

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 399-P of 2014.

JUDGMENT

Date of hearing.....10.10.2017.....

Appellants: (Munsif Ali) By Mian Qamar Gul Kakakhel, Advocate.

Respondents/State: (Mst. Noor Jehan complainant) By Mian Arshad Jan, AAG, assisted by Syed Mubashir Shah, Advocate, learned counsel for the complainant.



QALANDAR ALI KHAN, J:- This Criminal Appeal under section 410 Cr.P.C by Munsif Ali, convict/appellant, is directed against the judgment/order dated 07.06.2014 of the learned Sessions Judge, Swabi, whereby, the appellant was convicted under section 302 (b) PPC and sentenced to imprisonment for life with fine of Rs:200000/- and in default thereof

to one year S.I. The appellant was also sentenced to pay Rs:200000/- as compensation to the legal heirs of the victim which shall be recoverable as arrears of land revenue under section 544-A Cr.P.C. The appellant was further convicted under section 449 PPC and sentenced to five years R.I with fine of Rs:100000/- and in default thereof to six months S.I. Both the sentences were to run concurrently; and benefit of section 382-B Cr.P.C was also extended to the accused/appellant.

2. The convict/appellant was charged by Mst. Noor Jehan, complainant, vide FIR No.321 dated 28.03.2013 under sections 302/449 PPC and 13 A.O; registered in Police Station, Kalu Khan, Swabi, where she had brought dead body of her deceased daughter, Mst. Salma, and also the appellant/accused with the help of her co-villagers at 20:30 hours on 28.03.2013 and lodged report to the effect that she along with her deceased daughter, Mst. Salma, another daughter namely Mst.

Romina and sister, Mst. Sajida, was present in her house situated in village Ismaila, while her deceased daughter, Mst. Salma, was busy in sewing clothes with sewing machine inside the room, that the accused/appellant entered the house duly armed with a pistol at 19:30 hours and straightaway went to the room of her daughter Salma and fired at her, with which she was hit and died on the spot. According to the complainant, she, with the help of her daughter Romina and sister Sajida, overpowered the accused/appellant, and in the meantime her brothers-in-law namely Taj Muhammad and Rab Nawaz reached there and after subjecting the accused/appellant to beating, brought him along with 30 bore pistol to the Police Station for handing over him to the police for further legal proceedings. The motive for the occurrence was mentioned as efforts on the part of the accused/appellant to get married to her deceased daughter, Mst. Salma, and her refusal to marry her daughter to him. The

report/FIR was also endorsed by Mst. Romina, and after preparation of the inquest report, the deceased was referred to Kalu Khan Hospital for autopsy. The 30 bore pistol loaded with two rounds was taken into possession and the case was forwarded to the investigation staff for investigation.

3. The Postmortem examination of the deceased revealed six firearms entry wounds with equal number of corresponding exit wounds. During spot inspection, the I.O secured blood from the place assigned in the site plan to the deceased and also an empty shell of 30 bore near the place assigned to the accused/appellant in the site plan. The I.O also recovered 100 Watt bulb from the scene of occurrence, which was shown lit at the time of occurrence. The blood stained cotton, secured from the spot, and blood stained garments of the deceased were sent to the FSL for chemical analysis, and the result received therefrom was in the affirmative. Likewise, the 30 bore crime empty and 30

bore pistol were sent to the firearms expert and opinion of the firearms expert was that the crime empty was fired from the 30 bore pistol. The appellant/accused, arrested on the spot, was handed over by the complainant and her relatives to the police in injured condition and the Medicinal Officer found lacerated and simple wounds on the body of the appellant/accused. After completion of investigation, complete challan was submitted against the accused/appellant, leading to commencement of trial in the learned trial Court.

4. The learned trial Court framed formal charge against the appellant/accused under sections 449/302 PPC, to which the accused/appellant pleaded not guilty and claimed trial. In order to prove its case against the accused/appellant, the prosecution produced as many as nine PWs, as follows:

- Doctor Mudasir Iqbal, Medical Officer Civil Hospital Kalu Khan (PW-1), medically examined accused, Munsif and prepared MLC (EX.PW1/1);

- Said Jamil Khan SHO, Police Station, Kalu Khan (PW-2), submitted complete challan after completion of investigation;
- Ajmal Ali Shah (PW-3), identified dead body before the police as well as the doctor;
- Rab Nawaz (PW-4), is marginal witness to the recovery memos (EX.PW4/1 to EX.PW4/5);
- Mst. Noor Jehan (PW-5), the complainant;
- Mst. Romina (PW-6), the eyewitness;
- Doctor Shahida (PW-7), conducted autopsy on the dead body of deceased Mst. Salma and furnished Postmortem report (EX.PM);
- Salim Khan S.I/Investigating Officer (PW-8); and
- Bashir Khan S.I (PW-9), registered FIR (EX.PA) on the spot of the complainant;

5. After prosecution closed its evidence, statement of the accused/appellant was recorded under section 342 Cr.P.C. Although, the accused/appellant denied allegations levelled against him by the prosecution, but declined to be examined on oath and produce defence evidence. Having heard the learned

DPP and learned counsel for the accused/appellant, the learned trial Court/Sessions Judge, Swabi, rendered the impugned judgment dated 07.06.2014, thereby, convicting the accused/appellant and sentencing him to the punishment of imprisonment and fine as mentioned hereinabove; hence appeal by the appellant/accused for setting aside the impugned judgment as well as his conviction and sentences awarded to him by the learned trial Court/Sessions Judge, Swabi.

6. Arguments of learned counsel for the appellant/accused and learned AAG assisted by learned counsel for the complainant heard; and record perused.

7. The report/FIR was lodged by mother of the deceased in the Police Station within one hour of the occurrence, where the complainant, Mst. Noor Jehan, had not only brought the dead body of her daughter, Mst. Salma, but also the appellant/accused with the help of her co-villagers, and had charged

the appellant as the only accused for the *qatl-i-amd* of her daughter; and, at the same time, had handed over 30 bore pistol snatched from the appellant/accused after commission of offence by him. The occurrence, admittedly, took place inside the house of the complainant, which fact was also confirmed by the report of FSL regarding the blood secured from the scene of occurrence by the I.O during spot inspection and blood stained garments of the deceased. Likewise, the same size and dimension of the firearms entry wounds i.e. 1/4 X 1/4 inch indicated use of one weapon of offence; while the firearms expert further substantiated this fact by furnishing positive report in respect of the pistol snatched from the appellant/accused after commission of the offence and handed over to the police at the time of lodging the report, and the sole empty shell of 30 bore recovered by the I.O from the scene of occurrence during spot inspection. The lacerated wounds and racoon eyes

(hemoatoma both eyes) found by the Medical Officer (PW-1) after examination of the appellant/accused at 10:30 P.M on 28.03.2013 further confirmed not only presence of the appellant/accused on the spot at the time of occurrence, but also the prosecution story to the effect that he was subjected to beating by relatives of the complainant and the deceased after commission of the offence.

8. The ocular account furnished by the complainant, Mst. Noor Jehan (PW-5), and her daughter and the eyewitness, Mst. Romina (PW-6), substantiated allegations of the prosecution against the appellant/accused not only in material details but also in minor details like the time of occurrence, their presence in the Veranda in front of the two residential rooms and presence of the deceased in the single room situated opposite the two residential rooms and the Veranda and near the Kitchen and the Bathroom. The said two eye witnesses furnished graphic details of the facts that

the appellant/accused entered their house duly armed with pistol and went to the room where the deceased was busy in sewing clothes with sewing machine and opened fire at her, causing her death. Needless to say that being members of the same family, the complainant being mother and the eyewitness being sister of the deceased, their presence on the spot at the time of occurrence was natural and the appellant/accused, being their relative, cousin of husband of the complainant, was also familiar to them and to the scene of occurrence. Therefore, his entering the house and straightaway going to the room where the deceased was busy in sewing clothes with a sewing machine was not something unusual to create doubt about the conduct of the appellant/accused at the relevant time. The defence desperately attempted to prove presence of father and brother of the deceased on the scene of occurrence at the relevant time, but ended in proving this fact during cross examination of

these two PWs that father and brother of the deceased used to leave for Yar Hussain in the morning in connection with their business of selling fruit and return in the evening, and further that neither the father nor brother of the deceased were present on the spot at the time of occurrence, as the former was away from home and the latter was busy in offering prayers in the Mosque. The complainant and the eyewitness were subjected to thorough and searching cross examination, but no material contradiction came to surface to cast doubt on the prosecution version.

9. The motive for the commission of the offence is also established on the record not only from the testimony of the PWs but also from the defence of the appellant/accused; as, undoubtedly, the appellant/accused was eager to get married to the deceased and refusal of family of the deceased had caused him disappointment. The intimate relationship of the appellant/accused and the deceased was line of defence of the appellant/accused,

and it was also suggested by the defence during cross examination of the complainant (PW-5) that her husband i.e. father of the deceased had quarreled with the appellant/accused after the appellant/accused and the deceased were found together in a *Khwar* two years prior to the occurrence and further that the deceased had affairs with the appellant/accused and then she developed relations with another person. The appellant/accused himself admitted his strained relations with family of the deceased in his statement under section 342 Cr.P.C and also his quarrel with father of the deceased after he and the deceased were found talking to each other.

10. The appellant/accused has been inconsistent with his plea of defence, as at one occasion, during cross examination of the complainant, his defence was that murder of the deceased was committed by brother of the deceased because of her relationship, firstly, with him and then with another person; and at

another occasion, his defence was that he was implicated in the case through conspiracy, because when he was with a *Tableegi Jumat* in the Mosque, situated in village Yaqoobi, he was summoned on telephone with a promise to give him the hand of the deceased; but let alone murder of the deceased by her brother, the appellant/accused failed even to prove the fact of his summoning by the family of the deceased from the Mosque in Village Yaqoobi where he was with a *Tableegi Jumat*, through production of cell phone and phone data; and through production of even a single member of the said *Tableegi Jumat* to prove his presence with the *Tableegi Jumat* in the Mosque in Village Yaqoobi at the relevant time. He neither produced defence evidence nor even recorded his statement on oath to prove his plea of defence.

11. Since there is no revision petition for enhancement of the punishment awarded to the appellant/accused by the learned trial

Court/Sessions Judge, Swabi; and even otherwise, case of the prosecution against the appellant/accused for committing the *qatl-i-amd* of deceased, Mst. Salma, by firing at her inside her house and house of the complainant and the eyewitness stands proved beyond any shadow of doubt through the ocular and circumstantial evidence, as explained hereinabove. Therefore, there is nothing on the record to persuade us to arrive at a different conclusion than the one arrived at by the learned trial Court/Sessions Judge, Swabi, about guilt of the appellant/accused. Consequently, finding no merit in the appeal, the same is dismissed.

Announced.
10.10.2017.

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M.Iqbal

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak.*
Hon'ble Mr. Justice Qalandar Ali Khan.