

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

1. Cr.A No. 206-M/2020

(Mst. Shaheen Zari Versus The State and another)

Present:

Hafiz Ashfaq Ahmad, Advocate for the appellant.

Mr. Razauddin Khan, A.A.G. for State.

Muhammad Javaid Khan, Advocate for Respondent No.2.

2. Cr.A No. 198-M/2020 (M)

(Wazir Zadgai Versus Saeed Ullah and others)

Present:

Muhammad Javaid Khan, Advocate for the appellant.

3. Cr.R No. 31-M/2020

(Wazir Zadgai Versus Mst. Shaheen Zari and another)

Present:

Muhammad Javaid Khan, Advocate for the petitioner.

Mr. Razauddin Khan, A.A.G. for State.

Hafiz Ashfaq Ahmad, Advocate for the respondent/convict.

Date of hearing: **11.02.2021**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this judgment we intend to decide the instant appeal Cr.A No. 206-M/2020 as well as the connected Cr.A No. 198-M/2020 and Cr.R No. 31-M/2020 as all these cases are emanating from the same judgment dated 30.07.2020 of the learned Sessions Judge/Zilla Qazi/ MCTC Shangla rendered in case FIR No. 130 dated 10.08.2019 u/s 302/34 PPC registered at P.S

Chowga, District *Shangla* whereby appellant Mst. Shaheen Zari was convicted u/s 302 (b) PPC and sentenced to undergo life imprisonment with compensation of Rs.300,000/- payable to legal heirs of the deceased, in case of default thereof the appellant was directed to undergo further six months S.I. Benefit of section 382-B, Cr.P.C was extended to her. Co-accused Saeed Ullah and Sardar Ullah were acquitted of the charge.

2. Brief facts of the case are that on receipt of information regarding murder in village *Dambara*, Muzafar Khan ASHO (PW-7) rushed to the house of Hanif Ullah situated in the said village alongwith police contingents where he found a dead body in residential room of the present appellant/convit in pool of blood. A pistol 30 bore with 15 rounds were recovered from trouser-fold of the deceased whereas his CNIC was recovered from his front side pocket from which name of the deceased became known as Sher Khaliq son of Sher Zada resident of *Neem Kalay Aloch* besides, a Samsung mobile phone and cash amount of Rs.21050/- were also recovered from him. The present appellant Mst. Shaheen Zari, who was present on the spot, made a report in presence of her

brother-in-law/co-accused Saeed Ullah to the effect that her husband Hanif Ullah had met an accident, so, he had proceeded to Mingora for repair of the vehicle. During night time when she was asleep alongwith her children, at 03:00 hours someone opened the door of her room, so, she woke up and saw that an unknown person had entered her room. She picked up pistol of her husband from below her pillow and fired at the unknown person due to which he sustained multiple injuries on his body and died on the spot. She stated that the occurrence has been witnessed by her children.

3. The dead body was examined by Dr. Abdul Aziz. His findings as per his report EX.PM are as under:

EXTERNAL APPEARANCE

Neck: On examination no marks seen.

Clothes: Whole clothes coloured by blood (dry blood).

Stout decomposed: Nil

Wounds and injuries.

1. Wound on right eye.
2. Wound on right chest below right side nipple.
3. Wound on left side abdomen.
4. Wound on left side back below left scapula.

No charring marks and bruising are present.

Probable time that elapsed

- (i) Between injury and death: approximately 7/8 hours.
- (ii) Between death and post-mortem: Approximately 8/9 hours.

Urethral swab taken from deceased and handed over to police.

4. The present appellant Mst. Shaheen Zari was nominated as accused in the case whereas her two brothers-in-law namely Saeed Ullah and Sardar Ullah were also later on nominated in the case. The matter was investigated by Humayun Khan ASHO (PW-13) whereafter complete challan was put in Court against the present appellant and her co-accused named above. On commencement of trial, they were formally indicted for the offence to which they did plead guilty and opted to face the trial. In order to prove its case against them, prosecution examined as many as 14 PWs. After closure of evidence, the present appellant and her co-accused were examined u/s 342, Cr.P.C during which the present appellant/convict stated that she had acted in exercise of her private defence. The other co-accused, however, professed innocence and denied the allegation of prosecution. They neither recorded their own statements on oath nor opted to produce any witness in their defence. On conclusion of trial, the learned trial Court vide judgment dated 30.07.2020 convicted and sentenced the present appellant Mst. Shaheen Zari in the manner already discussed above, however, her co-accused were acquitted of the charge. Hence, these appeals.

5. We have heard the arguments of learned counsel for the parties including the learned A.A.G. for State and gone through the record with their able assistance.

6. Admittedly, the report was lodged by the present appellant/convict stating therein that an unknown person had entered her room at night time when she was asleep with her kids whereas her husband Hanif Ullah was away from home for the purpose of repairing his dented vehicle. On getting sight of the stranger, she picked up pistol of her husband and fired at the intruder as result whereof he became wounded and died on the spot. On arrival of police to her house, the deceased, as per his CNIC recovered from his pocket, was identified as Sher Khaliq son of Sher Zada resident of *Neem Kalay Aloch*, District *Shangla*. On his further body search, a 30 bore pistol with 15 rounds, Samsung mobile phone and cash amount of Rs.21,050/- were also recovered from him.

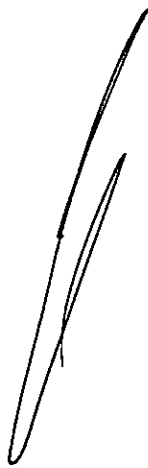
7. Spot of the occurrence is established in light of recovery of dead body as well as blood, two crime empties of 30-bore and a spent bullet from residential room of the appellant/convict and she has not denied the said recoveries during her

examination u/s 342, Cr.P.C. She has also admitted murder of the deceased in her statement u/s 342, Cr.P.C through a 30 bore pistol No. 1377 of her husband which was taken into possession vide recovery memo Ex.PC. Thus, murder of the deceased by the present appellant/convict inside her house is an admitted fact in view of her report as well as her statement u/s 342, Cr.P.C, however, we do not find ourselves in agreement with findings recorded by the learned trial Court in the impugned judgment while convicting her for the said murder.

8. Admittedly, the occurrence took place during nocturnal hours. The appellant/convict was present in her house alongwith her minor kids whereas her husband was away from the house. The very act of surreptitious entry by a stranger armed with pistol at night time into the room of a young lady, who was all alone in her room, and his murder by her in exercise of her right of private defence is not only believable but the same is also inferable from the attending circumstances of the case because she had no other option at that critical situation but to fire at the intruder. Right of private defence is to be inferred from facts and circumstances of case and the law, as observed by Lahore High Court in the

case of Maina Vs. The State (PLD 1972 Lahore 129), makes accused sole judge of his own danger and permits him to repel attack even to extent of taking life of his adversary within limits of S. 100 of the Pakistan Penal Code, 1860. The appellant/convict in the present case has taken the said plea from the very inception of the case and during her examination u/s 342, Cr.P.C she categorically took the stance that she had acted in her defence. A young lady in the company only of her kids could not expect that a trespasser armed with pistol had entered her room during nocturnal hours with a good intention, therefore, her act of firing at the deceased in the said situation cannot be termed in excess than what was required at the relevant time. The well-established principle laid down in this regard by the august Supreme Court is that the action on the part of the person in such critical situation cannot be measured in golden scales. The appellant/convict being a female and alone in her room had no choice at the relevant time to act in a weighed and pondered manner for repulsing the deceased for protection of her life, honour and safety of her minor kids. Reliance is placed on Mashal Khan Vs. The State (PLD 1988 Supreme Court 25)

wherein conviction and sentence of accused, who had acted in exercise of right of private defence, was set aside and he was acquitted of the charge by observing that:



The learned Acting Chief Justice has observed that it was manifest that there was great apprehension in the mind of the appellant that he would be either killed or severely injured by the deceased. It is reasonably probable that the deceased had taken out a knife in order to attack the appellant as stated in the confessional statement and it was due to the great apprehension in the mind of the appellant that he would be killed or severely injured like his brother that he took out the firearm which he always carried due to this fear and fired at the deceased while he might have turned back on seeing the firearm having been drawn at him. In such a state of panic when the right of self-defence is being exercised, the action on the part of the person cannot be measured in golden scales and this principle had been reiterated by this Court on numerous occasions.

9. Although it is also the case of prosecution that the appellant/convict had illicit relations with the deceased and in support of the said allegation against them CDR of SIM No. 0307-5901614 of the deceased and SIM No. 03473540857 allegedly used by appellant/convict has been brought on the record. The record shows that the I.O had taken into possession mobile phone having SIM No. 0348-0479801 from the appellant vide recovery memo Ex.PC/3 regarding which no CDR data is

available on record to establish her contact with the deceased whereas there is no evidence on the record that SIM No. 03473540857, regarding which CDR was obtained, was registered in her name. Thus, prosecution has not established any telephonic contact between the appellant/convict and deceased through any convincing evidence. The appellant had taken a plea in her defence which is to be taken in entirety and prosecution has failed to bring any evidence on record in rebuttal of the said version of the appellant/convict. In light of the facts and circumstances of the case and evidence available on the record, prosecution could not discharge its burden of proving the case against the appellant, hence, she is entitled to get the benefit of circumstances of the case which leads a prudent mind to the conclusion that she had acted in her defence. Wisdom is drawn from Zarid Khan Vs. Gulsher and another (1972 SCMR 597). The august Supreme Court of Pakistan observed in the said judgment that:

The onus is entirely on the prosecution to prove its case beyond any reasonable doubt. If in the facts and circumstances of the case there appears a likelihood of the existence of a right of private defence, the accused is entitled to the benefit of this right, for, such a situation will react on the whole prosecution case and will

lead the Court to hold that the prosecution has failed to prove its case beyond any reasonable doubt.

Thus, the learned trial Court has arrived at a wrong conclusion by convicting Mst. Shaheen Zari for the murder of deceased.

10. As regards acquittal of co-accused Saeed Ullah and Sardar Ullah by trial Court through the same judgment, which is the subject-matter of the connected Cr.A No. 198-M/2020, admittedly they have been charged in the case by Said Nabi (PW-10), brother of deceased, at a belated stage after nine days of the occurrence. The appellant/convict has not attributed any role to them in the FIR nor any incriminating thing has been recovered from their possession, therefore, the impugned judgment to the extent of acquittal of the afore-said co-accused needs no interference by this Court.

11. In light of what has been discussed above, the appeal preferred by appellant/convict Mst. Shaheen Zari is allowed, the impugned judgment to the extent of her conviction and sentence is set aside and she is acquitted of the charge leveled against her by prosecution. She be set

at liberty forthwith if not required in any other case.
The connected Cr.A No. 198-M/2020, having no
merits, is accordingly dismissed in *limine* whereas
the connected Cr.R No. 31-M/2020 is also dismissed
for having become infructuous.

12. Above are the reasons of our short order
of the even date.

Announced.
Dt: 11.02.2021

JUDGE

JUDGE

Office
3/3/2021
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