

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

**Jail Crl. Appeal No.1185-P/2018**

Inayat-ur-Rehman son of Sher Bahadur,  
r/o Musam Kuroona, District Mardan.

Appellant (s)

**VERSUS**

The State etc

Respondent (s)

For Appellant (s) :-	<u>Mr. Shabbir Hussain Gigyani, Advocate.</u>
For State :-	<u>Mr. Muhammad Nisar, AAG.</u>
For complainant :-	<u>Nemo</u>
Date of hearing:	<u>03.02.2022</u>

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** This Jail criminal appeal, filed by Inayat-ur-Rehman, the appellant, is directed against the judgment dated 27.11.2018, passed by learned Additional Sessions Judge-IV, Mardan, whereby the appellant having been found guilty of committing *qatl-e-amd* of Hazir Zaman deceased with firearm, has been convicted and sentenced under section 302(b) PPC to undergo life imprisonment and to pay a fine of Rs.10,000/- or in default thereof to undergo one month further simple imprisonment (S.I.) and under section 15 KP Arms Act, 2015 to undergo 05 years S.I. and to pay a fine of Rs,2000/- or in default thereof to undergo 10 days S.I., in case FIR No.139 dated 02.04.2014, under section 302 PPC and Section 15 KP Arms Act, 2013, Police Station Par Hoti, Mardan. Benefit of Section 382-B Cr.P.C. has been extended to the appellant.

*For the State*

2. The prosecution's case as unfolded in the First Information Report ("FIR") Exh.PA is that on 02.04.2014 at 2015 hours, complainant Mst. Musarrat (PW.3), in company of dead body of Hazir Zaman her deceased husband, reported to Itbar Shah Khan SI (PW.2), in Casualty Hospital Mardan, to the effect that as appellant Inayat-ur-Rehman was teasing and compelling her son Shahab for keeping illicit relation with him, therefore, on 02.04.2014, she along with her deceased husband went to the house of the appellant to complain him about his illegal demand. The deceased remained outside the house of the appellant and she went inside the house. When she complained the appellant that her son Shahab is too young (minor), therefore, do not tease and harass him, the appellant got infuriated, took a pistol and rushed outside the house. She followed him and the appellant when reached near the deceased, he opened fire at him; as a result, the deceased got hit and died on the spot. Motive behind the occurrence was the aforesaid complaint of complainant. Her report was recorded in the shape of Murasila Exh.PA/1 by Itbar Shah Khan SI (PW.2), on the basis of which FIR Exh.PA was registered against the appellant. Itbar Shah SI also prepared injury sheet Exh.PW.2/1 and inquest report Exh.PW.2/2 of the deceased and shifted his dead body to the mortuary for postmortem examination under the escort of Constable Sohail.

3. On 02.04.2014 at 1900 hours, Dr. Sajid Khan, conducted autopsy on the dead body of the deceased and found the following injuries on his body vide PM report Exh.PM.

1. Firearm entrance wound ½ inch in size on left buttock.
2. Firearm exit wound 1x1 inch in size on left ingunail area.

**Opinion:-** According to his opinion the deceased sustained fatal firearm injury to the left femoral (great) artery leading to heaving blood loss, shock and death.

4. Muhammad Yaqoob Khan Inspector (PW.11), conducted investigation in the case, who on receipt of copy of FIR, proceeded to the spot and prepared site plan Exh.PB, on the pointation of complainant. During spot inspection, he secured blood through cotton from the place of deceased vide recovery memo Exhd.PW.7/1 and .30 bore empty Exh.P.1 from the place of the appellant vide recovery memo Exh.PW.7/2. Vide recovery memo Exh.PW.7/3, he took into possession the last worn bloodstained garments of the deceased and vide recovery memo Exh.PW.1/1 he took into possession a 30 bore pistol Exh.P.3, produced to him by Tawab Khan ASI/Moharrir. Appellant was arrested by Muhammad Iqbal SHO (PW.13), who handed him over to PW.11 and the latter after obtaining his physical remand from the court of learned Judicial Magistrate, interrogated him and recorded his statement under section 161 Cr.P.C. Vide applications Exh.PW.11/3 and Exh.PW.11/4, respectively, he sent the bloodstained articles and pistol along with empty to the

FSL for chemical analysis, reports of the FSL are Exh.PK and Exh. PK/1, respectively. He also recorded statements of the PWs under section 161 Cr.P.C., and on completion of investigation, handed over case file to, who submitted challan against the appellant before the learned trial Court.


5. On receipt of *challan* by the learned trial Court, the appellant was summoned and formally charge sheeted to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as thirteen witnesses. After closure of the prosecution's evidence, statement of the appellant was recorded under section 342 Cr.P.C., wherein he denied the prosecution's allegation and professed his innocence. He, however, declined to be examined on oath under section 340 (2) Cr.P.C., or to produce evidence in defence. On conclusion of trial, the learned trial court, after hearing both the sides, convicted and sentenced the appellant as mentioned above, hence, this appeal.

6. Despite service, complainant is not in attendance, therefore, after hearing learned counsel for the appellant and learned AAG for the State this appeal is being decided on merit on the available record.

7. Record reveals that in this case the occurrence has taken place on 02.04.2014 at 1900 hours, in front of the house of appellant, situated in village Mosom Koroona, District Mardan, which has been reported by complainant Mst. Musarat (PW.3), widow of Hazir Zaman deceased, wherein she has directly and

singularly charged the appellant for committing murder of her deceased husband with pistol. Complainant Mst. Musarat (PW.3) and her son Shahab (PW.6), have furnished ocular account of the occurrence and for corroboration of the ocular account of the above named witnesses, the prosecution has placed reliance on circumstantial/corroboratory pieces of evidence in the shape of recovery of blood from the spot, last worn bloodstained garments of the deceased, positive Serologist report Exh.PK in respect therefore, recovery of .30 bore crime empty from the spot from the place of the appellant, recovery of .30 bore pistol from possession of the appellant at the time of his arrest by Muhammad Iqbal (PW.13) and positive FSL report Exh.PK/1 qua the crime pistol and crime empty coupled with medical evidence in the shape of autopsy report of the deceased and statement of the Medical Officer who conducted autopsy on the dead body of the deceased.

8. Mst. Musarat complainant while appearing as PW.3 reiterated the same story in her examination-in-chief, as set forth by her in the initial report Exh.PA/1, however, for the sake of convenience and ready reference, we are going to reproduced her examination-in-chief below:-

 "Khazir Zaman deceased was my husband and PW Shahab is my son. Accused Inayat ur Rehman used to pursuit my minor son Shahab for illicit relation and also teased him, due to which, we also picked him from school and his studies discontinued for this reason. On

the date and time of occurrence, I along with my deceased husband Khazir Zaman went to the house of Inayat ur Rehman accused to complain his ill activities regarding my son. My husband remained outside the house and I entered the house of accused and made a complaint and also requested him not to do the same with my son Shahab as he is a minor. On this, Inayat ur Rehman accused got annoyed and infuriated. He took a pistol, went out the house. I followed him and as he reached near my husband, all of a sudden he started firing at him, as a result, my husband Khazir Zaman got hit and died on the spot. I with the help of my son Fazil and other co-villagers took the dead body of the deceased to hospital where I made report in the shape of Murasila Exh.PA. The same was read over to me and I thumb impressed and was also signed by my son Fazil. The site plan was also prepared at my instance by the I.O. Motive for the occurrence was that Inayat ur Rehman accused was teasing my son minor Shahab for illicit relation and on my complaint he got infuriated and committed murder of my husband. I charge him for commission of the offence."

*Loone Sam*  
9. She has been subjected to lengthy and taxing cross-examination, but nothing beneficial to defence, could be extracted from her mouth. She remained stuck on her stance as set forth by him in the initial report, rather, in her cross-examination the events which remained un-clarified during her examination-in-

chief, have been clarified from her by the defence itself. Nothing has been extracted from her mouth so as to suggest false implication of the appellant by substituting the real culprit. She has reported the occurrence with promptitude i.e. within 1 hour and 15 minutes, eliminating the possibility of consultation and deliberation on her part in making report. As per her statement, she entered into the house of the appellant and her deceased husband stayed outside and when she made a complaint to appellant teasing of her minor son, the appellant got infuriated, picked a pistol and committed murder of the deceased, standing outside his house. The statement of the complainant is appealable to a prudent mind because in this part of the country, womenfolk in the villages frequently and freely used to enter any house, however, men are not permitted to do so without taking permission. Entrance of the complainant in the house of the appellant while waiting of her deceased husband outside the house has been proved by the prosecution. Meeting of the complainant and her conversation with the appellant prior to occurrence inside the house not only eliminates the possibility of mistaken identity but also establish the presence of appellant and complainant at the house. Even otherwise, it does not appeal to a prudent mind that complainant will substitute a real culprit for murder of her husband by charging innocent person. Admittedly, substitution of real culprit charged directly and singularly is a rare phenomenon in the system of criminal justice. Reference in this regard can be made to case titled, "Allah Ditta Vs the State"

**(PLD 2002 Supreme Court 52) and case titled, "Muhammad Iqbal Vs the State" (PLD 2001 Supreme Court 222.**

10. Recovery of blood from the spot from the place of the deceased, his last worn bloodstained garments and positive Serologist report Exh.PK in respect thereof, further corroborate the ocular account of the complainant coupled with confirming the place of occurrence to be the same as alleged by the complainant. It appears from record that appellant was arrested on the same day of occurrence by Muhammad Iqbal SHO, who while appearing as PW.13 deposed that on 02.04.2014, he along with other police officials arrested the appellant from a street along with 30 bore pistol Exh.P.3 without number and five live rounds, and he took the same into possession vide recovery memo Exh.PW.12/1 in presence of its marginal witnesses and thereafter handed over the pistol to Moharrir of the Police Station. Sharf Gul No.713, who is marginal witness to recovery memo Exh.PW.12/1 while appearing as PW.12, corroborated the testimony of Iqbal Khan SHO by deposing that in his presence the appellant was arrested by Iqbal Khan SHO and from his possession a 30 bore pistol with five live rounds Exh.P.3 was recovered. Both, Iqbal Khan SHO and Sharf Gul (PW.12), have been subjected to lengthy cross-examination by defence but nothing of the sort to make the recovery of the pistol doubtful, has been extracted from their mouths. They have furnished consistent statements and have corroborated each other on every aspect of the recovery i.e. the day, date, time and place of arrest



of the appellant and recovery of 30 bore pistol from his possession. Record reveals that the crime pistol Exh.P.3 along with .30 bore empty was sent to the FSL for analysis, report whereof Exh.PK/1 shows that the crime empty has been fired from the pistol Exh.P.3, recovered from the appellant at the time of his arrest. In this view of the matter, the above mentioned pieces of circumstantial evidence further corroborate the ocular version of complainant Mst. Musarat.

11. Dr. Sajjad Khan (PW.10), had conducted autopsy on the dead body of the deceased and as per his statement and autopsy report Exh.PM, the deceased had sustained solitary firearm entrance wound with corresponding exit which resulted into his unnatural death. Thus, the medical evidence also supports the ocular account furnished by Mst. Musarat complainant.

12. On reappraisal of the testimony of PW Mst. Musrat corroborated by circumstantial and medical evidence, we are firm in our view to hold that she has furnished a truthful account of the occurrence. Her presence with the deceased at the time of occurrence was quite natural and appealable to a prudent mind.

13. It appears from record that PW Fazil, who has verified the report of her mother/complainant Mst. Musrat, has been abandoned by the prosecution, whereas, PW Shahab has been examined as PW.6, who also pose himself as an eyewitness of the occurrence. Honestly speaking, neither in the initial report Exh.PA/1 nor in her court statement as (PW.3), complainant Mst. Musarat, has stated a single word about presence of PW

*look into this*

Shahab at the time of occurrence, therefore, we are not going to consider the testimony of PW Shahab as an eyewitness, however, his testimony to the extent of motive part is very much relevant. PW Shahab while appearing as PW.6 deposed that appellant was having a Karyana shop in a Mohallah adjacent to his house. He used to visit his shop and when he felt that the appellant is having bad eyes on him, he left visiting his shop. The appellant then told him that he has some outstanding against him, therefore, he should keep friendly relation with him. PW Shahab disclosed it to his father and on the day of occurrence his parents went to the house of the appellant for complaint where the occurrence took place. The testimony of PW Shahab to the extent of motive part, corroborate the testimony of complainant Mst. Musrat.

14. No doubt, PW Mst. Musarat is widow of the deceased, who appeared as a solitary eyewitness, but it will not advance the case of defence because general public in society, always feel reluctant to depose against the culprits due to fear of earning enmity etc. It is well established principle of law that testimony of a witness which is trust worthy and inspiring confidence cannot be discarded on mere ground of his close relation with the deceased. A close relative, if proved to be the natural and truthful witness of the occurrence, cannot be termed as interested witness. Statement of a witness on account of being interested can only be discarded if it is proved that he/she has ulterior motive on account of enmity or any other consideration. No evidence whatsoever has been brought by the defence to prove any enmity

*Justice S...*

or grudge of PW Mst. Musarat with the appellant. Reference in this regard can be made to case titled, "Khizar Hayat Vs the State" (2011 SCMR 429). Thus, mere relationship of complainant with the deceased would not detract her veracity, as she had absolutely no motive of her own to involve the appellant falsely by letting off the real culprit. Reliance in this regard can be placed on the judgments of the august apex court in case, titled, "Saeed Akhtar and others Vs the State" (2000 SCMR 383). In case titled, "Amal Sherin and another Vs the State through A.G." (PLD 2004 Supreme Court 371), the Hon'ble Supreme Court while dilating upon the evidentiary value of statement of related witnesses has ruled as under:-

"The trial Court was not justified to reject eyewitness account furnished by complainant Khan Amir PW and Hakim Gul PW merely on the ground of being related and interested particularly when appellants had not been able to establish on record that the above mentioned witnesses had nourished any grudge or ill will against them and deposed with a specific motive".

15. By now it is settled law that conviction can be recorded on the testimony of a solitary eyewitness provided the solitary eyewitness is true, trustworthy, confidence inspiring and his/her testimony is corroborated by strong circumstantial evidence because what is required by the court is the determination of veracity and credibility of a witness and not the number and relationship. For the Court, it is the quality and not the quantity of the evidence which matters in criminal dispensation of justice. By

*Justice Sani*

virtue of Article 17 of the Qanun-e-Shahadat Order, 1984, in financial matters, two male or one male and two female witnesses, have been made the requirement of law to prove the financial obligations, whereas, in all other matters including criminal, there is no such obligation, which clearly suggests that a single witness is sufficient to prove a fact. Wisdom may be derived from Zar Badadar's case (1978 SCMR 136), case titled, "Muhammad Ahmad and another Vs the State and others"(1997 SCMR 89), case titled, Muhammad Mansha Vs the State" (2001 SCMR 199), case titled, "Dildar Hussain Vs Muhammad Afzaal alias Chala and 3 others" (PLD 2004 Supreme Court 663), case titled, "Farooq Khan Vs the State" (2008 SCMR 917). From the above discussion, it is manifest that the prosecution has successfully proved that the appellant has committed murder of Hazir Zaman deceased on the day, date time and place of occurrence with a 30 bore pistol as alleged by the prosecution which has been substantiated through cogent and confidence inspiring ocular evidence, corroborated by strong circumstantial pieces of evidence and supported by medical evidence. In this view of the matter, the learned trial Court while appreciating the evidence in its true perspective has rightly held the appellant guilty of the murder of Hazir Zaman deceased, to which no exception can be taken.

16. Keeping in view the peculiar facts and circumstances of the case, evident from the prosecution's evidence, punishment awarded to the appellant by the learned trial Court seems a bit

harsh. Admittedly, the appellant had not gone behind the deceased for his murder. Had the complainant not visited the house of the appellant for making complaint, the appellant may not infuriated and the occurrence may not happened. The occurrence has taken place at the spur of moment without premeditation of the appellant. The appellant on the complaint of the complainant in front of his family members got infuriated, picked up his pistol and fired only one shot on the deceased with which the deceased was hit on his left buttock. The appellant has not repeated the act of firing. From the spot only one empty has been shown recovered and as per autopsy report the deceased has also sustained only solitary firearm entry wound. Keeping in view the sudden mode of the incident without premeditation or pre-planning on the part of the appellant, his case falls within the Exception (4) of the previous section 300 PPC, which by that time was punishable under section 304 PPC. For the sake of convenience and ready reference Exception 4 of the then section 300 PPC is reproduced below:-

***“Exception 4:-***Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon sudden quarrel and without the offender’s having taken undue advantage or acted in cruel or unusual manner.”

17. No doubt, neither old section 300 nor exceptions thereto are available at present on the Statute book, however, it is laid down by the Hon’ble Supreme Court in case titled, “The State Vs Muhammad Hanif and 05 others” (1992 SCMR 2047), that all

the matters which were initially dealt with by erstwhile section 304 PPC, are now to be considered under section 302 (c ) PPC. The same view has been repeated upheld by the august apex court in a number of cases.

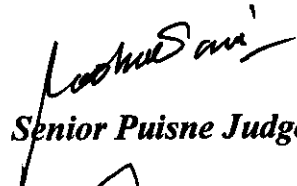
18. Placing reliance on the judgment (supra) of the Hon'ble Supreme Court, we convert the conviction of the appellant from section 302(b) PPC to section 302 (c) PPC and reduce his sentence from life imprisonment to ten years rigorous imprisonment. The remaining sentence of the appellant and benefit of section 382-B Cr.P.C. already extended to him, shall remain intact.

19. With the above modification in the conviction and sentence of the appellant, this appeal is hereby dismissed.

**Announced:**

**03.02.2022**

M.Siraj Afridi PS

  
**Senior Puisne Judge**

  
**JUDGE**

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge; and  
Hon'ble Mr. Justice Ijaz Anwar**