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

1) Cr.A No. 3-C/2019

Ahsan Ahmad.....(Appellant)

Versus

The State and another.....(Respondents)

2) Cr.R No. 1-C/2019

Muhammad Nasir....(Petitioner)

Versus

Ahsan Ahmad and another.....(Respondents)

**Present:** Mr. Rahimullah Chitrali, Advocate for the

appellant.

Mr. Haq Nawaz, Asst:A.G for the State.

Muhammad Nabi, 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 Sessions Judge/Judge Model Criminal Trial Court, Chitral on 29.06.2019 in a criminal case registered vide FIR No. 882 dated 01.09.2017 under sections 302/324/504/337-A (i)/337-A (ii) PPC at Police Station Chitral, District Chitral. On conclusion of trial, the appellant was convicted and sentenced as follows;

- i. Under section 302 (b) PPC to undergo life imprisonment;
- ii. Under section 544 (A) Cr. PC to pay Rs. 300,000/- to legal heirs of the deceased and in default thereof,

- he was ordered to undergo simple imprisonment for one (01) year;
- iii. Under section 324 PPC to undergo seven years rigorous imprisonment along with fine of Rs. 50,000/- and in default he was ordered to undergo simple imprisonment for six (06) months;
- iv. Under section 337-A (i) PPC to undergo two years rigorous imprisonment as Ta'azir;
- v. Under section 337-A (ii) PPC to undergo five years rigorous imprisonment as Ta'azir;
- vi. Under section 504 PPC to undergo simple imprisonment for one year along with fine of Rs. 5000/- or in default he was ordered to undergo simple imprisonment for fifteen days.

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

- 2. Criminal revision No. 1-C/2019 has been filed by complainant for enhancement of the sentence of appellant namely Ahsan Ahmad to that of death penalty.
- 3. FIR in the case in hand was registered on the basis of Murasila Ex PW 8/1. Complainant namely Muhammad Nasir lodged report of the occurrence at Emergency Ward of DHQ Hospital Chitral, by stating that he had gone to the local market for purchasing grocery for the occasion of Eid and on return, he parked his motorcycle near outer door of his house. In the meanwhile, the accused (appellant) came there and

started abusing the complainant. Complainant had also lodged a protest to father of the appellant, who came there in the meanwhile. When son of the complainant namely Zakria (deceased) came to the spot, the appellant took out a knife from his pocket and stabbed him with the intention to kill him. Complainant tried to separate the appellant and his son, but the appellant also made knife blows at his body. As a result of which, he was injured on left side of his head as well as abdomen, while his son injured on back was and upper portion of his head as well as left leg. The occurrence was stated to have been witnessed by PWs Abdul Rahman and Inam-ur-Rahman. Motive for commission of the offence stated have been some previous was to ill-will. The accused/appellant was accordingly charged for commission of the offence by the complainant.

4. Investigation in the case was started, during which injury sheets of the complainant and postmortem report of the deceased were obtained.

Beside other proceedings in investigation, the knife through which the appellant had allegedly stabbed the deceased, was also recovered vide recovery memo Ex PW 4/1, report regarding which was also obtained and placed on record as Ex PZ. The accused/appellant was arrested on the day of occurrence i.e. 01.09.2017. After completion of investigation, complete challan was put in Court. Charge was framed against him on 24.10.2017. The case was then posted for evidence of the prosecution. The prosecution recorded statements of fifteen (15) witnesses. On conclusion of prosecution evidence, statement of accused was recorded under section 342 Cr. PC. At conclusion of proceedings in the case, the accused/appellant namely Ahsan Ahmad was convicted and sentenced as reproduced above vide impugned judgment dated 29.06.2019.

- 5. We have heard arguments of learned counsel for the parties, learned Asst:A.G appearing on behalf of the State and perused the record.
- <u>6.</u> Perusal of record reveals that prosecution have been relying upon statements of the six eyewitnesses beside the corroboratory evidence that have been led in the case. We would first discuss eyewitness account of the occurrence. Statement of the

complainant was recorded as PW-10. examination-in-chief, he stated that on 01.09.2017 he had gone to the local market for purchasing grocery for the occasion of Eid and on his return, he parked his motorcycle near outer door of his house. The appellant namely Ihsan Ahmad came there and started abusing him. His father namely Sikandar Khan was also stated to have come in the meanwhile to whom the complainant lodged a protest and when son of the complainant namely Zakria (deceased) came to the spot, the appellant took out a knife from his pocket and stabbed him with the intention kill to him. Complainant further stated that he tried to separate the two, where-upon the appellant also gave him knife blows, causing him injuries on left side of his head as well as abdomen. The occurrence was stated to have been witnessed by PWs Abdul Rahman and Inam-ur-Rahman. Motive for commission of the offence was disclosed as his refusal in giving hands of his daughter to the appellant, due to which he had also extended threats to the complainant party earlier and security bond for keeping peace, had also been obtained from him under section 107 Cr. PC on their complaint.

<u>7.</u> The witness was allowed to be cross-examined by the defence side but the scheme of cross-

examination reveals that learned counsel for the accused/appellant had been trying to extracts some statement from the witness, wherein burden of his client may be lightened and the ensuing criminal liability diminished to a possible extent. Whatever may be the scheme of cross-examination, but the fact remained that the veracity of this witness regarding the occurrence and the role played by the appellant could not be shattered, even to a slightest extent. It was suggested to this witness that brunt of the knife which the appellant was having at the relevant time could not have caused death of a person, in response to which the witness had denied the suggestion and added that if brunt of the blow was borne by sensitive part of the body, then it might result into death. It was also suggested that there had been some iron rods on the spot and due to falling on such iron rods, the deceased died but said suggestion had also had straightaway denied by the witness. There had not been any evidence or material to said effect as it neither found support from site plan or any other piece of evidence. Brother of the deceased namely Sohaib Ahmad was examined as PW-2. While another cousin of the deceased namely Hamid-ur-Rahman was

examined as PW-6 beside Zafrullah, who was examined as PW-5.

Inam-ur-Rahman examined as PW-1, has 8. been an independent witness being neighbor of both the parties having no axe to be grinded in the matter. He has supported case of the prosecution in his examination-in-chief. He was cross-examined but nothing beneficial to the case of prosecution could be extracted from his mouth. Same was the case with statement of Ubaid-ur-Rahman recorded as PW-3. He was also community watcher and had been present at the spot. He has also been cross-examined at length but nothing beneficial to the case of prosecution could be extracted from his mouth. Both these witnesses had been fully independent witnesses of the locality having no relations with any of the parties. Hon'ble Supreme Court of Pakistan in the case of Muhammad Iqbal and others vs. Muhammad Akram and another reported as 1996 SCMR 908, has held that witnesses may be classified into three categories i.e. absolutely reliable witnesses, absolutely unreliable witnesses and partly reliable witnesses. It has further been held in said judgment that conviction may safely be based on testimony of absolutely reliable witnesses even in absence of any corroboratory material with the

prosecution. Relevant part of observation of the august Court is reproduced hereunder for ready reference;

## "In the first category, conviction may safely be sustained on uncorroborated testimony."

These witnesses have also been fully independent witnesses and no reason existed for discarding their testimony. Besides, other prosecution witnesses have also supported case of the prosecution and have remained fully consistent with each other as well as with the documentary evidence available with the prosecution on material aspects of the case. Their cross-examinations could not produce any beneficial factor for the defence.

9. Prosecution have also been banking on confessional statement of the appellant but same cannot safely be relied upon. The confessional statement Ex PW 12/2 has been recorded on 06.09.2017 while the accused/appellant had been arrested on 01.09.2017 i.e. after five days of his arrest. It was not only a delayed judicial confession but the accused had been brought before the Magistrate on the following day of his arrest (vide application Ex PW 14/3), who had granted two days custody of the accused. Then again he was produced before the Magistrate on 04.09.2017 (vide application Ex PW

14/7) and the local police obtained further two days custody of the accused. On neither of the two occasions, the accused had confessed his guilt before the Court. Then on 06.09.2017 when the accused/appellant was produced before the Magistrate, his confessional statement was recorded. Such prolonged custody and repeated productions of the accused before the Magistrate and taking him back to the Police Station would have naturally produced a state of mind, where the appellant might have been under the impression that if he had not made confession, he might again be handed back to the police. The confessional statement in such circumstances cannot be stated to be voluntary and it is not a piece of evidence which can safely be relied upon.

10. Other corroboratory pieces of evidence included post-mortem report of the deceased exhibited as Ex PW 9/2. The concerned Doctor has been examined in support thereof as PW-9, who has given the following description of injuries in his statement;

"About 4cm cut wound posterior upper cervical region i.e. with a depth of 6 to 7cm about which is already stitched, small cut wound over right scapula clothed blood in both nostrils.

About 4cm cut wound in upper cervical region on left side with maximum of about 6 to 7cm seen. Underlying bone exposed and

fracture communicating with posterior cranial fossa breach in dura meter with subdural hematoma extending into cerebellum."

In his cross-examination, he denied the suggestion that with a knife of routine usage, such like injuries could not be caused. The description of injuries given by the Doctor had also been lending support to the version of complainant as narrated in the FIR. Learned counsel for the appellant has been laying substantial stress on point that the injuries as described in the medico-legal report could not have been caused with a knife of routine usage and that this fact shows that the occurrence had not happened in the mode and manner as narrated by the complainant. We have given our anxious thought to this submission of learned counsel for the appellant but have found an adequate answer in the statement of Constable Akhtar Ayub recorded as PW-4. In his examination-in-chief, this witness has stated that the knife recovered from body search of the appellant had been having a blade of 4 inches. It needs mention here that the appellant had been arrested on the day of occurrence. In his crossexamination, he has stated that the knife was having a shape like fish and that one side of its handle had been broken. He had denied the suggestion that the knife had been so small and that it could not cause injuries to

anyone. The broken side of handle shows the force applied by the appellant while stabbing the deceased. Knife of even routine usage, in the hands of a powerful person, may cause injuries of very serious nature particularly when the blows are received on sensitive parts of one's body. When we read statement of PW-4 along with overwhelming evidence of the prosecution including the statements of independent eye-witnesses, we come to the conclusion that the injures had been caused with the stab blows of the appellant and it had been a sheer force applied that had caused fracture of the skull and resultant death of the deceased.

11. Recovery of knife through which the occurrence had been committed, recovered from the appellant at the time of his arrest from his personal search on 01.09.2017, has also been proved by the prosecution through the statement of PW-4 as well as statement of Investigating Officer. Said knife had also been sent to the Forensic Science Laboratory for the purpose of chemical analysis, wherefrom report Ex PZ had been received showing that the knife, shirt and blood stained shalwar had been containing human blood but same had not found sufficient for blood grouping.

case against the appellant beyond a shadow of doubt and the learned trial Court has rightly convicted the

Prosecution have been able to prove their

appellant for commission of the offence. The instant

criminal appeal was found divested of any force and

same is accordingly dismissed.

**12.** 

13. So far as criminal revision No. 1-C/2019,

filed by the petitioner for enhancement of the sentence

is concerned, it is important to be noted that the

occurrence had taken place all of a sudden without any

premeditation. Exchange of hot words had also taken

place between the complainant and the appellant,

immediately before the occurrence. Motive for

commission of the offence could not be proved by the

prosecution, beyond reasonable doubt. In such

circumstances, the learned trial Court had rightly

awarded the appellant a sentence of life imprisonment

instead of death penalty. No case for enhancement of

the sentence could be made out by learned counsel for

petitioner in the criminal revision. Same was found to

be divested of any force and accordingly dismissed.

Announced Dt: 03.06.2021

**JUDGE** 

**JUDGE**