthy cross-examination they remained firm in their deposition.



12. The case of prosecution has further been strengthened by the recovery of crime weapon i.e. pistol from the appellant/accused Jan Muhammad. At the time of lodging the report vide FIR No.556, the appellant/accused Jan Muhammad produced 30 bore pistol No.31017777, allegedly belonging to him and one 30 bore pistol without number belonging to the deceased Atta Gul. However, during investigation, it was found that license No.112-D/1998 was issued to the deceased Atta Gul against 30 bore pistol No.31017777 while 30

bore pistol without number was of the appellant/accused Jan Muhammad.

13. The I.O, vide recovery memo Ex.PW-5/1, recovered 07 empties of 30 bore from point 'A' & 'B' and 03 empties of 30 bore from point 'D' in the site plan. The empties and the 30 bore pistols were sent to the FSL. According to report Ex.PK/1 one 30 bore empty marked C1 was fired from 30 bore pistol No.31017777 while nine 30 bore crime empties marked C2 to C10 were fired from 30 bore pistol No.Nil. It shows that the appellant/accused Jan Muhammad made indiscriminate firing at the deceased Atta Gul while the deceased Atta Gul in retaliation made a single fire shot at the appellant/accused Jan Muhammad who also got injured.



14. The appraisal of direct and circumstantial coupled with medical evidence after minute consideration of all the circumstances, as well as the recoveries of crime empties, matching of the same with the crime weapon, we are of the considered view that the appellant/accused Jan Muhammad is

responsible for the murder of the deceased Atta Gul and has rightly been convicted and sentenced by the learned trial Court for life imprisonment, but we are unable to find ourselves in agreement with the impugned judgment of the trial Court to the extent of appellant/accused Ali Muhammad. The recovery of crime empties, the weapon of offence and report of Fire Arms Expert Ex.PK/1 are suggestive of the fact that the act was done by one accused, admittedly by appellant/accused Jan Muhammad, whereas, the appellant/accused Ali Muhammad has not at all taken participation in the alleged crime. The prosecution has failed to establish the mens rea of the appellant/accused Ali Muhammad to commit such crime. The prosecution has failed to establish through incriminatory evidence with regard to common intention or common object of the appellant/accused Ali Muhammad to commit the murder of deceased Atta Gul. Reliance is placed on the case of "Muhammad Ameer v. Muhammad Imran" (2017 MLD 1263 (Lahore), wherein it has been held that:



"4. After hearing the learned counsel for the appellant and going through the impugned judgment, it is observed that the acquitted respondent was admittedly, empty handed at the time of the occurrence that took place at 10.30 a.m. on 14.12.2009 near the shop of Tariq Mistri. According to the allegation, both the acquitted respondent and the death-convict Waheed Khan walked to the place of occurrence, hence, it could hardly be believed that they facilitated or helped each other to reach the spot. Being empty handed, respondent Imran could lend no help to his co-accused, rather he might have put himself in danger of being harmed by the other side, had there been any retaliation or counter-attack by them."

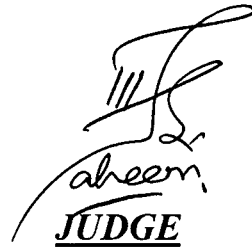
15. The reappraisal of entire prosecution evidence would establish the fact that the prosecution has successfully established the charge to the extent of main appellant/accused Jan Muhammad through cogent, consistent & confidence inspiring evidence but it has miserably failed to establish the common intention and common object of the appellant/accused Ali Muhammad for commission of crime rather the prosecution has only established his presence along with the main accused at the relevant time, which in our view is not sufficient to hold him responsible for the charge.

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16. For the above reasons, the appeal is partly allowed, the impugned judgment, dated, 15.9.2022, of learned Additional Sessions Judge-VI, D.I.Khan, is set aside to the extent of appellant/accused Ali Muhammad while the same is upheld to the extent of appellant/accused Jan Muhammad. The appellant/accused Ali Muhammad be set free forthwith, if not required in any other case. In the meanwhile, connected Cr.Rev.No.02-D/2023 stands dismissed.

17. Above are detailed reasons of our short order of even date.

Announced.
Dt: 02.3.2023.
Imran/*


JUDGE


JUDGE


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(D.B)
Hon'ble Mr. Justice Muhammad Faheem Wali
Hon'ble Mr. Justice Shahid Khan