

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.A No. 22-M/2019  
With M.R 1/2019**

**Muhammad Uzair.....(Appellant)**

**vs**

**The State & others.....(Respondents)**

Present: Muhammad Nabi, Advocate for the  
appellant.

Mr. Sohail Sultan, Asst:A.G for the State.

Mr. Gul Munir Khan, Advocate for the  
complainant.

**Date of hearing: 03.06.2021**

**JUDGMENT**

**WIQAR AHMAD, J.-** Appellant has called in question judgment of his conviction passed by learned Additional Sessions Judge, Dir Lower at Chakdara on 09.01.2019 in a criminal case registered vide FIR No. 544 dated 31.07.2017 under sections 302/109 PPC at Police Station Chakdara, District Dir Lower. On conclusion of trial, the appellant was convicted and sentenced as follows;

- i. Death penalty as Ta'zir for causing murder of Mst. Elishba under section 302 (b) PPC;**
- ii. To pay Rs. 300,000/- to legal heirs of deceased under section 544-A Cr. PC or in default thereof, he was ordered to undergo simple imprisonment for six (06) months.**

Benefit of Section 382-B Cr. PC was also extended to the appellant.

2. FIR in the case in hand was registered on the basis of Murasila Ex PW 6/1. Complainant namely Mst. Shanbata lodged report of the occurrence to the local police by stating that she and Mst. Elishba (deceased) had been present in the room of their house on the day of occurrence. In the meanwhile, the appellant came to the room duly armed with a pistol and made firing at his wife as a result of which she got injured. The occurrence was also stated to have been witnessed by daughter-in-law of the complainant namely Mst. Bacha Zadgai wife of Wahid Khan, who also supported and thumb impressed report of the complainant. The accused/appellant was accordingly charged for commission of the offence by the complainant. Initially, case against the accused/appellant had been registered under section 324 PPC but later on, the injured succumbed to injuries and died, the section of law was therefore altered to that of 302 PPC.

3. Investigation in the case ensued, during which injury sheet as well as postmortem report of the

deceased were obtained. Beside other proceedings in investigation, the Investigating Officer had also recovered blood stained earth vide recovery memo Ex PW 10/1, blood stained shirt and shalwar vide recovery memo Ex PW 11/5. A 30 bore pistol along with four live cartridges of same bore had also been recovered on pointation of the accused/appellant vide recovery memo Ex PW 10/3. Reports regarding the recovered articles were also obtained and placed on record as Ex PW 11/9 and Ex PW 11/10. During investigation, mother and brother of the deceased lady had also recorded their statements under section 164 Cr. PC, wherein they also charged mother of the appellant namely Mst. Asiyat Bibi for instigating the appellant. The accused/appellant was arrested on the day of occurrence i.e. 31.07.2017. After completion of investigation, complete challan was put in Court. The prosecution examined fourteen (14) witnesses and closed their evidence, whereafter statements of the accused were also recorded under section 342 Cr. PC. On conclusion of proceedings in the trial, the appellant namely Muhammad Uzair was convicted and sentenced as reproduced above while co-accused namely Mst. Asiyat Bibi was acquitted of the charges

leveled against her, vide the impugned judgment dated 09.01.2019.

4. We have heard arguments of learned counsel for the parties, learned Asst:A.G appearing on behalf of the State and perused the record.

5. Prosecution have been relying upon statements of the two witnesses recorded during trial of the case beside confessional statement of the appellant and other corroboratory evidence produced during the course of trial. On arrival of the local police at the spot, report of the occurrence had been made by the complainant namely Mst. Shanbata wife of Amir Chaman, who had been grandmother of the appellant. Same had been seconded by Mst. Bacha Zadgai who had also been related to the appellant. Complainant was examined during trial as PW-6 and the other PW who had seconded her report, was examined during trial as PW-7. The complainant while deposing in Court as PW-6 has stated that she and her daughter-in-law namely Mst. Bacha Zadgai (PW-7) had been present in the room of their house on the day of occurrence, and Mst. Elishba (deceased then alive) entered her room. The appellant came to the room while being duly armed with a pistol, after Zuhr prayer

and made firing at his wife as a result of which she got injured. She has also stated that when the police arrived to the spot, she had not been in her senses due to some heart disease. She further stated that the police had got recorded her statement and that of her daughter-in-law as well. She reaffirmed the contents of report Ex PW 6/1 and stated that she had thumb impressed the same. In her cross-examination, she stated that she had four sons and four daughters and had been living with her younger son namely Wahid. She also stated that father of the appellant had been living in a separate house. She denied the suggestion that the other PW namely Mst. Bacha Zadgai had not been having cordial relation with the inmates of the appellant's house. She could not recollect the time of arrival of police but stated that as soon as she got senses, the police recorded her statement which had been a time between Zuhre and Asr. In rest of her cross-examination also, she had stood firm in her stance and the learned counsel for defence could not extract anything from her mouth which may be found beneficial for the case of appellant. Same was the case with the other eye-witness namely Mst. Bacha Zadgai (PW-7), who had also been related to the appellant.

She is wife of Wahid Khan, who has been uncle of the appellant. She has also given a description of the occurrence similar to PW-6. In her cross-examination, she has also stood firm in her stance and has never deviated there-from. She has also fully supported case of the prosecution and nothing beneficial to the case of appellant could be extracted from her mouth. She has denied the suggestion that her husband had killed the deceased in the name of honor. She admitted it correct that the *Jirga* had put in restrictions on the appellant and her deceased wife, whereby they had been restrained from coming to village Chakdara. She however added that the couple had later on come to said village and had started living there. She also stated that the family of Mst. Elishba (deceased) had not been happy with their settling in village Chakdara. She further stated that they had been living there for a year.

**6.** These two witnesses examined as PW-6 and PW-7 had been closely related to the appellant and had not been related to the deceased or her parents. The occurrence has taken place inside their house. Their presence could neither be doubted nor had it been seriously questioned during the course of cross-examination. When these two witnesses have deposed

against the appellant, then no reason existed for disbelieving their testimony. Their statements have also been consistent with other particulars of the case as well as the corroboratory evidence collected by the Investigating Officer during the course of investigation. No discrepancy could be found in their statements inter-se or when put in juxtaposition to other particulars of the case. Statement of PW-6 in her examination-in-chief that at the time of arrival of police, she had not been in senses, has been clarified in her cross-examination that she has regained her senses and thereafter lodged report of the occurrence to the local police. These were absolutely reliable witnesses, whose statements have been sufficient for convicting the accused even in absence of any corroboratory evidence. In the case of **Muhammad Iqbal and others vs. Muhammad Akram and another** reported as ***1996 SCMR 908***, Hon'ble Supreme Court of Pakistan has held in this respect;

**“Ocular evidence may be classified into three categories: Firstly, wholly reliable; secondly, wholly unreliable; and thirdly, partly reliable and partly unreliable. In the first category, conviction may safely be sustained on uncorroborated testimony.”**

7. The appellant was grandson of the complainant (PW-6), who had been 80 years old woman. Existence of any malafide for false implication of the appellant had been beyond imagination. No such fact could be brought by the defence side in support of existence of such a malice on part of PW-6 and PW-7. Mere suggestion to PW-6 without any supporting material and background of any animosity, would not be sufficient for doubting testimony of PW-6. Both the witnesses have been absolutely reliable and no reason existed for discarding their testimony.

8. The appellant has also got his confessional statement recorded on 03.08.2017. He had been arrested on 31.07.2017 at 05:30 p.m. In his confessional statement, he has stated that due to quarrel between his mother and ex-wife, his mother had left house and went to the house of his maternal grandmother while his wife had gone to the house of his paternal grandmother i.e. complainant in the case in hand. He has further stated that he repeatedly requested his ex-wife to come along with him to their own house but she refused and therefore he fired at her and also intended to kill himself, but a bullet got stuck in the pistol. It is important to be noted that the pistol had



also been recovered on pointation of the appellant vide recovery memo Ex PW 10/3. It has been noted in such recovery memo that a bullet had got stuck in chamber of the pistol. The pistol had also been exhibited as Ex P-3 in statement of PW-10. This factum is providing sufficient corroboration to the confessional statement of the accused, which is even otherwise found to have been recorded voluntary besides being proved in its contents. For proving the confessional statement, prosecution have also examined the concerned Magistrate as PW-12, who has deposed in respect thereof and his testimony has also remained intact, during the course of cross-examination, wherein nothing could be found which could have shaken evidentiary value of the confessional statement. In addition to the eye-witness account, confessional statement of the appellant may also be considered safely.

9. The Doctor was examined as PW-9, who has given description of the injury found on the body of the deceased lady in the following words;

- 1. A firearm entry wound 1.5-2 cm × 1-2 cm on front of right side of abdomen. 7-8 cm from midline of abdominal wall and 2 cm above and medial to anterior superior iliac spine.**

- 2. A firearm exist wound (size 1-2 cm × 1-2 cm) in upper outer quadrant of right buttock near lumber region on back. 7-8 cm from backbone (vertebral column).**

In her statement as well as in her cross-examination, the Doctor has stated that the deceased lady Mst. Elishba had been alive, responsive, fully conscious and well oriented, when she had initially been brought to the Hospital. The time of arrival at the Hospital has been shown as 03:00 p.m. on 31.07.2017. She had also been brought to emergency ward of THQ Hospital Chakdara by some policemen. Learned counsel for the appellant has argued that the concerned policemen had not taken report of Mst. Elishba deceased, which fact indicated that she had in-fact, not been ready for nominating the appellant i.e. her husband for commission of the offence. The complainant while lodging report of the occurrence to Gul Rahman ASI at 03:30 p.m. has stated that after the lady had received injuries, she had been taken to the Hospital by the relatives. It has come in evidence that relatives of the deceased had been living in another village i.e. Sesada Chakdara. Relatives of the appellant and complainant had however been living close to the place of occurrence and it was quite natural that they would have taken the deceased lady to the Hospital.

This fact also becomes clear from the statement of PW-7 namely Mst. Bacha Zadgai, who has stated in her cross-examination that she had accompanied the lady to the Hospital at Chakdara. She has also stated that police had already been present in the Hospital, but she had not lodged any report to them at the Hospital. She has further stated that after sometime, she had come back to her house, where the police had arrived and on their arrival, she and her mother-in-law had got their statements recorded in respect of the occurrence. The deceased then alive and in injured condition, was at their disposal as she had not been accompanied by any of her relatives like father, brother and sister etc. In the given situation, if the police present at the Hospital had not taken report of the lady, it could not be presumed that she had not been charging the appellant. Nothing has come in evidence about the fact that the lady had ever been asked by anyone, and this presumption of not charging the appellant, cannot be drawn in circumstances of the case, particularly when the appellant has been charged by his relatives including his grandmother as well as wife of his uncle, in whose house the occurrence had taken place.

**10.** The ocular evidence has otherwise been fully in line with the medical evidence. No contradiction could be found making the eye-witness account doubtful. Weapon of offence i.e. pistol has also been recovered. In support thereof, PW-10 and PW-11 have been examined, who have also remained consistent in their testimony. The alleged pistol along with one empty shell and four live cartridges of same bore had also been sent to the Forensic Science Laboratory for the purpose of chemical analysis, wherefrom matching report Ex PW 11/10 had been received and placed on record of the case.

**11.** Prosecution have successfully proved case against the appellant beyond reasonable doubt. Conviction of the appellant recorded by the learned trial Court vide the impugned judgment has fully been justified in circumstances of the case and appeal to the extent of conviction of the appellant did not carry any substance.

**12.** The sentence of death awarded to the appellant however requires a reconsideration. Appellant has committed the offence in a state of mind where his emotions overpowered him all of a sudden and he made firing at the deceased lady. It is apparent

from the confessional statement of the appellant that he first requested and insisted that the lady should accompany him to his house. This is believable for the reason that the couple had entered into a love marriage about two years before the occurrence, which fact is evident from the statements of PW-1 and PW-2, sisters of the deceased. His emotional state of mind is also depicted from the fact that he even intended to kill himself but was prevented by the sticking bullet in chamber of the pistol, as per contents of the confessional statement, which we have accepted as true and voluntary. There had not been any premeditation in committing murder nor had there been any motive and the contributing factor of quarrel between mother and wife of the appellant had happened all of a sudden and the refusal of the deceased to accompany the appellant, had put the appellant (who had been a boy of 26 years of age and had just read to the level of 5<sup>th</sup> class), in such an emotional state of mind in which he had committed the unfortunate incident, not only killing the deceased but also devastating his own life. In such circumstances, we do not find imprisonment of death penalty by the learned trial Court as justified and

therefore order its reduction to the penalty of life imprisonment.

**13.** On allowing of the instant appeal partially, sentence of the appellant is ordered to be converted into life imprisonment, which shall run concurrently with the sentence separately awarded to the appellant in connected case registered vide FIR No. 550 dated 02.08.2017 under section 15-AA at Police Station Chakdara District Dir Lower. The appellant shall also have benefit of section 382-B Cr. PC. Murder Reference No. 01-M of 2019 sent by learned trial Court is accordingly answered in negative.

**14.** These are reasons for our short order of even date, which reads as;

**“For reasons to be recorded later, this appeal is partially allowed, the impugned judgment dated 09.01.2019 of the Court of learned Additional Sessions Judge, Dir Lower at Chakdara rendered in case FIR No. 544 dated 31.07.2017 registered under section 302/109 PPC at Police Station Chakdara District Dir Lower, is modified by converting the sentence of death awarded to the appellant/convict namely Muhammad Uzair son of Khaista Rahman under section 302 (b) PPC to life imprisonment along with benefit of section 382-B Cr. PC. Rest of the sentence in respect of amount of compensation awarded by learned trial Court shall remain intact. The modified sentence of life imprisonment in the case in hand shall however run concurrently with sentence in the connected case registered vide FIR**

No. 550 dated 02.08.2017 under section 15-AA at Police Station Chakdara District Dir Lower, a conviction in which case was upheld vide separate judgment of even date in Criminal Appeal No. 23-M of 2019. Murder Reference No. 1-M of 2019 is answered in negative.”

*Announced*  
*Dt: 03.06.2021*

**JUDGE**

**JUDGE**