

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT, ABBOTTABAD  
BENCH  
JUDICIAL DEPARTMENT**

*Cr.Appeal No. 22-A/2015*

**JUDGMENT**

Date of hearing.....08.11.2018.....

Appellant (Rashid Khan) By Mr. Fazal-e-Haq Abbasi, Advocate.

Respondents. (State) By Mr. Yasir Zahoor Abbasi, Assistant A.G  
and (Complainant) By Mr. Javed Khan Tanoli,  
Advocate.

\*\*\*\*\*

**LAL JAN KHATTAK, J.-** Through this judgment, we shall also decide **Cr.Appeal No. 21-A/2015** titled "**Fareed Khan Vs. The State & another**", **Cr.Appeal No. 16-A/2015** titled "**Muhammad Iqbal Vs. The State & others**" and **Cr.Revision No. 04-A/2015** titled "**Muhammad Iqbal Vs. Rashid Khan**" as all the four (04) matters have emanated from same judgment dated 07.02.2015 of the learned Additional Sessions Judge-III, Haripur, delivered in case FIR No. 178 dated 15.04.2011 under Sections 302 / 452 / 109 / 34 PPC of Police Station Kot Najibullah District Haripur, whereby appellant Rashid Khan has been convicted under Section 302

*Again*

(b) PPC and sentenced for imprisonment of life with compensation of Rs.2,00,000/-, payable to legal heirs of the deceased or in default whereof to further suffer six (06) months S.I. He has further been convicted under Section 452 PPC and sentenced to three (03) years nine (09) months and four (04) days with fine of Rs. 20,000/- or in default whereof to suffer three (03) months S.I. Appellant Fareed Khan has been convicted under Section 452 PPC and sentenced to three (03) years nine (09) months and four (04) days with a fine of Rs.20,000/- or in default of payment of fine to suffer further simple imprisonment of three (03) months, however, he was acquitted of the charge under Section 302 PPC. All the sentences were ordered to run concurrently with benefit under Section 382-B Cr.P.C.



2. Appellants have impugned their convictions while the complainant has filed appeal against the acquittal of accused Fareed Khan from the charge of murder. He

has also filed criminal revision against appellant Rashid Khan for enhancement of the sentence awarded to him.

3. Brief facts of the case are that on 15.04.2011, complainant Muhammad Iqbal (PW-6) reported to Sardar Jehangir Khan, Inspector (PW-1) to the effect that on 14.04.2011, his son Khan Nawaz and daughter-in-law Mst. Shazia, the newly wedded couple, were asleep in their room while he was asleep in the courtyard when at *Fajar Azan* time, someone knocked at the door of the groom's room where he was asleep, on which he i.e. the complainant awoke and saw appellant Fareed Khan and Rashid Khan present over there, duly armed. According to the FIR, complainant enquired from them the purpose of their presence. In the meanwhile, his son came out of his room, who was fired at by both the accused with their pistols with which he was hit on his chest and died on the spot. Motive for the offence was stated to be some previous blood feud.

*Gan*

4. After arrest of the accused and completion of the investigation, challan was put in court, which indicted them, to which they pleaded not guilty and claimed trial. Prosecution in order to prove its case, examined twelve (12) witnesses whereafter statements of the accused were recorded where they professed innocence. They also produced evidence in their defense. The learned trial court, after conclusion of the trial, found the appellants guilty of the charges and while recording their conviction, sentenced them as mentioned above.

*Gan*

5. Arguments heard and record gone through.

6. Perusal of the case record would show that the prosecution has produced two eyewitnesses in support of its charge but as both the eyewitnesses are closely related to the deceased, therefore, for the safe dispensation of justice, their evidence will be appreciated with great care and caution. No doubt, evidence of a related witness cannot

be discarded on the ground of his being related to the victim but if it is found that the testimony of a related witness gets no corroboration from attending circumstances of the case or the conduct shown by him at the time of occurrence or just thereafter is such which cannot be expected from a prudent person, then in such circumstance the evidence furnished by a related witness can be easily discarded.

7. On the touchstone of the above, we now take into consideration the testimony furnished by both the eyewitnesses in the case. It reflects from the record that the occurrence had taken place at *Fajar Azan Vela* whereas same was reported to police by the complainant at 08:30 a.m and that too at the place of occurrence. Conduct of the complainant by not shifting the dead body of his son either to a hospital or the police station suggests that at the time of occurrence he was not present on the spot. Had he been present on the spot at the time

A handwritten signature in black ink, appearing to be 'Gp'm' with a stylized flourish at the end.

of occurrence, he must have taken the dead body either to a hospital or the police station which admittedly he did not do. Assuming for the sake of argument that personally he was unable to take the deceased either to the hospital or police station, he could have deputed someone for that purpose. Waiting for police on the spot with the dead body from *Fajar Azan Vela* to 08:30 a.m for lodging report is conduct of the complainant, which ordinarily is not expected from a father.

8. Another important aspect of the case is that according to FIR and prosecution evidence, the complainant at the time of occurrence was asleep in the courtyard of his house whereas the occurrence had taken place on 15.04.2011. In the month of April people rarely sleep under the open sky and that too in the Hazara Division. Above aspect of the case also casts doubt on presence of the complainant at the time of occurrence. Though the complainant has advanced a reason for his sleeping in the open sky that he



was a patient of asthma, but same is not justifiable.

9. Not shifting the deceased to the police station and letting it on the spot for considerable period of time, waiting for arrival of the police in his house, non-deputing anyone to police station for report and sleeping in the courtyard under the open sky in the mid of April are some aspects of the case which negate presence of the complainant on the spot when the occurrence had taken place. Therefore, his testimony cannot be relied upon.



10. So far as presence of Mst. Shazia, widow of the deceased, on the spot is concerned, though according to the FIR and her court statement she had come out of her room at the time of occurrence and saw the unfortunate event, but there is no material on the record to show that prior to the occurrence there had been any noise, scuffling or any hue and cry in between the deceased and his assailants which have

prompted her to leave her room and come on the spot. Coming out of room by a bride by following her groom in *Suhaag Rat* for no justifiable reason is not appealable to a prudent mind. Besides, the widow too did not inform any member of the deceased family about the occurrence in due course of time and she also kept waiting till 08:30 a.m. Ibid conduct of PW Mst. Shazia shows that the occurrence did not take place the way it has been reported.

gan

11. Prosecution, in order to prove its case against the appellant, has also relied upon the crime empties recovered from the spot and the two pistols taken into possession on pointation of the appellants and the report of FSL, according to which the crime empties recovered from the spot did match with the pistol recovered on the pointation of appellant Rashid Khan but ibid recoveries are of no help to the prosecution as both the pistols were recovered from an open place which was accessible to all and sundry. Besides,



both the pistols were recovered through a joint recovery memo (Ex.PW-10/1) which fact has eclipsed evidentiary worth of the recoveries.

12. Thorough and careful examination of the case record would show that the prosecution has not proved its case through any worth reliable and confidence inspiring evidence. It is the cardinal principle of criminal law that in order to bring home guilt to an accused the prosecution must prove its case through unimpeachable evidence and beyond reasonable doubt which is not the case in hand. The learned trial court has not appreciated the case evidence in its true perspective and has fallen in error to record convictions of the appellants for which its judgment is not sustainable in the eyes of law.

*Gain*

13. For what has been discussed above, both the appeals filed by the convicts are allowed, the impugned judgment is set aside and consequently the appellants are acquitted of the charges levelled against them. They be

set free from Jail, if not required in any other case.

14. So far as criminal appeal and criminal revision, filed by the complainant against acquittal of appellant Fareed Khan from the murder charge and for enhancement of sentence of the appellant Rashid Khan respectively, are concerned, suffice it to say that as we have disbelieved the evidence, adduced at the trial by the prosecution and have set aside the judgment of conviction, therefore, both the appeal and revision have become infructuous and, as such, are hereby dismissed.

Above are the detailed reasons of our short orders of even date.

Announced:  
08.11.2018.

  
JUDGE

  
JUDGE

/\*Saif\*/