

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT**Cr.A No. 204-P of 2015.**

With Murder Reference No.7 of 2015

JUDGMENT

Date of hearing.....08.11.2017.....

Appellant(s)...(Azmatullah etc): By Mr. Muhammad Ismail Khalil,
Advocate.

Respondent(s)/State: By Syed Sikandar Hayat Shah AAG assisted by
Syed Abdul Fayaz and Mr. Bashir Ahmed,
Advocates.



QALANDAR ALI KHAN, J:- This single judgment is directed to also dispose of Murder Reference No.7/2015, Criminal Appeal No.193-P/2015 by Muhammad Saeed Khan and Criminal Revision No.46-P/2015 by Sangeen Khan, complainant/petitioner, for enhancement of sentence of life imprisonment awarded to Muhammad Saeed, respondent

No.3 (wrongly mentioned in the Criminal Revision as respondent No.1) to that of death penalty; as the instant Death Appeal by the convicts/appellants, Azmatullah and Hukman Shah, Murder Reference No.7/2015, Criminal Appeal No.193-P/2015 by Muhammad Saeed Khan, appellant, and Criminal Revision Petition No.46-P/2015 by Sangeen Khan, complainant/petitioner, arise out of the same case vide FIR No.568 dated 05.12.2013 under Sections 365-A/302/382/412/34 PPC and 13 A.O, Police Station West Cantt: (Gharbi) Peshawar.

2. Facts of the case, briefly stated, are that when Taxi Car XLI No.RT-699/Islamabad of the complainant, Sangeen Khan hired by unknown person from Peshawar Airport to Tall at 11 hours on 09.11.2013 was not returned by the driver, namely, Musharraf son of Bakht Jamal aged about 55 years, resident of Sarband, Peshawar, the complainant reported the matter to the local police of West Cantt: and his report was incorporated in the Daily

Diary of the P.S at Sr. No.18 dated 11.11.2013; leading to inquiry under Section 156 (3) Cr.P.C, during which, brother of driver Musharraf, namely, Gulzar, son of Bakht Jamal, resident of Sarband, recorded statement under Section 161 Cr.P.C and alleged kidnapping for ransom of his brother/driver, Musharraf, and the motorcar by unknown person and confinement of his brother and the motorcar at unknown place. Consequent upon the inquiry, initially, case/FIR was registered under Section 365-A PPC in P.S West Cantt: (Gharbi), Peshawar, vide FIR No.568 dated 05.12.2013. Earlier, the complainant had reported in the P.S at 1015 hours on 11.11.2013, which was recorded in the Daily Diary of the P.S at Sr.No.18 dated 11.11.2013, about receiving no response from his driver, Musharraf, after the driver had informed him about hiring of the Taxi Car, and on one occasion attending of mobile phone of his driver by another person who stated about his location as

Batkhela and also informed him about the driver becoming unconscious after an accident. According to the complainant, the driver was located going towards Tall City, but, thereafter, his cell phone was found switched off. The complainant suspected confinement of driver alongwith motorcar in Tall City.

3. During investigation, accused-appellants, Azmat Ullah son of Sher Zaman and Muhammad Saeed son of Shahid, were arrested on 07.12.2013, and accused/appellant, Hukman Shah, was arrested on 11.12.2013. At the time of their arrest, cell phones were recovered from all the three accused/appellants. After their arrest, on the pointation of accused/appellants, Azmat Ullah and Hukman Shah, the decomposed dead body of deceased Musharraf was recovered from the dry well of Poultry Farm of accused/appellant Azmatullah in the presence of DHO Hangu and Mr. Muhammad Mushtaq, Judicial

Magistrate-II, Hangu, who certified the proceedings conducted in his presence. The autopsy on the dead body of the deceased on 11.12.2013 by the Medical Officer revealed 1 entry wound at left eye about 2 x 3 cm, with corresponding exit wound at lower part of occipital (posterior) about 3 x 4 cm. The Medical Officer furnished opinion regarding time between injury and death as 10-30 minutes (approximately) and between death and P.M as 20-30 days (approximately); and reported cause of death as "cardio pulmonary arrest due to perforated injury of skull and brain (vital organs) by the FAI". It is, indeed, note worthy that at the time of recovery of dead body of deceased Musharraf, the dead body of another driver, whose Taxi Car was hired in the like manner from Islamabad Airport, was also found dumped in the same dry well of the poultry farm of accused/appellant Azmat Ullah. In that respect, another case was also registered in P.S Doaba, Hangu, vide FIR No.581 dated

11.12.2013 under Sections
302/412/386/392/201/34 PPC.

4. On 11.12.2013, the I.O prepared two site plans (EX:PW12/2 and EX:PW12/3), respectively showing the poultry Farm of accused/appellant, Azmat Ullah, where the abducted Taxi Driver was shot dead and his dead body dumped in a dry well, and also house of the same accused/appellant, Azmat Ullah, situated in village Darsamand, wherefrom the weapon of offence i.e. a 30 bore pistol No.31304517 along with magazine loaded with five rounds of 30 bore was recovered on the pointation of the accused/appellant, Azmat Ullah. The I.O also prepared site plan of the Airport on the pointation of accused/appellant, Hukman Shah, showing the place wherefrom the Taxi Motorcar was hired for Darsamand on payment of Rs.5000/-

5. The accused/appellants recorded their confessional statements in the aforementioned case as well on 23.12.2013,

wherein, they both re-affirmed their confessional statements in this case recorded before the learned Judicial Magistrate 1st class-II, Peshawar on 14.12.2013, wherein, they had narrated the story of hiring the Taxi Car from Peshawar Airport by Hukman Shah and taking the same to the Poultry Farm of accused/appellant, Azmat Ullah, where the deceased driver of the Taxi Car, Musharraf, was shot dead by accused/appellant, Azmat Ullah, when the deceased resisted to handing over of keys of the car to the accused/appellants. They also furnished graphic details of dumping the dead body in a dry well in the poultry Farm which was covered by them with stones and mud and also taking away cash amount of Rs.18000/-, CNIC and other papers alongwith a Nokia Cell Phone from the dead body, and also selling the vehicle to Riaz resident of Sadu-Khel for sale price of Rs.3,70,000/-; which was distributed in equal share, by both the accused/appellants. In their confessional

statements, both the accused/appellants, also disclosed murder of another driver of the Taxi Car and selling of that car for Rs.1,90,000/- to Riaz, and dumping of dead body of that deceased driver earlier in the same dry well in the poultry Farm. The confessional statement of accused/appellant, Muhammad Saeed, was also recorded by the same learned Judicial Magistrate, Peshawar, on 14.12.2013, wherein, the accused/appellant, who was a student of 4th Semester in BS Commerce, Qaid-e-Azam Department, and had friendship with accused/appellant, Hukman Shah, stated about staying of the accused/appellant with him for a night, and their exchanging cell phones with each other, and use of cell phone of accused/appellant, Hukman Shah, by him, having no knowledge that the cell phone was a stolen property. The I.O also got recorded statements under Section 164 Cr.P.C of complainant, Sangeen, on 23.12.2013, and that of Gulzar son of Bakht Jamal, on 28.12.2013. The I.O further got

recorded statement of son of deceased Musharraf, namely, Shabbir Ahmed under Section 164 Cr.P.C on 28.12.2013. All the said three PWs charged the accused/appellants for commission of the offences. After collection of the evidence and completion of investigation, complete challan was submitted to the trial Court/Judge, Anti Terrorism Court-I, Peshawar, who entrusted the case to learned Judge Ant Terrorism Court-III, Peshawar, where all the three accused were charged, firstly, under Sections 365-A/34 PPC, secondly, under Sections 382/412/34 PPC, thirdly, under Sections 302/34 PPC; and accused/appellant, Azmat Ullah, additionally under Section 15 AA KPK. The accused/appellants pleaded not guilty to the charges and claimed trial. During trial, the prosecution produced as many as 17 PWs, as under:

- Inspector Tauheed (PW1) arrested all the three accused and effected recoveries from them, mentioned in the recovery memos;

- Khalid Khan SI (PW2) is marginal witness to the recovery memos EXPW1/3 and EXPW1/5;
- Hassan Zamir SI Investigation (PW3) is witness to the sketch prepared by the I.O on the pointation of accused Hukman Shah, and also received report of FSL (EXPW3/1);
- Anees-ud-Din (PW4) is witness to hiring of the Taxi Car by accused/appellant, Hukman Shah;
- Fazal Diyan, Muharrir (PW5) is witness to the recovery memo whereby garments of the deceased were taken into possession by the I.O. He is also marginal witness to the taking into possession of mobile set with Sims by the I.O from complainant, Sangeen Khan;
- Gul Wali S.I (PW6) submitted challan in the case;
- Muhammad Ajmal ASI (PW7) conducted inquiry in the case under Section 156 (3) Cr.P.C;

- Shah Sharraf Khan (PW.8) is marginal witness to the recovery memo with respect to taking into possession of the Motorcar by the I.O;
- Sangeen Khan (PW.9) is owner of the Motorcar and is also complainant in the case who had lodged initial report in the P.S;
- Gulzar (PW.10) is brother of the deceased and recorded his statement and charged the accused/appellants;
- Shabbir Ahmed (PW.11), is son of the deceased, Musharraf, and charged the accused/appellants for commission of the offences;
- Fazl-e-Mula Khan DSP (PW.12) was entrusted investigation of the case and he accordingly conducted investigation in the case;
- Shoukat Ahmed Khan, Senior Civil Judge (PW13) recorded confessional statements of all the three accused/appellants;.

- Muhammad Mushtaq Khan, Judicial Magistrate, (PW14) supervised recovery of dead body of the deceased, Musharraf, and also another dead body of deceased Fazal Rehman, from a dry well situated in the Poultry Farm of accused/appellant Azmat Ullah;
- Dr. Qasim Gul M.O (PW.15) conducted autopsy on the dead body of deceased Musharraf;
- Saeed Khan DSP (PW.16) is marginal witness to the recovery of dead body from the dry well on the pointation of the accused/appellants; and
- Sabir Khan Inspector (PW.17) was also entrusted investigation in the case on 05.12.2013.

6. After prosecution closed its evidence, statements of all the three accused/appellants were recorded under Section 342 Cr.P.C. In their statements, they refuted allegations of the prosecution, but declined to be examined on oath or produce defence evidence; followed by arguments

before the learned trial Court/Judge, ATC-III, Peshawar, by learned PP and learned counsel for the accused/appellants; and impugned judgment dated 21.03.2015, whereby all the three accused/appellants were convicted under Section 365-A PPC and awarded Rigorous Imprisonment for life; accused/appellants, Azmat Ullah and Hukman Shah also convicted under Section 302 PPC read with Section 7 (a) ATA-1997 and awarded punishment of death and fine of Rs.300000/- each, payable to legal heirs of the deceased and in default of payment of fine to further two years imprisonment; and the said two accused/appellants further convicted under Section 382 PPC and awarded the punishment of R.I for ten years and fine of Rs.50,000/- each and in default to R.I for six months; while accused/appellant, Azmat Ullah, was also convicted under Section 15-AA and awarded punishment of three years S.I. All the sentences (Imprisonments) were ordered

to run concurrently, and benefit of Section 382-B Cr.P.C was also extended to the accused/appellants. Simultaneously, vide the same impugned order dated 21.03.2015, the learned trial Court/Judge ATC-III, Peshawar, declared absconding accused, Riaz, as a proclaimed offender and issued perpetual warrant of arrest against him. Hence separate criminal appeals by the accused/appellants, Murder Reference forwarded to this Court by the learned trial Court and Revision Petition by the complainant for enhancement of punishment of imprisonment for life of accused/appellant, Muhammad Saeed to that of death.

7. Arguments of learned counsel for the appellants and learned AAG assisted by learned counsel for the complainant heard; and record perused.

8. The case of loss of contact with his Taxi driver, namely, Musharraf son of Bakht Jamal on 09.11.2013, reported to the local

police of P.S West Cantt: (Gharbi), Peshawar, by owner of the Taxi Car/complainant, Sangeen Khan, at 1015 hours on 11.11.2013 and recorded in the Daily Diary of even date at Sr. No.18, was initially inquired into under Section 156 (3) Cr.P.C; after which, the local police reached to the conclusion that driver, Musharraf, was kidnapped for ransom; and report of the daily diary was, therefore, converted into FIR No.568 dated 05.12.2013 under Section 365-A PPC. In his report, recorded in the daily diary of the P.S, the complainant had reported hiring of his Taxi Car by a passenger to a destination, which was located as Tall City. Following the clue furnished by the complainant, the local police arrested the accused/appellants during investigation after registration of the case, and recovered dead body of the driver from a dry well in the poultry Farm of accused/appellant, Azmat Ullah, on his pointation as well as on the pointation of co-

accused, Hukman Shah. They both also recorded their confessional statements, narrating therein the story of hiring of the Taxi Car by the accused/appellant, Hukman Shah, from Peshawar Airport for Darsamand and taking the Taxi Car along with driver to the Poultry Farm of accused/appellant, Azmat Ullah, situated in village Darsamand, and also the fact of accused/appellant, Azmatullah, effectively firing and causing death of the driver when the deceased driver showed resistance to the demand of the accused to hand over keys of the Motorcar to them. They also disclosed the factum of throwing/dumping the dead body in a dry well situated in the said Poultry Farm, and covering the well with stones and mud. The decomposed dead body of deceased Musharraf, was recovered from the said dry well on the pointation of both the accused/appellants in the presence of DHO Hangu as well as learned Judicial Magistrate Hangu. At the time of recovery of

dead body of the deceased, Musharraf, another dead body of a Taxi driver shot dead and also thrown/dumped in the said dry well in similar circumstances, was also recovered, and both the accused/appellants separately recorded their confessional statements before another learned Judicial Magistrate in the case registered relating to that abduction and murder vide FIR No.581 dated 11.12.2013 under Sections 302/412/386/392/201/34 PPC P.S Doaba. The weapon of offence i.e. 30 bore pistol was also recovered from the house of accused/appellant, Azmat Ullah, on his pointation, which was declared in working condition by the Firearms expert. As such, the prosecution was able, with painstaking and laudable efforts on the part of the investigating agency, to build up an edifice of its case against the accused/appellants, Azmatullah and Hukman Shah, right from the very beginning starting from report of the complainant, Sangeen Khan, recovery of

the dead body of deceased, Musharraf, from a dry well in the Poultry Farm of accused/appellant, Azmatullah, situated far away from Peshawar in village Darsamand, augmented by confessional statements of the accused/appellants, of recovery of another dead body from the same well in the Poultry Farm of the accused/appellant, shot dead in the same way after his abduction along with Taxi Car from Islamabad Airport, and confessional statements of both the accused/appellants in that case as well, before another Judicial Magistrate, who was also present alongwith DHO Hangu at the time of recovery of both the dead bodies of drivers of Taxi Cars, who were shot dead by accused/appellant, Azmatullah, after they showed resistance, and were thrown/dumped in the like manner in the dry well situated in the Poultry Farm of the accused/appellant. The recovery of weapon of offence i.e.30 bore pistol from the house of accused/appellant, Azmatullah, on

his pointation further substantiated has already established main role in the commission of the offences, particularly *Qatl-i-Amd* of deceased driver, Musharraf.

9. In short, a case of blind murder, not witnessed by anyone with his own eyes, was proved by the prosecution through circumstantial evidence, establishing links of chain of events starting from abduction of the Taxi driver, Musharraf, from Peshawar Airport and his *Qatl-i-Amd* by the accused/appellant, Azmatullah, in his Poultry Farm situated for way from Peshawar at Darsamand, and then taking away all the belongings of the deceased including cash amount and cell phone and other documents and throwing/dumping the dead body in a dry well in the Poultry Farm by both the accused/appellants. The recovery of dead body from the dry well situated in the Poultry Farm of accused/appellant, Azmatullah, on his pointation as well as on the pointation of co-

accused, Hukman Shah, and their confessional statements whereby they furnished graphic details of abduction of the deceased and his murder proved case of the prosecution beyond any shadow of doubt, of course, in the light of statements of 17 PWs produced by the prosecution, including, the complainant, brother and son of the deceased, both the learned Judicial Magistrates, Medical officer, witnesses to the recovery memos, a Taxi driver at Peshawar Airport and investigating officers in the case, which remained consistent and confidence inspiring, fully corroborating sequence of events in material details, and not shattered during lengthy cross examination by the defence. Their coherent statements left no doubt about abduction of the poor taxi driver by both the accused/appellants, Azmatullah and Hukman Shah, and his cold blooded murder in a ruthless and callous manner by the accused/appellant, who had also enacted an unfortunate tragedy of the same kind in

the past, without any remorse penitence. The inhuman conduct of both the accused/appellants deserve no leniency, especially when one of them is owner of a Poultry Farm and he, with the connivance of his co-accused, would touch the abysmal of human conduct by first kidnapping poor taxi drivers and then committing their *qatl-i-amd* in a cruel and dreadful manner. In the circumstances, the learned trial Court/Judge, Anti Terrorism Court, had no other choice but to hold both the accused/appellants guilty of commission of offences.

10. In the absence of ocular account, the case of the prosecution admittedly rested on confessional statements of the accused/appellants, further corroborated by recovery of the dead body from the place belonging to accused/appellant, Azmatullah, on his pointation as well as on the pointation of co-accused/appellant, Hukman Shah, and also recovery of weapon of offence i.e. 30 bore pistol from the house of

accused/appellant, Azmatullah, on his pointation, further corroborated by the P.M report showing 1 entry wound with corresponding exit wound on the head of the deceased. In the given circumstances, no role of accused/appellant, Muhammad Saeed Khan is discernable either in the abduction of the deceased or his *qatl-i-amd*. The only role assigned to accused/appellant, Muhammad Saeed Khan, was that of his relations with accused/appellant, Hukman Shah, and having in his possession the cell phone of deceased, Musharraf, which, according to his confessional statement was handed over to him by accused/appellant, Hukman Shah, during his stay for a night with him. The accused/appellant, Muhammad Saeed Khan, however, denied any knowledge of the occurrence or even of the fact that the mobile was stolen property, in his exculpatory confessional statement, which even otherwise cannot be used against him after the same having been retracted

by him in his statement under Section 342 Cr.P.C. In the absence of any other incriminating evidence against accused/appellant, Muhammad Saeed Khan, his appeal is accepted, and the impugned judgment dated 21.03.2015 to the extent of his conviction and sentences awarded to him is set aside; and he is acquitted of the charges, and be released forthwith, if not required in any other case.

11. As regards case of abduction under Section 365-A PPC against the remaining two-co-accused/appellants Azmatullah and Hukman Shah, it is not only established from the evidence available on record discussed above, but also from confessional statements of both the accused/appellants that they shared the common intention of abduction of the deceased Taxi driver for the purpose of extorting 'property' from him, which was executed by accused/appellant, Hukman Shah, by hiring the Taxi Car from Peshawar Airport and taking the same to

Poultry Farm of accused, Azmatullah, situated at a faraway place in darsamanad, where the unfortunate *qatl-i-amd* of poor Taxi driver also took place at the hands of owner of the poultry farm and co-accused/appellant, Azmatullah. As such, both the accused/appellants were rightly held guilty and convicted for abduction under Section 365A PPC and awarded the punishment of imprisonment for life, which is accordingly upheld/maintained; and appeal of the accused/appellants to that extent is dismissed.

12. The evidence leading the learned trial Court to hold both the accused/appellants guilty of offence of *Qatl-i-Amd* of deceased Taxi driver, Musharraf, under Section 302 PPC read with Section & (a) ATA, 1997, and awarding them the punishment of death and fine of Rs.300000/- each, needs re-appraisal in the light of the evidence comprising P.M report showing only one firearm wound on head of the deceased

caused by accused/appellant, Azmatullah, with his 30 bore pistol, when the deceased showed resistance to the demand of the accused/appellant to hand over keys of the motorcar to him. As pointed out earlier, the prosecution case drives its strength, mainly, from the confessional statements of the accused/appellants, which categorically imputed the single fire shot to the accused/appellant, Azmatullah, and which also appears to be his individual act after the deceased showed resistance to the demand of handing over keys of the Motorcar to the accused/appellant; because not only both the accused/appellants shared common intention only to the extent of abduction of the deceased Taxi driver for extorting 'property' from him, which was executed by co-accused Hukman Shah, but recovery of weapon of offence i.e. 30 bore pistol, in working condition, from the house of accused/appellant, Azmatullah, would also substantiate the proposition with regard to

the role of only accused/appellant, Azmatullah, in the commission of offence of *qatl-i-amd* of deceased Musharraf. In short, no active role of accused/appellant, Hukman Shah, has been proved on record in the *Qatl-i-Amd* of deceased, Musharraf. Therefore, the appeal of the accused/appellants, is partially accepted to the extent of accused/appellant, Hukman Shah, and he is acquitted of the charge of *qatl-i-amd* under Section 302 PPC read with Section 7 (a) ATA, 1997. The impugned judgment of the learned trial Court/Judge, Anti Terrorism Court, Peshawar dated 21.03.2015 is accordingly set aside, together with conviction and punishment of death and fine of Rs.300000/- awarded to accused/appellant, Hukman Shah. However, in view of the overwhelming evidence available on record against the accused/appellant, Azmatullah, proving the commission of offence of *qatl-i-amd* of deceased, Musharraf, by the

accused/appellant, his conviction under Section 302 PPC read with Section 7 (a) ATA1997, and penalty of death with fine of Rs.300000/- payable to legal heirs of deceased and in default of payment of fine to further two years imprisonment by the learned trial Court/Judge, Anti Terrorism Court, Peshawar dated 21.03.2015 are upheld/maintained, and his appeal is, accordingly, dismissed.

13. Adverting to the conviction of both the accused/appellants under Section 382 PPC, suffice it to say that in the light of evidence adduced by the prosecution and even their own confessional statements, the offence under the above stated section of law is abundantly proved in view of taking away of cash amount, a cell phone and other documents from the deceased and also selling the motorcar and the sale proceeds equally shared by both the accused/appellants. Therefore, the learned trial Court/ Judge, Anti Terrorism Court,

Peshawar, rightly convicted them under Section 382 PPC and sentenced them to ten years R.I and fine of Rs.50,000/- each and in default thereof to further six months R.I.

14. So far the last charge under Section 15 AA against accused/appellant, Azmatullah, is concerned, it has been clearly proved on record by the prosecution that the unlicensed 30 bore pistol, being weapon of offence, was recovered on his pointation from his house, and the recovery of the unlicensed 30 bore pistol was also proved through un-wavered depositions of the PWs. Consequently, the conviction of the accused/appellant, Azmatullah, under Section 15 AA is also upheld/maintained, together with the punishment of imprisonment for three years S.I.

15. The punishment of imprisonment awarded to both the accused/appellants shall run concurrently, with benefit of Section 382-B Cr.P.C extended to them.

16. The appeals (Cr.A No.204-P/2015) and Cr.A No.193-P/2015) are disposed of, accordingly; and Criminal Revision No.46-P/2015, having become infructuous, pursuant to acquittal of accused/respondent, Muhammad Saeed Khan, is hereby dismissed. The Murder Reference No.7 of 2015 in respect of accused appellant Hukam Shah is answered in the negative; while the same is answered in the affirmative to the extent of accused/appellant, Azmatullah.

Announced.
08.11.2017.

J U D G E

J U D G E

Ayub

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