

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 196-P of 2014.

JUDGMENT

Date of hearing.....09.11.2017.....

Appellant: (Imran) by Mr. Ishaq Ahmed Afridi,
Advocate.

Respondents/State:) by Syed Sikandar Hayat Shah, AAG
assisted by Mr. Shahzad Gul Khattak,
Advocate, counsel for the complainant.



QALANDAR ALI KHAN, J:-Noor Muhammad,
appellant, preferred this appeal against the
judgment/order dated 26.05.2011 of the
learned Sessions Judge, Kohat, whereby, he
was convicted under section 302 (b) PPC and
sentenced to imprisonment for life, and also to
pay Rs:100000/- as compensation to the legal

heirs of the deceased, within the meaning of section 544-A Cr.P.C, or in default thereof to undergo six months S.I, while extending him the benefit of section 382-B Cr.P.C.

2. The case FIR No.708 dated 12.12.2010 under sections 302 PPC, Police Station, Jungle Khel, Kohat, was registered on the report of Gul Muhammad, complainant, who reported to police in the emergency room of KDA Hospital, Kohat, that he was running a cloth shop in Mian Khel Bazaar and was present in his shop when at 20:00 hours on the eventful day i.e. 12.12.2010 he was asked by his brother, Faiz Muhammad, on his cell phone to reach home and when he reached there he came to know that his brothers i.e. the appellant/accused and deceased Haji Gul had a quarrel with each other and the former had stabbed the latter with knife blows, causing serious injuries to Haji Gul, who was brought to the hospital and was lying there unconscious and not in a position to record statement, therefore, the complainant lodged

the report and charged the appellant for the commission of offence; while stating, at the same time, that there was no motive for the commission of the offence.

3. The deceased Haji Gul, then injured, was medically examined at 08:00 PM and the Medical Officer found two grievous injuries caused by sharp weapon on the body of the deceased, then injured, i.e. one incised wound of about 2 X 1/2 cm on the posterior surface of right chest at the level of thoracic vertebrae, and another incised wound of about 2 1/2 X 1/2 cm on the left buttock. The injured later succumbed to the injuries and was subjected to postmortem examination. The investigating officer inspected the spot, but could neither recover blood from the spot nor anything incriminating during spot inspection on the pointation of the eyewitness. The accused/appellant was arrested on the following day of the occurrence i.e. 13.12.2010; and at the time of his arrest, the knife, allegedly used as weapon of offence,

was recovered from his possession. On 14.12.2010, the accused/appellant was produced before the learned Judicial Magistrate-II, Kohat, and he recorded his confessional statement. The widow of the deceased, Mst. Asma Bibi, also charged the appellant/accused for commission of the offence in her statement under section 164 Cr.P.C on 15.12.2010. After completion of investigation, complete challan was submitted against the accused/appellant to the learned trial Court, where the accused/appellant was formally charged under section 302 PPC and also under section 13 A.O, to which he pleaded not guilty and claimed trial.

4. During trial, the prosecution examined as many as 12 PWs, including, Investigation Officer, Saif-ur-Rehman S.I (PW-1); Medical Officer, Doctor Saleemullah (PW-3); Aqeeq Hussain SHO, Police Station, Jungle Khel (PW-4); Bakhtiar Khan S.I/Additional SHO (PW-7); Mst. Asma Bibi, widow of the deceased (PW-9); Complainant Gul

Muhammad (PW-10); and the learned Judicial Magistrate-II, Kohat, Muhammad Ghayas Khan (PW-12), besides formal PWs. After prosecution closed its evidence, statement of accused/appellant was recorded under section 342 Cr.P.C. Although, he denied allegations levelled against him by the prosecution, but declined to be examined on oath or produce defence evidence. After hearing arguments of learned PP for the State and learned defence counsel, the learned trial Court/Sessions Judge, Kohat, rendered the impugned judgment dated 26.05.2011, thereby, convicting the appellant/accused and awarding him the sentences, as mentioned hereinabove; hence the instant appeal.

5. Arguments of learned counsel for the convict-appellant and learned AAG heard. The complainant, present in the Court during hearing of the appeal, stated at the bar that he would be relying on the arguments of learned AAG. Record perused.

6. It is evident from the FIR that complainant was not an eyewitness, and was informed about the occurrence on his cell phone by his other brother, namely, Faiz Muhammad. However, the said Faiz Muhammad was abandoned by the prosecution "being won over". The widow of the deceased Haji Gul, Mst. Asma Bibi, recorded her statement under section 164 Cr.P.C, during investigation, on 15.12.2010 i.e. after three days of the occurrence, and also after arrest of the appellant/accused on 13.12.2010 and his recording confessional statement on 14.12.2010, wherein, she narrated the story of quarrel of the appellant/accused with his brother and her deceased husband, leading to the occurrence; but when appeared in the Court as PW-9, she admitted this fact that at the time of occurrence she was present in her house, while quarrel took place in another house and further that she was not present at the spot at the time of quarrel and the occurrence.

According to her statement, she went to the hospital after 4/5 hours of the occurrence and that she came to know about the occurrence after 4/5 hours of the occurrence and that her statement was recorded by the police on the third/fourth day of the occurrence which was tutored to her by her first cousin namely Atta Ullah. She admitted that the I.O and her cousin Atta Ullah told her eight to ten times to give statement under section 164 Cr.P.C, with further admission that they had charged the accused on suspicion. She admitted as correct that somebody else had committed the offence and that the accused/appellant had satisfied them on Holy Qur'an that he was innocent. Likewise, the complainant, Gul Muhammad, admitted this fact that he had lodged the report at the instance of police and that he did not know anything about the occurrence and also was unaware who killed his brother. Like widow of the deceased, he was satisfied that the accused/appellant was present with them in the hospital during the

whole night, and was arrested by the police from the hospital, and further that the accused/appellant was charged by them under the pressure of police, and that he had no objection if accused was acquitted of the charge.

7. Obviously, the PWs belonging to the same family, the complainang being real brother and PW Mst. Asma Bibi, widow of the deceased, having exonerated the appellant/accused of the charge coupled with absence of independent ocular evidence to bring home charge against the appellant/accused, left the prosecution case bereft of incriminating evidence; but the learned trial Court was largely influenced by the confessional statement of the appellant/accused and alleged recovery of blood stained knife from the possession of the appellant/accused at the time of his arrest to record a guilty verdict against the appellant/accused. The confession was,

however, retracted by the accused/appellant in his statement under section 342 Cr.P.C, who claimed to have satisfied the entire family including widow of the deceased about his innocence on Holy Qur'an. The statement of the appellant/accused, when placed in juxtaposition with aforementioned statements of the PWs, this fact becomes clear that the local police had played a critical role in bringing charge of *qatl-i-amd* of his brother on a petty issue against the appellant/accused. Even otherwise, a retracted confession was of no help to the prosecution case unless corroborated by other ocular and circumstantial evidence. The only corroborative piece of evidence i.e. recovery of blood stained knife from possession of the appellant/accused at the time of his arrest also became doubtful in view of the fact that the knife, allegedly, recovered from the side pocket of the accused/appellant was not mentioned besmeared with blood, and the chemical examiner could not confirm grouping

of blood on the knife and blood stained garments of the deceased, Aqeeq Hussain SHO, Police Station, Jungle Khel (PW-4) stated that the recovered knife was “visibly besmeared with blood” and F.C Zar Badshah No.111 (PW-5), marginal witness to the recovery memo (Ex.PW4/2), showed presence of private persons at the time of arrest of the appellant/accused, while the seizing officer (PW-4) contradicted him by saying that no private person, except the police personnel was present at the time of arrest of the accused. As such, the so-called corroborative piece of evidence having been shattered, as stated hereinabove, the retracted confessional statement lost its evidentiary value, if any, against the appellant/accused, further making case against the appellant/accused bereft of incriminating evidence against him. In view of above stated scenario there was nothing on record to justify conviction of appellant/accused.

8. Consequently, the appeal is accepted, and the impugned judgment of the learned trial Court as well as conviction and sentences awarded to him are set aside. The appellant is acquitted of the charge levelled against him by the prosecution; and he be, accordingly, set free, forthwith, if not required in any other case.

Announced.
09.11.2017.

J U D G E

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Ayub

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