

IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.A No.46-B of 2021

Alam Raheel alias Alam Raseel

Vs

The State etc

JUDGMENT

For Appellant: Mr. Anwar-ul-Haq Advocate

For respondent: Muhammad Rashid Khan Dhirma Khel,
Advocate

For State: Sardar Muhammad Asif, Asstt: A.G

Date of hearing: 07.04.2022

SAHIBZADA ASADULLAH, J.--- Through this appeal, the appellant has called in question the judgment dated 19.02.2021 passed by the learned Additional Sessions Judge-I, North Waziristan in case FIR No.15 dated 30.10.2019 under section 302/34 PPC registered with police station Miranshah, North Waziristan, whereby, he convicted the appellant under section 302(b) PPC and sentenced him to imprisonment for life on two counts alongwith payment of Rs.10,00,000/- (Rupees Ten Lac) to the legal heirs of each deceased under section 544-A Cr.P.C or in default thereof, to undergo six months simple imprisonment, whereas, co-accused Haji Muhammad was acquitted of the charges for want of

evidence. Benefit under section 382-B Cr.P.C was extended to the appellant.

2. Feeling aggrieved, the appellant has questioned the legality of the impugned judgment and the awarded sentences through instant appeal.

3. Briefly stating, facts of the case, as divulged in the first information report "FIR" ExPA, are that complainant Bakht Rasool made a report to the local police in terms that on the day of occurrence, he alongwith his sons namely Shakir Ullah and Kausar Ullah was proceeding to Bazar; when they reached near the house of Alam Raheel alias Alam Raseel, they saw accused Alam Raheel alias Alam Raseel duly armed with Kalashnikov, Haji Muhammad and his son Yasir duly armed with pistols; that it was about 07:15am, when accused Alam Raheel alias Alam Raseel started firing at Shakir Ullah and Kausar Ullah through his Kalashnikov, resultantly, both of them got hit and succumbed to the injuries on the spot. The accused decamped from the spot after the commission of offence. Motive is alleged to be a dispute over womenfolk. Hence, the FIR.


4. After completion of investigation and arrest of the accused / appellant, prosecution submitted complete

challan, where at the commencement of trial, the prosecution produced and examined as many as 10 witnesses. On close of prosecution evidence, statements of appellant / accused and that of co-accused Haji Muhammad were recorded under section 342 Cr.P.C, wherein they professed innocence and false implication, however, neither they opted to be examined on oath as provided under section 340(2) Cr.P.C, nor wished to produce defence evidence. After hearing arguments, the learned trial Court vide the impugned judgment dated 19.02.2021, convicted and sentenced the accused / appellant as mentioned above, whereas, co-accused Haji Muhammad was acquitted of the charges for want of evidence. Hence, the instant appeal against the judgment of conviction.

5. The learned counsel for the parties alongwith Assistant Advocate General were heard at length and with their valuable assistance, gone through the record.

6. The tragic incident occurred on 30.10.2019, when the complainant alongwith his deceased sons were on his way to local Bazar. The deceased after receiving firearm injuries died on the spot and their dead bodies were shifted with the help of co-villagers from the place of

incident to a vacant plot situated in front of the house of the complainant. The SHO of the concerned police station after receiving information regarding the incident reached to the spot, where the complainant reported the matter and the same was penned down in the shape of Murasila. After drafting the murasila, the injury sheets and inquest reports were prepared and the dead bodies were sent to the doctor for postmortem examination. It is pertinent to mention that soon after the incident, the appellant was arrested from in front of his house and from his personal possession, a Kalashnikov alongwith live rounds were taken into possession. The investigating officer after getting copy of the FIR, reached to the spot and on pointation of the complainant, prepared the site plan. During spot inspection, the investigating officer took into possession three empties of 7.62 bore near from the place of the convict / appellant, whereas, bloodstained earth was collected from the places of the deceased. The site plan also depicts bullet marks on the house of the appellant. The investigating officer dispatched the Kalashnikov recovered from the possession of the appellant alongwith three empties of 7.62 bore recovered from the spot to the Forensic Science Laboratory and



after chemical analysis, a laboratory report was received with an opinion that the same were fired from the recovered Kalashnikov. The accused was produced before the Court of Judicial Magistrate on 31.10.2019, where he opted to confess his guilt and as such, his statement under section 164/364 Cr.P.C was recorded. The co-accused were also arrested in the instant case after their bail before arrests could not be confirmed. All the three accused faced trial and on conclusion of the trial, the accused Alam Raheel alias Alam Rasil was convicted and sentenced as stated above, whereas, the co-accused were acquitted of the charges. Feeling aggrieved, the convict / appellant approached this Court through the instant criminal appeal.

7. The impugned judgment was read with valuable assistance of learned counsel for the parties, where the learned trial judge dealt with the material aspects of the case and after application of his judicial mind to the collected material and recorded statements, convicted the appellant. This being the Court of appeal, feels it essential to thrash out the collected material to ascertain as to whether the learned trial judge was justified to convict the appellant, and to acquit the co-accused and as to whether

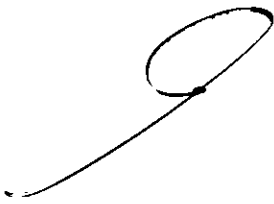
the evidence on file was properly appreciated. True that the learned trial judge was influenced from the confessional statement of the convict / appellant and that from the death of the two deceased alongwith close relationship of the parties, but we are to scan through the record as to whether the approach of the learned trial judge, more particularly, keeping before these three essential elements of the prosecution, was justified and as to whether the reasons advanced by the learned trial judge find support from the attending circumstances of the case. True that the appellant was arrested from the spot, he confessed his guilt before the competent Court of law and that the weapon used in the episode was recovered from his possession, which wedded with the recovered empties, but equally true that these factors alone are not sufficient to convict an accused charged for the murder, rather the prosecution is still under obligation to collect independent evidence in that respect, so that miscarriage of justice could be avoided.

8. Though, the complainant is the sole eye witness of the incident and that the accused were his nephews, yet we are to see as to whether the incident occurred in the mode, manner and at the stated time; and as to whether it

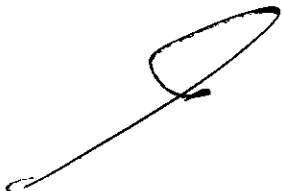
was the complainant who saw the incident; and as to whether the convict / appellant was arrested from the spot and from his personal possession, a Kalashnikov used in the incident was taken into possession and as to whether the confession made by the convict / appellant is true and voluntary. The complainant was examined as PW-09, who stated that on the day of incident, he in the company of his deceased sons, was proceeding to the local Bazar to make purchases, when they reached in front of the house of the convict / appellant, he in the company of his co-accused, appeared on the spot; that the convict / appellant was duly armed with a Kalashnikov, started firing at the deceased, who, after receiving firearm injuries, fell to the ground and died on the spot; that the co-accused were present on the spot duly armed with pistols; that after having been fired at the deceased, the accused decamped from the spot. In order to ascertain the veracity of the statement of the complainant, it is essential to go through the background of the parties which led to the strain relationship between them. The motive was alleged as a dispute over womenfolk, but the same was not explained by the complainant. The explanation came on record when the convict / appellant confessed his guilt before the

✓ Court of Judicial Magistrate and his statement was recorded under section 164 / 364 of the Criminal Procedure Code, 1898. The convict / appellant during his statement before the Court of Judicial Magistrate explained that two of his daughters were married to the deceased and that two of the daughters of the complainant were engaged to his sons. He further explained that with the passage of time, the situation between the parties turned strained and in that eventuality, one of the daughters of the convict / appellant who was married to deceased Kausar Ullah was living a deserted life in his house and that the daughters of the complainant who were engaged to the sons of the convict / appellant were refused to them and were engaged to the sons of his cousins / *Tarboors* and this was because of these reasons, that he got infuriated and on the day of incident, when the deceased were passing in front of his house, he fired at them, as a result, the deceased died on the spot. This explanation by the convict / appellant lends support to the motive alleged by the complainant. The houses of the complainant and the accused are situated at a little distance from each other and that the presence of the complainant at the time of incident is nearer to the truth.

It was the complainant who pointed out the spot to the investigating officer and on his pointation, the site plan was prepared and the recoveries were effected. The recoveries of three empties of 7.62 bore from the place of the convict / appellant and bloodstained earth from the places of the deceased strengthen the prosecution case to a greater extent. The scribe reached to the spot on receiving information and the matter was reported by the complainant on the spot and thereafter, the dead bodies were shifted to the doctor for postmortem examination. The scribe was examined as PW-07 who stated that while present a little away from the place of incident, an informer informed him regarding the tragedy and when he alongwith police officials reached to the spot, the complainant was present who reported the matter which he took in the shape of Murasila and after preparation of the injury sheets and inquest reports, the dead bodies were sent to the doctor for postmortem examination. This witness was cross examined on material aspects of the case, but nothing detrimental to the prosecution case could be extracted from his mouth. This witness was cross examined at length, but the defence could not succeed in shattering his testimony, rather he explained

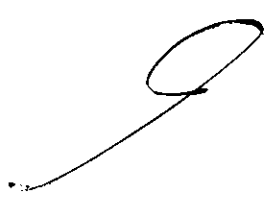


the minute details of the case. True that the complainant when appeared before the trial Court stated that after the deceased lost their lives, the co-villagers arranged cots and their dead bodies were shifted to a vacant plot situated in front of his house, but this will not discredit the veracity of the complainant, as he gave the exact picture of the incident and his statement rings true, as the same was spontaneous. This was questioned time & again that when the incident occurred in front of the house of the convict / appellant, what led to shift the dead bodies therefrom, before reporting the matter and that why the witnesses remained inconsistent on this particular aspect of the case, but we cannot ignore the current status of the area that has recently been merged in the province and earlier to that, the like cases were dealt under the FCR, after merger, much is needed to educate the people and make them understand the present criminal justice system. The scribe was examined regarding his length of service and his caliber to investigate, who candidly conceded that he got training from the police officials posted from Bannu in the area. The lack of expertise and the quest to learn has made the status of this witness above board and we cannot discredit the prosecution case



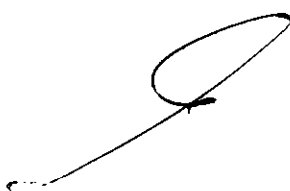
because of the slightest infirmities crept in. It doesn't matter that the dead bodies were lying on the spot or shifted in front of the house of the complainant, rather we are to see as to whether the incident occurred at the stated time and as to whether the deceased died on the spot due to the firing made by the convict / appellant. It is pertinent to mention that on the day of incident, the convict / appellant was arrested from in front of his house and from his personal possession, a Kalashnikov used in the incident was taken into possession, the same was sent to the forensic science laboratory alongwith the recovered empties and a report was received in positive. The bonafide of the complainant can be assessed from the fact that the effective role of firing was attributed to the appellant, whereas, no role of firing was attributed to the co-accused. The physical circumstances of the present case, in the shape of recoveries from the spot and positive laboratory report support the case of the prosecution in general and the statement of the complainant in particular. The complainant came forward and narrated the events as these occurred and no infirmity could be pointed out in his statement. The complainant was questioned regarding the targets and he categorically

stated that the appellant fired at the deceased and did not fire at him, but we are not persuaded to count this fact against the prosecution. Had there been blood feud between the parties then the complainant would have been fired at, but in the present case, the convict / appellant was nourishing a grudge against the deceased only.




9. The record tells that soon after the incident, the convict / appellant was arrested alongwith the weapon used and on the next day of his arrest, he was produced before the Court of Judicial Magistrate, where he opted to confess his guilt and as such, his statement under section 164 / 364 Cr.P.C was recorded. The learned Judicial Magistrate who recorded the confessional statement of the appellant was examined as PW-04 who stated that on 31.10.2019, the convict / appellant was produced before him for recording his confessional statement; that he provided sufficient time to the accused to think and recompose himself which he did and thereafter, his statement was recorded; that relevant questions were put to the accused before his statement was recorded and after having been satisfied that the accused, without any influence and coercion, was ready to confess so, his

statement was recorded. The learned Judicial Magistrate was cross examined at length, but nothing detrimental could be extracted from his mouth in favour of the appellant and in disfavor of the prosecution. This witness remained consistent on material aspects of the case and even, he disclosed that after recording his confessional statement, the accused was handed over to the Naib Court who onward sent him to the judicial lock up. This was agitated that the convict / appellant after recording his statement was handed over to the same police who had brought him before the court, but it came on record that police from the police line were called and the appellant was handed over to them to place him in the judicial lock up. The learned counsel for the appellant wanted to reap the harvest of this procedural irregularity, but he failed to understand that the area where the incident occurred was by then under the influence of miscreants and strict security was needed to shift the appellant from the Court of Judicial Magistrate to the judicial lock up. It has never come on record that the convict / appellant was handed over to the police official who produced him before the Court of Judicial Magistrate, rather for his transportation to the judicial lock up, Nafri from the police line was



demanding and on their arrival, he was handed over to them and they shifted him to the concerned judicial lock up. The sequence of events narrated by the appellant while confessing his guilt leaves no ambiguity that it was he who killed the deceased. Despite efforts, the defence could not succeed in convincing this Court that either the confession was made on inducement or the appellant was tortured. As the appellant was arrested on 30.10.2019 and he recorded his confessional statement on 31.10.2019, no ambiguity is left in holding that the confessional statement is true and voluntarily recorded as is held in case titled **"The State v. Minhum (PLD 1964 SC 813):**

"Retracted confessions, whether judicial or extra-judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. As against the maker himself his confession, judicial or extra-judicial, whether retracted or




not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement. The question, however, as to whether in the facts and circumstances of a given case the Court should act upon such a confession alone is an entirely different question, which relates to the weight and evidentiary value of the confession and not to its admissibility in law."

10. True that the only confessional statement cannot be made basis for convicting an accused charged, but equally true that when the prosecution is in possession of the ocular account and circumstantial evidence, then in that eventuality, the confessional statement can be taken into consideration for convicting an accused charged. In the present case, it is not only the confessional statement of the appellant, but we have an eye witness as well, who

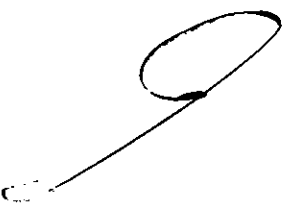
remained consistent in his statement from beginning to the end and the defence could not succeed in discrediting him, rather his veracity as a witness is intact and that can be taken into consideration. Another important aspect of the case is the spot arrest of the appellant and the positive laboratory report in respect of the collected empties and recovered weapon. True that positive laboratory report is supportive in nature and that alone cannot be taken into consideration to determine the fate of an accused charged, but as the prosecution has direct eye witness account and voluntary confession of the appellant, so the same can be taken into consideration as a supportive piece of evidence, and the same lends support to the case of the prosecution. While considering positive forensic science laboratory report as a corroborative piece of evidence in support of prosecution case, it was held in the case of *“Ali Muhammad & another Vs The State” (2002 YLR 710)* that:

*“The recoveries of empties of T.T.
pistol vide recovery memo (Ex.P/ 3-
C) and recovery of empties of 9.MM
vide its recovery memo and recovery
memo of 25 empties of Kalashnikov*

as Ex.P/7-A and the positive report of Forensic Science Laboratory regarding them are also strong corroborative pieces of evidence to prove the case of prosecution."



11. The investigating officer appeared before the trial Court and was examined as PW-10 who stated that after receiving copy of the FIR, he visited the spot and on pointation of the complainant, prepared the site plan. He further disclosed that after effecting recoveries from the spot, the same were sent to the forensic science laboratory and thereafter, the statements of the witnesses were recorded. It was agitated time & again that despite the fact that the matter was reported on the spot and by the time the dead bodies were available, but the complainant has not been cited as the identifier of the dead bodies before the police at the time of report and before the doctor at the time of postmortem examination, but we are not hesitant to hold that these submissions of the learned counsel hold no grounds. As admittedly, the incident occurred a little away from the house of the complainant and in front of the house of the appellant, so the presence of the complainant either in the house or in



the vicinity on the day and at the time of incident cannot be excluded. We cannot forget that the complainant lost his two young sons in his immediate presence and that soon after the incident, co-villagers attracted to the spot and out of them, two identified the dead bodies before the scribe at the time of report and before the doctor at the time of postmortem examination. It is not a rule of thumb that in all cases the complainant must be the identifier and that if he fails to identify the dead body before the police at the time of report and before the doctor at the time of postmortem examination, then his presence would outrightly be rejected. If so, then the damage caused would be beyond repair, as the approach of the learned trial Court while dealing with this aspect of the case must vary from case to case. As the present incident occurred in the close proximity of the house of complainant and the appellant was no other than the father-in-law of the deceased, we lurk no hesitation to hold that the complainant was present on the spot at the time of incident. The cumulative effect of all the collected evidence gives no other inference, but that the incident occurred in the mode, and manner and that the complainant was present at the time of incident.

12. The prosecution succeeded in proving the alleged motive and even, the confessional statement of the appellant has fully supported the same. The details of the strained relationship provided by the complainant and the appellant, leaves no room to doubt and we lurk no doubt in mind that the same has been proved on record. True that weakness or absence of motive hardly plays a role to dislodge the prosecution case, provided it succeeds in proving the same through trustworthy and confidence inspiring evidence. As in the present case, the prosecution fully succeeded in bringing home guilt against the appellant, so the motive, if not proved, has no role to play, but the prosecution succeeded in proving the alleged motive and even, the appellant supported the same.

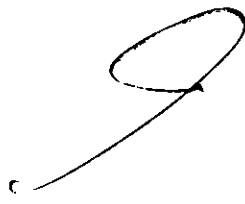
13. The close relationship between the parties has excluded the element of false implication, as both the accused are the nephews of the complainant and the daughters of the appellant were married to the deceased and *vice versa*. The defence could not bring on record any other motive and even nothing was suggested to the witnesses that they had a *mala fide* to charge. When such is the position, there remains no ambiguity in holding that the appellant is the actual killer. As stated above, the

parties are in blood relationship and the complainant being real father of the deceased, is not expected to let off the real culprit and falsely implicate the appellant for the murder of his sons, especially when there was no blood feud between them, so substitution or false implication becomes a rare phenomenon in the circumstances. A similar view was expressed in the case of "Zeeshan alias Manna Vs The State" (2019 YLR 59):

"It cannot be expected from Niaz Ali complainant, who is father of Muhammad Ishaq deceased that he would let off the real culprit and would falsely involve appellant in the murder of his real son in the absence of enmity between them. Substitution in such situation is rare phenomenon."

14. The cumulative effect of what has been stated above leads this Court nowhere, but to hold that the learned trial Court was fully justified to convict the appellant and that the reasons provided for his conviction find support from the collected evidence and recorded statements. We do not see any irregularity or inherent

defects in the judgment rendered by the trial Court and that the learned trial judge competently applied his judicial mind to the facts & circumstances of the present case. When such is the position, we are not persuaded to interfere and upset the findings so recorded. The instant criminal appeal being bereft of merit is hereby dismissed.



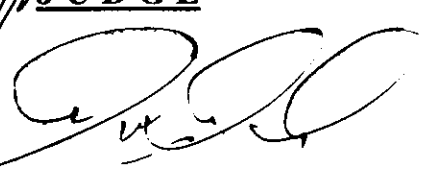
15. Now, diverting to the quantum of sentence awarded by the learned trial Court, we went through record of the case minutely. In order to ascertain as to what led the learned trial judge to choose a lesser sentence instead of normal penalty of death and in order to appreciate this particular aspect of the case, we deem it essential to go through the confessional statement recorded by the appellant. While going through the same, it tells nothing, but that it was the refusal of the complainant to honour his commitment regarding the marriage of his daughters to the sons of the appellant which led to the present tragedy. The appellant is no other than the father-in-law of both the deceased and there must be some hidden reasons which disturbed the mind of the appellant who took such an extreme step. While scanning through the record to know the hidden cause, we came to a definite conclusion that the tension between the families

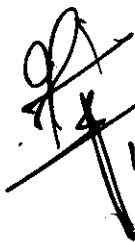
overpowered his senses which in turn provoked him to kill even those who were the nearest. The clean breast confession of the appellant leaves no ambiguity that it was because of the strained relationship between the parties which overpowered the faculties of the appellant, which in turn yielded to the tragic deaths. In the given circumstances of the present case, we are not persuaded to interfere and honour the request of the complainant for enhancement of the sentence. We do appreciate the approach of the learned trial Court on this particular aspect of the case, the awarded sentence is fully justified which hardly calls for interference. The instant criminal appeal being bereft of merit is, therefore, dismissed.

Announced

07.04.2022

Ghafoor Zaman/Steno


JUDGE

JUDGE


13/6/2022

(D.B)
Hon'ble Mr. Justice Ishtiaq Ibrahim
Hon'ble Mr. Justice Sahibzada Asadullah

13 JUN 2022
