

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Crl. Appeal No.1450-P/2019

1. Shahid Murad; and
2. Shah Khalid sons of Wazir Zada,
Residents of Gumbat District,
Mardan.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Appellant (s) :-	<u>M/S Altaf Khan and Muhammad Fahim, Advocates.</u>
For State :-	<u>Mr. Muhammad Nisar, AAG.</u>
For Respondent No.2.	<u>Syed Mubashir Shah, Advocate.</u>
Date of hearing:	<u>27.01.2022</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-At a trial held by learned Additional Sessions Judge/Judge Model Criminal Trial Court, Swabi, Shahid Murad and Shah Khalid sons of Wazir Zada, the appellants, having been found guilty of committing the following offences have been convicted and sentenced, vide judgment dated 19.11.2019, in case FIR No.440 dated 13.10.2014, under sections 449/302/324/337-F(v)/34 of Pakistan Penal Code ("PPC"), as under:-

Appellant Shahid Murad:

Under Section 302(b) PPC:- To undergo imprisonment for life on two counts as Ta'azir and to pay Rs.3,00,000/- to legal heirs of each deceased Hassan Ali and Mst. Kalsoom, as compensation in terms of section 544-A Cr.P.C. and in default thereof to undergo six months simple imprisonment (S.I) under each count.

For Shahid Murad

Under Section 449 PPC: To undergo seven years rigorous imprisonment and to pay a fine of Rs.50,000/- and in default thereof to further undergo 03 months S.I.

Under Section 324 PPC: To undergo six years rigorous imprisonment and to pay a fine of Rs.50,000/- and in default thereof to further undergo 03 months S.I.

Under section 337-F(v) PPC: To pay Rs.50,000/- as Daman to injured Mst. Iram and also to undergo three years rigorous imprisonment and till payment of Daman, he shall be kept in jail and he shall be dealt with in the manner as if he is sentenced to simple imprisonment.

Appellant Shah Khalid:

Under Section 302(b) PPC:- To undergo imprisonment for life on two counts as Ta'azir and to pay Rs.3,00,000/- to legal heirs of each deceased Hassan Ali and Mst. Kalsoom, as compensation in terms of section 544-A Cr.P.C. and in default thereof to undergo six months simple imprisonment (S.I) under each count.

Under Section 449 PPC: To undergo seven years rigorous imprisonment and to pay a fine of Rs.50,000/- and in default thereof to further undergo 03 months S.I.

Under Section 324 PPC: To undergo six years rigorous imprisonment and to pay a fine of Rs.50,000/- and in default thereof to further undergo 03 months S.I.

Under section 337-F(v) PPC: To pay Rs.50,000/- as Daman to injured Mst. Iram and also to undergo three years rigorous imprisonment and till the payment of Daman, he shall be kept in jail and he shall be dealt with in the manner as if he is sentenced to simple imprisonment.

All the sentences shall run concurrently and benefit of section 382-B Cr.P.C., has been extended to the appellants.

2. The appellants have jointly filed the instant criminal appeal against their conviction and sentences, whereas, Jan

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Muhammad complainant-petitioner, has filed Cr.R. No.287-P of 2019, for enhancement of sentences of the convicts-respondents.

3. Since, both the appeal and the revision petition are arising out from one and the same judgment dated 19.11.2019, passed by the learned trial Court/Model Criminal Trial Court, Swabi, therefore, we propose to decide the same through this single judgment.

4. The prosecution's case as per contents of First Information Report ("FIR") Exh.PA/1 is that on receipt of information about the occurrence, on 13.10.2014 Khalid Iqbal Khan SHO (PW.12) reached RHC Yar Hussain Swabi, where complainant Jan Muhammad (PW.10), in company of dead bodies of Hassan Ali, Mst. Kalsoom, Ghani ur Rehman alias Bacha deceased, respectively and injured Mst. Iram at 2000 hours reported him to the effect that on the fateful night of 13.10.2014 he along with his sons, namely, Hassan Ali, Akbar Ali, daughter-in-law, Mst. Iram, Mst. Kalsoom wife of Wahid and other inmates was present in his house, situated in village Bazaargai. At 2000 hours, Shah Khalid and Shahid Murad (appellants) along with co-accused Ghani-ur-Rehman alias Bacha (now dead), duly armed with firearms entered his house and opened fire at them with the intention to do them away, as a result, his son Hassan Ali and Mst. Kalsoom got hit and died on the spot whereas, his daughter-in-law Mst. Iram (PW.11), sustained firearm injuries. He and his son Akbar Ali luckily remained unscathed. Similarly, as a result of firing of Hassan Ali deceased made by him in self-

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defence, one of the accused, namely Ghani ur Rehman alias Bacha got hit and died on the spot. Motive behind the occurrence is that some 14/15 years prior to the occurrence, Mst. Kalsoom deceased had eloped with Wahid (brother-in-law of complainant) and both had contracted marriage. Besides the complainant, the incident is stated to have been witnessed by PWs Akbar Ali and Mst. Iram as well as other inmates of the house.

5. Khalid Iqbal Khan SHO (PW.12), reduced into writing report of the complainant in the shape of Murasila Exh.PA, on the basis of which FIR Exh.PA/1 was registered against the appellants. He prepared injury sheet and inquest report of Ghani ur Rehman deceased which are Exh.PW.2/1 and Exh.PW.2/2, injury sheet and inquest report of Mst. Kalsoom deceased which are Exh.PW.PM and Exh.PW.2/5, inquest report of Hassan Ali deceased Exh.PW.3/6 and injury sheet of injured Mst. Iram Exh.PW.1/2. He shifted the dead bodies of the deceased to the mortuary for postmortem examination under the escort of Nisar FC and referred injured Mst. Iram to lady doctor under escort of Naveed FC for medical examination. He also took into possession a Kalashnikov No.28630 Exh.P1 with fixed charger containing 14 rounds Exh.P.2 produced by complainant, who disclosed the same to be the ownership of accused Ghani ur Rehman deceased. The complainant also produced him Kalashnikov Exh.P.3 bearing No.154213 having fixed charger containing 03 live rounds Exh.P.4 and disclosed the same to be the ownership of Hassan Ali deceased. He (PW.12), took into

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possession both the Kalashnikovs through recovery memo Exh.PW.6/1 in presence of its marginal witnesses.

6. On 13.10.2014 at about 1015 hours, Lady Dr. Shazana (PW.1), conducted autopsy on the dead body of Mst. Kalsoom deceased and found the following injuries on her body vide report Exh.PM:-

- *. Firearm entry wound on posterior left and upper part of chest size $\frac{1}{2}$ x $\frac{1}{2}$ inch.
- *. Firearm exit wound on anterior left and lower side of chest just below left breast size 1x1 inch.
- *. Firearm entry wound on right posterior and lower side of chest, size $\frac{1}{2}$ x $\frac{1}{2}$ inches.
- *. Firearm entry wound on the posterior side of right lumber area of the abdomen size $\frac{1}{2}$ x $\frac{1}{2}$ inch.
- *. Firearm exit wound on the upper and central part of hypogestic area of abdomen on anterior side, size 1x1 inch.
- *. Firearm exit wound on lower part of hypogestrioum on anterior side, size 1x1 inch.
- *. Firearm entry wound on upper and later part of right thigh, size $\frac{1}{2}$ x $\frac{1}{2}$ inch.
- *. Firearm exit wound on upper part of right labia majora, size 4x4 inches.

Opinion: According to her opinion, the deceased died due to firearm injuries to her vital organs like heart.

On the same day, Lady Dr. Shazana also examined injured Mst. Irum and found the following injuries on her body vide medico legal report Exh.PW.1/1:-

- *. Firearm entry wound on posterior side of right hand at base of middle finger, size $\frac{1}{2}$ x $\frac{1}{2}$ inches.
- *. Firearm exit wound on the posterior side of right palm and in the middle, size 1x1 inch.

The injured was referred to Mardan Medical Complex, after first aid.

Nature of Injuries: Jur Ghayr Faifah Hashima".

Kind of injuries: Firearm.

Dr. Irtaza Ajmal Khan conducted postmortem on the dead body of Ghani ur Rehman alias Bacha deceased on 13.10.2014 and found the following injuries on his person vide report Exh.PW.2/1.

- *. Firearm entry wound, size 1x ¼ cm on left side of chest one inch below the nipple.
- *. Firearm exit wound about 1x1/2 cm on right side of abdomen above umbilicus.

Opinion: According to his opinion the deceased died due to cardiopulmonary rupture due to firearm injury.

On the same date at 1015 hours, he also conducted autopsy on the dead body of Hassan Ali deceased and found the following injuries on his body vide PM report Exh.PW.2/4.

- *. Firearm entry wound about 1 x ¼ cm in size on right side of abdomen below umbilicus.
- *. Firearm exit wound about 1x1/2 cm on left side of chest below the nipple.

Opinion: According to his opinion death of the deceased occurred due to firearm injuries and rupture of heart causing cardiopulmonary arrest.

7. Investigation of the case was handed over to Mirza Khan SI, who on receipt of copy of FIR, proceeded to the spot. During spot inspection, he secured blood through cotton from the place of Hassan Ali deceased vide recovery memo Exh.PW.4/1. Vide Recovery memo Exh.PW.2/2, he secured blood through cotton from the place Mst. Kalsoom deceased and from the place of injured Mst. Iram vide recovery memo Exh.PW.4/3. Through

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recovery memo Exh.PW.4/4 he secured blood from the place of the accused Ghani ur Rehman deceased. Vide recovery memo Exh.PW.4/5 he took into possession 15 empties of 7.62 bore Exh.P.1 from the place of accused Ghani ur Rehman deceased vide recovery memo Exh.PW.4/5. He also recovered 4 empties of same bore Exh.P.2 from the place of deceased Hassan Ali vide recovery memo Exh.PW.4/6. Similarly, vide recovery memo Exh.PW.4/7, he took into possession 14 empties Exh.P.3 of 7.62 bore from the places of the appellants. Vide recovery memos Exh.PW.4/8, Exh.PW.4/9 and Exh.PW.4/10, he took into possession the last worn bloodstained garments of the deceased and that of injured Mst. Iram. He also recovered one 100 Watt bulb Exh.P.12 from the Western wall of the house vide recovery memo Exh.PW.4/12. Vide recovery memo Exh.PW.4/13 he took into possession energy saver Exh.P.13 installed on the wall of southern room of the spot house. Vide recovery memo Exh.PW.4/13 he took into possession another energy saver Exh.P.14 from the kitchen of the spot house and vide memo Exh.PW.4/14 he took into possession another energy saver Exh.P.154 installed on southern room of the spot house vide memo Exh.PW.4/15. Through recovery memo Exh.PW.4/16 another 100 Watt bult Exh.P.167 was also recovered from the spot. He prepared site plan Exh.PB on the pointation of eyewitnesses, placed on record extract of DD No.11 dated 13.10.2014 and Exh.PW.13/1 as well as DD No.5 dated 14.10.2014 Exh.PW.13/2. DD No.14 dated 14.10.2014 is

exhibited as Exh.PW.13/3. He sent the crime empties and Kalashnikovs to the FSL report whereof is Exh.PK. He also sent the bloodstained articles to the FSL report whereof is Exh.PK/1, placed on file Postmortem reports of the deceased, recorded statements of the PWs and on 22.10.2014, recovered a Kalashnikov along with fixed charger containing 6 live rounds left behind the accused in sugarcane field of complainant vide recovery memo Exh.PW.7/1. He prepared sketch Exh.PB/1 of the place of said recovery. He prepared lists of legal heirs of the deceased and placed on file attested copy of FIR No.483 dated 04.06.2004, under section 11 Hudood Ordinance which is Exh.PW.13/13. He sent the Kalashnikovs along with 14 empties and 4 live rounds to the FSL report whereof is Exh.PK/2. As the appellants were avoiding their lawful arrest, therefore, he initiated proceedings under sections 204 and 87 Cr.P.C. against them and on completion of investigation, he handed over case file to the SHO, who submitted challan under section 512 Cr.P.C. against the appellants.

8. On arrest of the appellants and completion of necessary investigation, supplementary challan was submitted against them before the learned trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as fourteen witnesses. After closure of the prosecution's evidence, statements of the appellants were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed

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their innocence. They declined to be examined on oath or to produce evidence in defence, however, stated that cross FIR No.484 pending trial is their defence. On conclusion of trial, the learned trial Court, after hearing both the sides, convicted and sentence the appellants as mentioned in the first Para of this judgment, hence, this appeal on behalf of the appellants against their conviction and sentence and the connected revision petition on behalf of the complainant for enhancement of their sentences.

9. We have heard the exhaustive arguments of learned counsel for the parties and perused the record with their able assistance.

10. It appears from record, particularly, the First Information Report (FIR) that the untoward incident of this case has taken place on 13.10.2014 at 2000 hours inside the house of complainant Jan Muhammad (PW.10), situated in village Bazaargai, District Swabi, which has been reported by him at 2130 hours to Khalid Iqbal Khan SHO (PW.12) in RHC Yar Hussain. In the incident, one Hassan Ali and Mst. Kalsoom wife of Wahid, deceased respectively, have lost their lives from complainant side whereas one Mst. Iram has sustained firearm injuries whereas from accused's party one Ghani-ur-Rehman deceased has lost life as a result of firing of Hassan Ali deceased, allegedly made by him in self-defence when they were under the attack of the accused party. The ocular account of the incident has been furnished by PWs Jan Muhammad complainant and injured Mst. Iram. The prosecution has relied upon the ocular



account of the above named two witnesses as well as circumstantial/corroborative evidence in the shape of recoveries of blood from the places of the deceased, injured, their bloodstained clothes, Serologist reports in respect thereof, recovery of crime empties and crime weapons, to be discussed in detail in later part of the judgment, as well as medical evidence, in support of the ocular version of the prosecution's case.

11. First we are taking the ocular account of the prosecution's case for reappraisal to determine as to whether the same is truthful, trustworthy and confidence inspiring and to what extent it has been corroborated by circumstantial pieces of evidence as well as supported by medical evidence.

Jan Muhammad complainant while appearing as PW.10 deposed as under:-

“Deceased Hassan Ali was my son. Mst. Kalsoom deceased was the wife of Wahid and Wahid is my brother-in-law (sister of Wahid is married to me). Injured Mst. Iram is the wife of my son Akbar Ali. Accused facing trial Shah Khalid and Shahid Murad are brothers inter-se and are brothers-in-law of deceased Mst. Kalsoom (brothers of first Fiancé of Mst. Kalsoom) while Ghani ur Rehman deceased was the uncle of accused facing trial. On the fateful night I along with my family members, deceased Hassan Ali, Mst. Iram, Akbar Ali including deceased Mst. Kalsoom were available there in our house situated at Bazargai. Accused facing trial Shahid Murad, Shah Khalid along with deceased Ghani ur Rehman entered our house duly armed with the intention to kill us and started firing with their respective firearms while my deceased son Hassan Ali by exercising of his right of private defence started firing upon the

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accused in retaliation. During the occurrence with the firing of accused facing trial and deceased Ghani ur Rehman Mst. Kalsoom and Hassan Ali received injuries and died while PW Mst. Iram got injured and with the firing of my deceased son Hassan Ali one of the accused Ghani ur Rehman was hit and died on the spot while we and other members of the family remained unhurt. Accused facing trial decamped from the spot. Motive of the occurrence was that some 14/15 years prior to the occurrence my brother-in-law Wahid brought Mst. Kalsoom deceased for the purpose of marriage. The occurrence was seen by me, by my son Akbar Ali, daughter-in-law Mst. Iram and other inmates of the house. I charge the accused for the commission of offence. Thereafter I handed over Kalashnikov of deceased Ghani ur Rehman along with 14 live rounds and Kalashnikov of my deceased son Hassan Ali along with 10 live rounds to the police in the hospital and lodged the report Exh.PA/1 which I thumb impressed as a token of its correctness while PW Mst. Iram signed my report as verifier. The spot was pointed out by me to the I.O."

PW Jan Muhammad has been subjected to lengthy and taxing cross-examination through skillful hand, but nothing favourable to defence could be extracted from his mouth while answering the questions of defence. He remained stuck to his stance taken in the FIR and site plan. He correctly pointed out the places of the deceased, injured and the accused at the time of occurrence. It is fully established from record that the occurrence has taken place inside the house of the PW Jan Muhammad on 13.10.2014 at 2000 hours though nocturnal but in the recent days marriage of PW Mst. Iram had taken place in the house and the prosecution has brought ample evidence on file about availability of plenty of

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lights lit in the house at the time of occurrence, therefore, identification of the appellants was quite possible, particularly, when they were previously known to the complainant party. Nothing was extracted from the mouth of PW Jan Muhammad to the effect that on the day and time of occurrence he was not present in the house and was present somewhere else. As per statement of Jan Muhammad, he is 62 years old; therefore, his presence in his house at the time of incident was quite natural and is appealable to a prudent mind. In the initial report/Murasila, PW Jan Muhammad has not concealed the real facts, rather has narrated all the events occurred at the spot at the time and after the occurrence. He is so fair and straightforward witness that he himself handed over Kalashnikov of his son Hassan Ali deceased to Khaliq Iqbal SHO (PW.12), the author of Murasila had disclosed that it was the weapon used by Hassan Ali deceased in self-defence, and as a result of his firing, accused Ghani ur Rehman got hit and died on the spot. Similarly, he has also handed over Kalashnikov of accused Ghani-ur-Rehman (now dead) along with 14 crime empties fired through the same. Again, the honesty and credibility of PW Jan Muhammad can be seen from the fact that he along with dead body of his family members, also shifted the dead body of Ghani ur Rehman accused to RHC Yar Hussain despite the fact that he could easily arrange to dispose of his dead body so as to minimize role of his son in the incident, but he has not concealed the facts and evidence of the occurrence. Both the appellants in their

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statements under section 342 Cr.P.C., have stated that they are relying on case FIR No.484 dated 17.11.2014 registered under sections 302/3243/34 PPC, on the report of Shakeel, as defence. Record of the FIR No.484 (ibid) is available before us, wherein complainant Shakeel has charged Jan Muhammad (PW.10) along with his son Akbar Ali. The story narrated in FIR No.484 (ibid) is that on 13.08.2014 Shakeel along with his uncle Ghani ur Rehman alias Bacha and other Jirga members, namely, Ahmad Zeb and Saeed ur Rehman went to the house of Jan Muhammad. Dispute between the parties was that Mst. Kalsoom, who had been engaged with Waheed Murad some 14/15 years back, had eloped with one Wahid son of Noor ul Baz. That about a month prior to the occurrence, Mst. Kalsoom along with her husband Wahid had come to the house of Jan Muhammad. As Jan Muhammad was relative of Shakeel hence, a jirga was sent to resolve the issue of Mst. Kalsoom. During Jirga accused Jan Muhammad and his sons suddenly turned aggressive and started altercation with complainant Shakeel and Ghani ur Rehman, who were separated by the Jirga members. The accused then rushed to a room and came out with deadly weapons and started indiscriminate firing upon Shakeel and Ghani ur Rehman as a result the latter got hit and died on the spot, whereas, Shakeel and Jirga members escaped unhurt.

12. It appears from record that neither Shakeel complainant nor Ahmed Zeb and Saeed ur Rehman etc, the alleged Jirga members, have been produced by the appellants as defence

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witnesses. It may be noted that FIR No.484 (ibid) has been registered on the direction of the Justice of Peace on the application under section 22-A Cr.P.C. of complainant Shakeel, with considerable delay. One thing can be gathered from FIR No.484 (ibid) that the accused party has admitted the incident but to minimize their role, have concealed material facts of the occurrence but the same have been honestly disclosed by PW Jan Muhammad in the instant case. In FIR No.484 (ibid), the motive of the instant case has also been admitted that Mst. Kalsoom had eloped with Wahid brother in law of PW Jan Muhammad and a month prior to the occurrence she along with her husband had visited the house of PW Jan Muhammad and was residing there. Murder of Mst. Kalsoom deceased, inside the house of PW Jan Muhammad corroborate the ocular account of PW Jan Muhammad.

13. Another eyewitness, namely, Mst. Iram aged 24/25 years, who has stamp of injuries on her person while appearing as PW.11, deposed as under:-

“On the fateful night, I along with my family members and Mst. Kalsoom were present in our house. In the meanwhile, accused facing trial along with Ghani Rehman entered our house duly armed with firearms and started firing with their respective firearms upon us. My brother-in-law Hassan Ali while exercising right of self defence stated firing upon the accused in retaliation. With the firing of accused I got injured while Mst. Kalsoom and Hassan Ali

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got hit and died whereas Ghani Rehman deceased got hit with firing of my brother-in-law Hassan Ali and died. Accused decamped from the spot. I pointed out the spot to the police after my discharge from the hospital. I charge the accused for commission of the offence”.

14. Mst. Iram (PW.11) has also been subjected to lengthy cross-examination by the defence but nothing beneficial to the appellants could be extracted from her mouth. She remained stuck to her initial stance and corroborated the testimony of complainant Jan Muhammad on each and every aspect of the occurrence i.e. the day, date, time and place of occurrence as well as the mode and manner in which the occurrence took place. She has also furnished true account of the events occurred at the spot. She has not tried to minimize the role of firing on their behalf by Hassan Ali deceased. She while replying to the questions of defence has correctly pointed out the places of each deceased and the accused at the spot at the time of occurrence. It has been brought from her by the defence itself that first the three assailants opened firing at them and then Hassan Ali deceased opened fire at the assailants. Her testimony is also consistent with PW Jan Muhammad on all the events after the occurrence i.e. her shifting along with the dead bodies to the hospital and making report by the complainant in RHC Yar Hussain in her presence. Not a single question has been put to her by the defence so as to make question the identity of the appellants.

Jan Muhammad

15. No doubt, the occurrence is nocturnal but it is evident from record and material produced by the prosecution that it has taken place inside the house of the complainant Jan Muhammad. It is also proved from evidence that both the parties were previously known to each other having serious motive of elopement of Mst. Kalsoom deceased (lady of accused's family) with family members of complainant party. Similarly, during spot inspection, Mira Khan SI (PW.13), the Investigating Officer, has taken into possession 100 Watt bulb Exh.P.12 from the Western wall of the spot house vide recovery memo Exh.PW.4/12 while vide recovery memo Exh.PW.4/13, he has taken into possession energy saver Exh.P.13 installed on the wall of southern room of the spot house. Similarly, vide recovery memo Exh.PW.4/13 the I.O. has also taken into possession another energy saver Exh.P.14 from the kitchen of the spot house and vide memo Exh.PW.4/14 another energy saver Exh.P.15 installed on southern room of the spot house vide memo Exh.PW.4/15. Through recovery memo Exh.PW.4/16 another 100 Watt bulb Exh.P.167 has also been taken into possession by the I.O. It has also been explained by the prosecution witnesses that due to marriage ceremony of PW Mst. Iram and Akbar Ali they had installed plenty of light in the spot house. In view of the above recoveries coupled with the fact that parties were well known to each other question of mistaken identity of the appellant by the eyewitnesses does not arise.

16. Similarly, from the places of Mst. Kalsoom and Hassan Ali as well as injured PW Mst. Iram, blood was secured by Mira

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Khan SI, the Investigating Officer, vide recovery memos Exh.PW.4/1 to Exh.PW.4/3, which along with last worn bloodstained garments of the deceased and that of injured Mst. Iram was sent to the FSL, positive report whereof Exh.PK/1 corroborates the ocular account of the eyewitnesses and proves the crime spot to be the same place as alleged by the eyewitnesses. FSL report with regard to Kalashnikovs of deceased Ghani ur Rehman and Hassan Ali deceased, produced by complainant to the Author of Murasila at the time of report, were also sent to the FSL by the I.O. along with 14 and 04 crime empties, and according to FSL report 14 empties were fired from the Kalashnikov of Ghani ur Rehman deceased and 04 from that of deceased Hassan Ali. This piece of circumstantial evidence also corroborates the ocular account furnished by the eyewitnesses.

17. Statement of Lady Dr. Mst. Shazana (PW.1), who conducted autopsy on the dead body of the deceased Mst. Kalsoom and examined injured PW Mst. Iram, also support the ocular account of the prosecution's case. According to Postmortem report Exh.PM, Mst. Kalsoom met her unnatural death due to firearm injuries to her vital organ like heart. Similarly, as per medico legal report, PW Mst. Iram has sustained firearm injuries. Dr. Irtaza Ajmal Khan, who had conducted autopsy on the dead body of deceased Ghani ur Rehman alias Bacha and Hassan Ali deceased appeared in the witness box and affirmed the death of both the above named deceased as unnatural

Dr. Irtaza Ajmal Khan

due to firearm injuries. All the deceased have received firearms injuries on their bodies having different dimensions meaning thereby that different weapons have been used in the commission of offence. In this view of the matter, medical evidence also supports the eyewitness's account of the instant case.

18. As stated earlier, motive advanced by the complainant Jan Muhammad has not only been proved by the prosecution in the instant case but also admitted by the accused party in FIR No.484 wherein it has been alleged that on the eventful night there was a Jirga between the parties over the issue of elopement of Mst. Kalsoom with one Wahid, brother-in-law of the complainant Jan Muhammad.

19. On reappraisal of the evidence available on record, we have reached to an irresistible conclusion that the prosecution has proved the guilt of the appellants through cogent and confidence direct/ocular evidence corroborated by strong circumstantial pieces of evidence and supported by medical evidence. In this view of the matter, the learned trial court has rightly held the appellants guilty of the offences to which no exception can be taken.

20. Adverting to the question of quantum of sentence to be awarded to the appellants to meet the ends of justice. Record depicts that the appellants along with co-accused Ghani ur Rehman (now dead), are charged for indiscriminate firing at the complainant party. It is not certain that from the fire shots of the three accused which of the deceased got hit. Similarly, it is also

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not certain as to from firing of which of the three accused PW Mst. Iram sustained firearm injuries. Similarly, as a result of firing of one of the deceased Hassan Ali one Ghani ur Rehman has also lost his life. Considering the above aspects as mitigating circumstances, we are firm in our view to hold that the learned trial court has rightly not awarded the normal penalty of death to the appellants. The sentences awarded by the learned trial court to the appellants under each offence are quite appropriate and justifiable under the law.

21. For what has been discussed above, this appeal filed by the appellant-convicts and the connected Cr.R. No.287-P of 2019, filed by petitioner-complainant Jan Muhammad, are hereby dismissed. Judgment dated 19.11.2019 passed by learned Additional Sessions Judge/Judge Model Criminal Trial Court, Swabi is hereby maintained.

Announced:

27.01.2022

M.Siraj Afridi PS

Rooh ul Amin
Senior Puisne Judge

S. A.

JUDGE

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge; and
Hon'ble Mr. Justice Syed Arshad Ali**