

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

**Crl. Appeal No.877-P/2017**

Sohail Nasir son of Nasir,  
r/o Mohmand Agency recently Usman Hostel,  
Faqirabad, Peshawar, presently Central Prison,  
Peshawar.

Appellant (s)

**VERSUS**

The State etc

Respondent (s)

For Appellant :-	<u>M/S Hussain Ali and Shah Nawaz,</u> <u>Advocates.</u>
For State :-	<u>Mr. Mujahid Ali Khan, AAG.</u>
For Respondent :-	<u>M/S Syed Abdul Fayaz, and Jehanzeb Khan,</u> <u>Advocates.</u>
Date of hearing:	<b><u>24.10.2019</u></b>

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** This criminal appeal has been filed by Sohail Nasir, the appellant, against the judgment dated 07.12.2017, passed by learned Sessions Judge/Judge on Special Task, Peshawar, whereby the appellant having been found guilty of committing murder of Aman Ullah deceased has been convicted under section 302 (b) PPC and sentenced to undergo imprisonment for life as well as to pay Rs.3,00,000/-, as compensation to legal heirs of the deceased in terms of section 544-A Cr.P.C., and in default thereof to undergo 06 months S.I. He has been further convicted under section 201 PPC, and sentenced to undergo imprisonment for three years and pay a fine of Rs.30,000/- or in default of payment thereof to

undergo 06 months S.I. in case FIR No.1050 dated 30.09.2015, registered under sections 302/201/34 PPC, at Police Station Agha Mir Jani Shah, Peshawar.

2. Mst. Hakima Bibi, mother of Aman Ullah deceased, has filed connected **Cr.R. No.03-P/2018**, seeking enhancement of sentence of convict/respondent from life imprisonment to normal penalty of death, as provided for the offence.

3. Since, both the matters arise out from one and the same judgment of the learned trial Court dated 07.01.2017, therefore, we propose to decide the same through this single judgment.

4. As per contents of FIR, the prosecution case is that on 30.09.2015 on receipt of information regarding a beheaded dead body of an unknown person lying in the vacant plot owned by Afridi Khan, situated in Dir Colony Chowk Ring road, Peshawar, Mr. Ishaq Khan ASI (PW.9) along with other police officials, reached the spot and saw a dead body whose head had been cut with a sharp weapon and taken away by some unknown culprit(s). Nobody identified the dead body, therefore, PW.9 prepared injury sheet and inquest reports Exh.PW.9/1 and Exh.PW.9/2, respectively and dispatched the beheaded dead body to the mortuary at KMC under the escort of Constable Said Azam No.1582 (PW.1), for post mortem examination. He also drafted Murasila and sent the same to Police Station on the

basis of which FIR Exh.PA was registered against unknown culprit(s).

5. Shaukat S.I. (PW.5) was entrusted with the task of investigation, who proceeded to the spot, summoned Ishaq Khan ASI (PW.9) and on his pointation prepared site plan Exh.PB. During spot inspection, he secured bloodstained earth from the place where the dead body was lying/thrown vide recovery memo Exh.PC. He also recovered bloodstained earth at some distance from the aforesaid place vide recovery memo Exh.PC/1 as well as from outside gate of a godown vide recovery memo Exh.PC/2. A 30 bore crime empty was found inside the godown which was recovered vide memo Exh.PC/3. Vide recovery memo Exh.PW.1/1 he took into possession the last worn bloodstained garments of the deceased. In the meantime, the appellant was arrested by Sabz Ali Khan DSP, the then SHO police Station Agha Mir Jani Shah (PW.11) at Shoba Chowk vide arrest card Exh.PW.11/1, and on his pointation the chopped head of the deceased was recovered from grass in front of *Lasani Kanta Ring road*. He (PW.11) sent the same to Khyber Medical College (KMC) for stitching it with headless dead body already dispatched for Post mortem examination. The appellant was then brought to scrap godown by PW.11 where Shaukat SI (PW.5) and Muhammad Ishaq ASI (PW.9) (author of Murasila) were already present and had effected the recovery of

bloodstained earth and 30 bore crime empty. The appellant allegedly pointed out the crime spot to PW.11 i.e. a room in scarp's godown (Kabar khana) and on his pointation, he recovered a 30 bore pistol, without number along with spare charger and bandolier containing 02 live rounds and a dagger/Churri from a drawer of table Exh.P.5 to P.9 vide recovery memo Exh.PW.9/3. The appellant was then handed over to the Shaukat SI (PW.5)/Investigating Officer at the spot. During interrogation the appellant disclosed before the I.O. about his residential room, situated in Usman hostel, opposite Government College Peshawar. The I.O. took the appellant to the said hostel and on his pointation recovered a mobile set allegedly owned by the deceased vide recovery memo Exh.PC/4. On return to Police Station, father of deceased Jalat Khan charged the appellant in his statement under section 161 Cr.P.C. followed by his statement under section 164 Cr.P.C. before the Judicial Magistrate. The I.O, produced the appellant for his physical remand before the learned Judicial Magistrate and also obtained permission for his medical examination vide application Exh.PC/11. The appellant was medically examined by Dr. Muhammad Arshad Hussain. The I.O, recorded statement of one Tariq who allegedly had handed over keys of the aforesaid godown to one Sartaj uncle of the appellant. The I.O. also draw snapshots of the places of occurrence and the dead body of the deceased available on

file as Exh.PC/13 (11 photographs). He sent the bloodstained earths, clothes of the deceased, and bloodstained dagger/chorri, bloodstained grass and bloodstained pieces of carpet, as well as the 30 bore pistol and crime empty of the same bore to the FSL. On his transfer, the Remaining investigation was carried out by Humayoun Khan SI (PW.12), who placed on file PM documents of the deceased, FSL report Exh PZ, qua the bloodstained articles and Exh.PZ/1, about the crime pistol and empty. During interrogation the appellant disclosed the name of one Farhad to be his co-accused in the crime, therefore, he initiated proceedings under sections 204 and 87 Cr.P.C. against him. On completion of investigation challan was submitted against the appellant before the learned trial court.

6. On receipt of challan by the learned trial Court, the appellant was charge sheeted to which he pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as twelve witnesses. After closure of the prosecution evidence, statement of the appellant was recorded under section 342 Cr.P.C. wherein he denied the prosecution allegations 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.

7. We have heard the extensive arguments of learned counsel for the parties and perused the record with their valuable assistance.

8. It is manifest from record that it is a case of no eyewitness. Though, Jalat Khan, father of Aman ullah deceased has nominated the appellant for murder of his son in his statement recorded under section 164 Cr.P.C. on 01.10.2015, but after the arrest of appellant on the ground that as the appellant has been arrested by the police during investigation, therefore, he is satisfied that the appellant has committed murder of his son. He has not uttered a single word about the motive behind the crime. In the circumstances, the prosecution case is squarely based on circumstantial evidence in the shape of recovery of bloodstained earths secured from three places, mentioned above and a 30 bore crime empty Exh.P.4 recovered from inside Kabar godown by Muhammad Ishaq Khan ASI (PW.9), (the author of Murasila) and recovery of head of the deceased, a 30 bore crime pistol, bloodstained dagger/churri, iron rod and a mobile set of the deceased, on the pointation of the appellant by Sabaz Ali Khan DSP the then SHO (PW.11), coupled with positive Serologist report Exh.PZ qua the bloodstained articles and positive FSL report Exh.PZ/1 about the crime pistol and crime empty.

The circumstantial evidence referred above, has been relied upon by the prosecution and the learned trial Court while believing it has recorded conviction of the appellant.

9. At the very outset it needs to be mentioned here that undisputedly on 30.09.2015 or at night between 29<sup>th</sup> and 30<sup>th</sup> September, someone committed brutal murder of Aman Ullah alias Manay deceased, whose beheaded body was found inside a vacant bounded plot owned by one Afridi Khan, situated at Dir Colony Chowk, ring road Peshawar, whereas, on the same day his head was recovered lying in grass on berm of the road. There is ample evidence on record which proves homicide of the deceased through firearm on his head and thereafter chopping of head from his dead body. The only point for consideration is that whether it was the appellant who committed homicide of the deceased.

10. What inclines the Court to believe the circumstantial evidence is the maxim that men may lie but circumstances do not. We do not nor can we doubt and dispute the century's old well tested wisdom rather we use it as a touchstone for assessing and evaluating the evidentiary worth of the circumstantial evidence. Circumstantial evidence can form basis of conviction if it is incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. This case thus has to be

analyzed and adjudged on the touch stone of the above principle.

11. As per FIR, the occurrence has taken place on 30.09.2015 at unknown time. The scribe of Murasila, namely, Muhammad Ishaq ASI (PW.9) reached the spot (the place where the dead body was lying/thrown), where he drafted Murasila at 14.00 hours. Besides, he also prepared injury sheet and inquest report of the deceased, however, he has not shown recovery of blood etc from the spot. If there was any blood and other incriminating material he ought to have shown the same in column No.12 and 13 of the inquest report of deceased. Shaukat Khan SI (PW.5), the Investigating Officer deposed that when he reached the spot i.e (the place where the dead body of the deceased was thrown/lying), he summoned Muhammad Ishaq ASI, the author of the Murasila (PW.9) and in his presence secured bloodstained earth from the place where the dead body was thrown/lying, blood stained earth lying at some distance from the aforesaid place and bloodstained earth from outside gate of godown as well as a 30 bore crime empty from inside the godown. The appellant has been shown arrested by Sabz Ali Khan DSP (PW.11) on the same day of occurrence from Shoba Chowk Peshawar, vide arrest card Exh.PW.11/1, wherein the time and place of arrest of the appellant has not been shown. In cross-examination (PW.11) admitted that he has



not mentioned the time and place of arrest of the appellant in the arrest card. He deposed that on receipt of spy information at 2.00 p.m. through an informer he along with other police officials rushed to Shoba Chowk and arrested the appellant at 05.00 pm. He further deposed that name of appellant, his father name and residence were disclosed to him by the informer, however, this PW has not uttered a single word that at the time of arrest of the appellant the alleged informer was accompanying him/police party. The appellant was not already known to PW.11, therefore, his arrest from overcrowded place, namely, Shoba Chowk from amongst numerous persons, present and roaming in the said bazaar in routine, is nothing but a cook and bull story. As per prosecution case the headless body of the deceased was recovered at 14.00 hours, by (PW.9), who there and then drafted Murasila, while weirdly, the PW.11 (Sabz Ali Khan DSP) got information at 14.00 hours about purposeless presence of the appellant in Shoba square, who purportedly was present upto 17.00 hours and got busted there. Needless to mentioned that the appellant has not been showed arrested from any hotel, building or shop etc. Record is silent about any stains or dots of blood etc on the sleeves or clothes of the appellant. For the sake of discussion if we presume that the appellant might had changed his clothes in which he allegedly committed the crime, then no such clothes has

been shown recovered on the pointation of the appellant, through, the Investigation Officer has searched the room of appellant in the hostel. The dramatic arrest of the appellant from Shoba square,, who by then was the student of F.Sc (Pre-engineering), settled in a room of hostel in front of Government College Peshawar cast serious doubt on prosecution case. During arguments learned counsel for the appellant drew our attention to a newspaper “Daily Aaj”, (placed on judicial file), wherein news along with a photo has splashed, according to which the local police on pointation of three accused discovered the head of deceased Aman Ullah as well as pistol and dagger. In the photographs, the appellant amongst three other persons has been shown standing in handcuffs with the police. Who were the other three persons and why they were released has remained a mystery, however, in cross-examination PW.11 has deposed that on the pointation of the appellant, he recovered head of the deceased from the fields of Dir Colony, situated on ring road in front of Lasani Kanta. The place of recovery of head of the deceased is also situated in congested area of Peshawar, but no private witness has been associated with the alleged pointation proceedings, while on the other hand, it negates the briefing report of police high-ups to the media personnel being flashed in “daily Aaj” wherein the head of the deceased has been shown recovered on the disclosure of three persons

including the appellant. Owner of the plot, namely, Afridi Khan has not been examined despite the fact that his house is situated adjacent to Plot. Besides, in the photographs of the place, wherefrom head of the deceased has been shown recovered on the pointation of the appellant, one can see only the appellant in handcuffs and grass but no head of dead body is visible, hence, this piece of evidence is highly doubtful.

12. As regards recovery of 30 bore pistol without number along with spare charger and a bandolier containing two live rounds and bloodstained Churri on the pointation of the appellant from inside a small room of godown, suffice it to say that Sabz Ali Khan DSP (PW.11), who allegedly arrested the appellant deposed that on the pointation of the appellant he effected the aforesaid recoveries from drawer of table from a room inside godown vide memo Exh.PW.9/3. In cross-examination he deposed that after arrest of the appellant and recovery of head on his pointation when he reached the crime spot/godown, Shaukat SI (PW.5) and Muhammad Ishaq Khan ASI (PW.9), the author of Murasila, were already present and in their presence on the pointation of the appellant he recovered the crime pistol along with bandolier, dagger/Churri etc from drawer of table inside a room in the godown. On the other hand, PW.5 deposed that after registration of the case he proceeded to the spot and

summoned Ishaq Khan ASI (PW.9), and on whose pointation prepared the site plan. In view of the statement of PW.5, the Investigation Officer along with complainant was present inside the premises of godown (place of occurrence) and was busy in collecting evidence from the spot but could not recover the alleged crime weapons from a small room where only one table has been shown lying in the photographs. Had the appellant not been arrested, the Investigation Officer would have not recovered the crime weapons. Likewise, PW Sabz Ali Khan has disclosed the arrest of the appellant at 1700 hours in Shoba Bazaar, situated at a considerable distance from place of occurrence, who was immediately brought to the spot and on his disclosure the weapons of offence were allegedly recovered from the place where the Investigation Officer along with complainant was already present and searching the spot for the last three hours. The statement of Sabz Ali Khan does not appeal to a prudent mind because if the author of Murasila and the I.O. were already present inside godown, they could have easily recovered the alleged crime pistol, dagger, bandolier and iron rod etc. In this view of the matter, recovery of the alleged crime weapons on the pointation of the appellant being highly doubtful, seems to have been planted against the appellant by the police just to show their efficiency, hence, this piece of circumstantial evidence has wrongly been believed by the

learned trial Court. No doubt, FSL report about the crime weapons is in positive, however, not only its recovery is highly doubtful, but the empty and pistol have been sent together to the FSL on 05.10.2015 which were received in the Laboratory on 08.10.2015. Whereabouts of the alleged crime pistol and empty in the interregnum period has not been explained by the prosecution. No independent witness has been examined in support of the aforesaid recoveries. Neither owner nor watchman of the godown has been examined in support of the aforesaid recoveries or nexus of the appellant with the godown. One Tariq who in his statement under section 161 Cr.P.C. had stated about handing over of key of godown to one Sartaj uncle of the appellant has been abandoned as his whereabouts were unknown. The aforesaid Sartaj has not been cited as an accused in the case nor has been examined by the I.O. An iota of evidence has not been brought on record by the prosecution to prove the nexus of the appellant with the aforesaid godown. The purpose of visit of deceased to a bounded area has also remained a mystery. No relative of the deceased has come forward to furnish evidence to the effect that the deceased had friendship with the deceased or that he used to visit the crime spot (godown). Similarly, an iota of evidence has not been collected by the prosecution to prove nexus of the appellant with the deceased or his visit to the godown before the occurrence.

13. A mobile set of the deceased also has been shown recovered on the pointation of the appellant from his room in a hostel situated in front of Government Degree College, Peshawar, but no identification parade of the said mobile has been conducted through LR's of the deceased. Similarly, an iota of evidence is not available on file to prove the said mobile to be the ownership of the deceased.

14. For what has been discussed above, the prosecution has miserably failed to prove the guilt of the appellant through the circumstantial evidence. It is settled by now that in such like cases every chain should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other end should touch the neck of the accused. But if chain is missing then its benefit must go to the accused. In this regard, guidance has been sought from the judgments of the Apex Court of the country reported in "**Ch. Barkat Ali vs. Major Karam Elahi Zia and another**" (1992 SCMR 1047), "**Sarfraz Khan vs. The State**" (1996 SCMR 188) and "**Asadullah and another vs. State**" (PLJ 1999 SC 1018).

15. Accordingly, this appeal is allowed. Conviction and sentence of the appellant recorded by the learned trial Court vide judgment dated is hereby set aside and he is acquitted of the charge leveled against him. He be set at liberty forthwith, if not confined in any other case. On acquittal of the convict, connected Cr.R. No.03-P/2018,

titled, “Mst. Hakima Bibi Vs Sohail Nasir” has become infructuous, which is hereby dismissed.

16. These are the reasons of our short order of even date which is reproduced below:-

“For reasons to be recorded later, we allow this appeal, set-aside the conviction and sentence of appellant Sohail Nasir son of Nasir, recorded by the learned Sessions Judge/Judge on Special Task, Peshawar under section 302(b) and 201 PPC, in case FIR No.1050 dated 30.09.2015, under sections 302/201/34 PPC, Police Station Agha Mir Jani Shah, Peshawar and hereby acquit him of the charge in the cited case. He be set at liberty forthwith, if not confined in any other case”.

**Announced:**

**24.10.2019**

*M.Siraj Afridi PS*

**JUDGE**

**JUDGE**

DB of Hon’ble Mr. Justice Rooh ul Amin Khan; and  
Hon’ble Mr. Justice Ishtiaq Ibrahim.

