JUDGMENT SHEET
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

J.Cr. Appeal No. 177-B/2018 with
M.R. No.10-B/2018.

Azmat Ullah

Vs

The State & Balqiaz Khan

JUDGMENT

For appellant: ***Mr. Arifullah Khan, Advocate***

For State: ***Mr. Shahid Hameed Qureshi, Addl. A.G.***

For Respondent: ***Mr. Inamullah Khan Kakki, Advocate***

Date of hearing ***02.12.2019***

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SAHIBZADA ASADULLAH, J.- Impugned herein is the judgment dated 18.10.2018 rendered by learned Sessions Judge, Bannu, whereby the appellant Azmat Ullah, involved in case FIR No.56 dated 28.02.2014, under section 302 PPC of police station Basia Khel, was convicted and sentenced to death with compensation of Rs:1,00,000/- payable to the legal heirs of the deceased or in default thereof, to undergo further six months simple imprisonment. The learned trial Court has also sent Murder Reference No.10-B/2018 for its confirmation.

2. The tragic incident of the instant criminal appeal, as reflected by and unfolded in the FIR Ex.PW-5/1 registered at the instance of Balqiaz Khan, the complainant shifted the dead body of his deceased wife to the police station and reported the event in terms that at the fateful time, at about 13:00 hours, he and

other family members were present in their house when in the meanwhile, his son Azmat Ullah the accused, duly armed with pistol, got hypered, and fired at his wife (mother of accused) namely Mst. Mir Daro Bibi, as result of it, she was injured and succumbed to her injuries. The accused after commission of the offence fled away from the spot. Motive for the offence was stated to be a domestic dispute.

3. Investigation was started in the case by the local police of police station Basia Khel and on conclusion of the same, complete challan was submitted against the appellant to the Court of learned Sessions Judge, Bannu, where at the commencement of the trial the prosecution produced as many as eight witnesses whose statements were recorded and placed on file. On close of the prosecution evidence, accused was examined under section 342, Cr.P.C. Describing himself as scapegoat, he denied the charges, professed innocence and stated to have falsely been implicated in the case. He, however, wished to produce no defence, nor to examine himself on oath as required under section 340(2), Cr.P.C. The learned Sessions Judge, Bannu on conclusion of the trial, convicted and sentenced the appellant vide judgment impugned herein.

4. We have considered submissions of the learned counsel for the parties and gone through the record of the case with their valuable assistance.

5. It was one of the most unfortunate day, when the deceased Mst. Mir Daaru lost her life by receiving firearm

injuries for which the unfortunate son i.e. the accused was charged. It was at 1415 hours, when the complainant husband of the deceased alongwith co-villagers brought the dead-body of his wife to the local police station and reported the matter and charged the accused/appellant his son. . After reporting the matter the dead body was taken to the hospital the postmortem was conducted and the doctor found two firearm entry wounds with its exit and a graze wound. The learned counsel for the accused/appellant mainly attacked the delay in reporting the matter to the police and that the complainant was a procured witness and was not present on spot and that the Investigating Officer could not collect anything against the accused/ appellant. We heard learned counsels passionately, but the present case is resting on a different premise as a mother was killed and a son was charged where the complainant was no one else but a father, so it needs a different approach. The objections so raised by the learned counsel for the defence in respect of the delay caused in reporting the matter to the local police, as to him, the occurrence took place at 01:00 p.m. whereas, the report was made at 2:15 p.m., which to him, was abnormal and none could explain and he stressed that this delay leads nowhere, but to hold that the complainant was not present in the house at the time of occurrence. We do not find ourselves in agreement with the learned defence counsel, as we are to see the people involved in the episode and their *inter se* relations with one another, it was the father who lost his wife on the one hand, and on the other

hand, he was to put to gallows no one else but his son, so being a father and a husband, he was in a fix and at last decided to charge the culprit. The question regarding the availability of complainant in the house holds no ground, as it was a joint house and when the complainant was examined, he stated that at the time of occurrence he, his daughter-in-law and her children were present in the house but at the time of firing his daughter-in-law was inside the room even otherwise, if we presume for the sake of arguments, that the daughter-in-law was not ready to support the charge against the appellant, at the same time, we cannot doubt the veracity of a father charging his real son. An abortive attempt was made to convince this Court that the charge was brought against the appellant with *mala fide* intentions, but the defence, despite searching cross-examination, could bring nothing favourable from the mouth of the complainant and even the defence could not substantiate the plea that the accused was substituted for the actual culprit. We will say that an unfortunate attempt was made by the defence to suggest that the woman was of easy virtue, but the defence ignored the age of the deceased, as her age was the age of respect. Nothing could be brought on record that the relations between father and son were too strained that a father would bring a false charge and even the defence could not convince us.

6. It was a brutal murder, as the deceased was mercilessly killed, what a son it was, who entered the bullets in her mother's chest and what the mother would have thought at

the last moment of her life, what! a merciless killing this was?. Non-recording of statements of the inmates of the house will not disturb the prosecution case, as the father was a natural witness and his presence in the house at the time of occurrence could not be doubted. The complainant came forward and was examined as PW- 6, who gave the natural sequence of events and his testimony was nothing but the emotions gushing out. One of the arguments of the defence was that the main gate was located just behind the complainant and that as to why the complainant did not try to catch hold of the accused while he was decamping from the house, the answer is easy, it was an old father whose son in his presence committed the murder of his wife and it was the emotional attachment of the husband with his wife who rushed towards her ignoring the appellant while running from the spot.

In case titled ***Fayyaz alias Niazi Vs. State (2017 SCMR 2024),*** it was held that:-

> *S. 302(b)---Qatl-i-amd---Reappraisal of evidence---case of a single accused, who had been nominated with the specific allegation of causing firearm injury to the deceased--- Occurrence took place in a grocery shop, and ocular account was furnished by brother of the deceased and owner of the shop---Ocular account was fully supported by medical evidence furnished by the doctor, who conducted autopsy on the dead body of deceased---*
> *Prosecution case stood proved against the accused beyond any shadow of doubt and his conviction under S.302(b), P.P.C. recorded by the Trial Court and maintained by the High Court was fully justified---Appeal was dismissed to the extent of conviction of accused.*

In case titled ***Shamshad Ali Vs. The State (2011 SCMR 1394),*** it was held that:-

> *"The place of occurrence admittedly was the house of the complainant and the appellant, therefore the complainant was a natural witness. After her examination-in-chief, she was subjected to lengthy cross examination but nothing in favour of the appellant came out in the same. The complainant had no motive to falsely implicate the appellant in the present case. Her statement is confidence inspiring and solitary statement coming out of the mouth of a natural witness, even if it is not corroborated by any independent piece of evidence, is sufficient to bring home the guilt of the accused. However, in the present case, the medical evidence also supported the ocular account. All the injuries were found to have been caused with sharp edged weapon. The appellant was the only accused alleged to have caused the said injuries, therefore the conflict in regard to the number of injuries caused by him, is not material".*

7. The Investigating Officer recovered blood-stained earth and two empties of .30 bore from the spot and prepared the site plan on pointation of the complainant. The venue of occurrence is proved and there is nothing on record to disprove it, as it was the house where both complainant and the accused were living and so the deceased. Gul Rauf D.S.P. arrested the appellant and from his possession a .30 bore pistol with 13 live rounds were recovered and the pistol recovered was sent to the Forensic Sciences Laboratory, which was received on 09.3.2014 which after comparison gave birth as positive, the F.S.L report is lying on file. The defence tried its utmost that the empties and pistol were dispatched after sufficient long time and that no one was examined as to where and in whose custody the case

property was lying in the intervening period and that who took the pistol and empties to the F.S.L. The submissions of the learned counsel for the defence in this respect finds no weight as the incident occurred on 28.02.2014 the accused was arrested on 03.3.2014 and the pistol alongwith empties was received to the Laboratory on 09.3.2014, which cannot be taken as an abnormal delay which could spoil the prosecution case. Even otherwise, the prosecution has proved its case against the accused to the hilt and we cannot doubt the veracity and truthfulness of the complainant.

In case titled ***Nizamuddin Vs. The State (2010 SCMR 1752),*** it was held that:-

> *"6. Coming to the question of delay in sending crime weapon and crime empties, admittedly, the crime empties were recovered on the day of incident and the crime weapon was recovered on 17-7-1996. It appears that the same were, however, sent to Chemical Examiner on 24-7-1996 with considerable delay but such delay shall not, in the facts and circumstances of this case, overweigh the ocular evidence found in line with and supported by the medical evidence".*

8. The learned counsel for defence tried his best to make out his case for acquittal and at the same time he focused on the quantum of sentence being his alternate prayer. We are conscious of the fact that the complainant was examined as PW-6, though he was thoroughly cross-examined on material aspects of the case, but nothing could be brought out from his mouth to favour the accused, so in all respects the prosecution case is proved against the accused. There is one thing which tilts us

towards the submission of the learned counsel in respect of the quantum of sentence and when with the help of learned counsels for the parties, the statement of the complainant was read thoroughly, we stuck there where the complainant stated that since morning till the time of occurrence the atmosphere was peaceful and that it was at 01:00 p.m, when the accused got ignited and all at once started firing on the deceased and that even the complainant could not say that what prompted the accused to kill his mother and even no motive was given and no attempt was made by the prosecution especially the Investigating Officer to dig out the cause for commission of the offence. The weakness and absence of motive react on the quantum of sentence and here too the prosecution could not bring anything in black and white which could be the definite cause of the murder.

In case titled ***Ghulam Sabir Vs.State (2017 SCMR 807),*** it was held that:-

---ملزم نے اپنے سگے بھائی کی زوجہ کو کلہاڑی کے وار سے قتل کیا جس بنا پر اسے زیر دفعہ ۳۰۲(ب) تعزیرات پاکستان موت کی سزا دی گئی---اصل وجہ قتل کو گواہان استغاثہ نے عدالت سے مخفی رکھنے کی کوشش کی کیونکہ بھائیوں کی آپس میں لڑائی اتنی شدید نہ تھی جو کہ وجہ قتل کا موجب بنتے---فروعی صورت حال کے مطابق مقتولہ نے جو کپڑے زیب تن کئے تھے سے یہ تاثر ابھرتا ہے کہ گھریلو سودا سلف کی خریداری کو جاتے وقت عموماً خواتین اس قسم کے کپڑے زیب تن نہیں کرتیں۔اگرچہ مقتولہ کے اخلاقی کردار سے متعلق واضح رائے نہیں دی جا سکتی لیکن سگا بھائی ہونے کے ناطے شاید ملزم کے ذہن میں ایسا فتور آیا کہ وہ مقتولہ کے چال چلن سے متعلق شکوک وشبہات میں مبتلا ہو گیا جیسا کہ وکیل صفائی کی جرح سے کسی حد تک واضح اشارے ملے---انہی شکوک وشبہات نے واقعتاً ملزم کے ذہن کو زہر آلودہ کیا اور اس کے زیر اثر رہ کر ملزم نے مقتولہ کو قتل کر دیا--- تاہم احتیاط کے تقاضوں کو مدنظر رکھتے ہوئے ملزم کو دی گئی سزائے موت کو عمر قیدی سزا میں تبدیل کر دیا گیا۔ [صفحات 812, 811] C, D & F

9. While assessing from all angels, this Court reaches to an inescapable conclusion that it was no one else, but the appellant, who committed the murder but keeping in view the circumstances in which the murder was committed, this Court

finds no other option but to reduce the sentence from death to imprisonment for life, as till date the cause could not be known. Resultantly, this criminal appeal is partially allowed and the sentence of death awarded to the appellant is reduced to imprisonment for life and the murder reference is answered in negative.

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

Announced
Dt.02.12.2019
*Hasnain/**

JUDGE

JUDGE

(D.B)
Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Mr. Justice Sahibzada Asadullah