

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 314-P of 2013.

JUDGMENT

Date of hearing.....23.10.2017.....

Appellant: (Shah Room) by Mr. Khalid Bacha,
Advocate.

Respondents/State: by Mr. Moeen-ud-Din Hamayun, AAG.



QALANDAR ALI KHAN, J:- This single judgment in the instant appeal shall also dispose of Criminal Appeal No.728-P/2015 by co-accused Gohar Rehman alias Bacha and Criminal Revision No.133-P/2015 by complainant Mst. Nihar Begum widow of deceased Inam Khan for enhancement of sentence awarded to accused/respondent

No.1, Shah Room, by the learned trial Court vide impugned judgment dated 18.06.2013, as both the appeals by the convict-appellants and the revision petition relate to the same case vide FIR No.506 dated 30.05.2010 under Sections 302/324/34 PPC of Police Station Katlang, Mardan.

2. The report/FIR in the case was lodged by Mst. Nihar Begum, complainant, in Police Station Katlang, District Mardan, where she had brought the dead body of her deceased husband Inam Khan son of Daulat Khan in a datson with the help of her co-villagers, and lodged report to the effect that on the eventful day i.e.30.05.2010 she along with her deceased husband Inam Khan, her son, Bakht Munir, and brother in law, Behram Khan, had gone to Katlang Bazar for purchasing clothes and while on their way back to their home, Abdur Rehman son of Gul Rehman, Gohar Rehman alias Bacha and Shah Room sons of Abdur Rehman residents of Babozai Katlang suddenly emerged on the scene and opened

fire at them with their deadly weapons, resulting in the *Qatl-i-Amd* of deceased Inam Khan. They, however, escaped unhurt. The motive for the occurrence was mentioned as dispute over women folk, and Bakht Munir as well as Behram Khan were cited as eye witnesses. After registration of the case/FIR, the dead body of the deceased was referred to RHC Katlang, where autopsy was conducted; and the Medical Officer (PW-3) found the following firearms injuries with corresponding exit wounds;

- I. F.A entry wound on lower end of sternum 1 x 1 mm in diameter with its exit wound below right axilla 2 x 2 mm.
- II. F.A entry wound on left hypochondrium 1 x 1 mm, while its exit on back side lateral to vertebral column right side in lumber area 2 x 2 mm.
- III. FA entry wound on back side vertebral column lumber area 1.5 x 1.5 mm in size while its exit right side below axilla 2 x 2 mm in size.

In the opinion of the Medical Officer, cause of death was firearm injury to vital organs like lungs, heart and spinal cord. The time between injury and death was shown as approximately one hour while time between death and P.M was approximately two hours. Investigation in the case was entrusted to Amir Bacha SI (PW.5), who proceeded to the spot, inspected the spot, and during spot inspection not only secured blood from the place assigned to the deceased in the site plan but also one empty shell of 30 bore. The blood stained carton secured from the spot and blood stained garments of the deceased received from the hospital after autopsy were sent to the FSL Peshawar and a positive report was received there-from.

3. Initially, all the three accused named in the FIR were absconding and were therefore proceeded against under Sections 204 and 87 Cr.P.C, and challan was submitted against them under Section 512 Cr.P.C; but after surrender of co-accused and father of the

convict/appellants, namely, Abdur Rehman, on 09.11.2011, supplementary challan was submitted against him, leading to his trial, resulting in his acquittal of the charges vide judgment/order of the learned Additional Sessions Judge-III, Mardan, dated 17.04.2012; whereas the convict/appellants, still remaining at large were declared proclaimed offenders and perpetual NBW of arrest were issued against them vide the same judgment dated 17.04.2012.

4. Convict/appellant, Shah Room, also surrendered before the police and was arrested on 01.11.2012. After receipt of supplementary challan against him, he was formally charged in the case under Sections 302/324/34 PPC, to which he pleaded not guilty and claimed trial. In order to prove its case against the convict/appellant, Shah Room, the prosecution produced as many as 11 PWs and closed its evidence; whereafter statement of the accused was recorded under Section 342 Cr.P.C, wherein he refuted

allegation of the prosecution but declined to be examined on oath or produce defence evidence. Having heard arguments of learned SPP on behalf of the State assisted by private counsel for the complainant and learned counsel for the accused, the learned trial Court/ASJ-III, Mardan, convicted and sentenced appellant, Shah Room, to imprisonment for life as *Tazir* with compensation of Rs.300000/- payable to legal heirs of deceased Inam Khan son of Daulat Khan within the meaning of Section 544-A Cr.P.C or in default to one year S.I, with benefit of Section 382-B Cr.P.C vide impugned judgment dated 18.06.2013; hence the instant appeal by the convict/appellant, Shah Room.

5. Convict/appellant, Gohar Rehman alias Bacha, was arrested on 02.01.2015, and was tried in the Court of learned ASJ-III, Mardan, after submission of supplementary challan against him and framing of formal charge by the learned trial Court. This time,

the prosecution examined a total of 8 PWs and closed its evidence, followed by statement of the accused/appellant under Section 342 Cr.P.C. He disputed allegations of the prosecution, but declined to be examined on oath or produce defence evidence. Having heard the learned Deputy DPP assisted by learned counsel for the complainant and learned counsel for the accused/appellant, Gohar Rehman alias Bacha was also convicted under Section 302 (b) PPC and sentenced to life imprisonment as '*Tazir*' with fine of Rs.200000/- or in default to suffer further six months S.I, with further direction to the appellant/accused to pay compensation of Rs.400000/- to the legal heirs of deceased Inam Khan within the meaning of Section 544-A Cr.P.C, which shall be recoverable as arrears of land revenue if not paid to the legal heirs of the deceased, along with benefit of Section 382-B Cr.P.C to accused/appellant, vide impugned judgment of the learned trial Court/ASJ-III, Mardan,

dated 02.12.2015; which is also impugned through a separate connected Criminal Appeal No.728-P/2015.

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

7. No doubt, the report/FIR was lodged in the P.S within 45 minutes of the occurrence, as the occurrence, allegedly, took place at 1745 hours on 30.05.2010 while report was lodged on the same day at 1830 hours; and all the three accused were charged by name in the report of complainant and widow of deceased Inam Khan for the *qatl-i-amd* of her deceased husband by effectively firing at him, while citing dispute over women folk as motive for the offence; but the complainant and both the eye witnesses i.e. son of the complainant, Bakht Munir and her brother in law, Behram Khan, escaped unhurt, and did not receive a single fire arm injury in the firing attributed to all the three accused named in the FIR and

belonging to the same family, acquitted accused Abdur Rehman father and convict/ appellants Shah Room and Gohar Rehman his sons. The motive for the commission of the offence also remained shrouded in mystery, and was not proved independently. Moreover, despite charge of *qatl-i-amd* of deceased against three persons, only one empty shell of 30 bore was recovered from the spot, and PM report showed two entry wounds of the same size i.e. 1 x 1 mm while third entry wound of different size of 1.5 x 1.5 mm and that, too, on the back side, unlike the first two firearm entry wounds on the front side of body of the deceased, thus creating doubt about the site plan showing all the three accused in the same direction from the deceased. The FIR showed instantaneous death of the deceased, but the PM report revealed time between injury and death, approximately, one hour and time between death and P.M examination, approximately, two hours, thus casting serious doubt about version of the

prosecution, on the one hand, and credibility of the complainant and eye witnesses, on the other.

8. Apart from non-production of clothes, allegedly, purchased before the occurrence by the complainant and the eye witnesses, being chance witnesses, contradictions in the statement of the complainant, Mst. Nihar Begum (PW-4), with regard to signing of her report by the PWs accompanying her and the deceased to the hospital, and non citing of the complainant and the so-called eye witnesses as identifiers of the dead body in both the inquest report prepared by the police as well as PM report of the Medical Officer, creating doubt about presence of the complainant and the so-called eye witnesses on the spot at the relevant time, the acquittal of co-accused and father of convict/appellants Abdur Rehman, facing similar charges and attributed identical role in the case, and non filing of appeal against his acquittal either by the complainant or by the State, and thus the

acquittal order in the same case on the basis of the same evidence, particularly that of the complainant and the so-called eye witness Behram Khan, left case of the prosecution bereft of any incriminating evidence against the appellants; hence providing no justification for their conviction and award of sentence of life imprisonment to both the appellants vide separate judgments of the learned trial Court. Needless to say that in the given circumstances, even abscondence of the accused/appellants for a considerable period, being only a corroborative piece of evidence and not a substitute for substantive evidence could not justify conviction of the appellants in the face of otherwise weak case of the prosecution which was replete with doubts and contradictions.

9. Consequently, both the instant appeal as well as the connected appeal by appellant, Gohar Rehman, are accepted; and while setting aside the impugned judgments as well as conviction and sentences awarded to the

both the accused/appellants, they are acquitted of the charges levelled against them and be set free, forthwith, if not required in any other case.

10. Following acceptance of the appeals of both the accused/appellants and setting aside their convictions and sentences awarded to them, the criminal revision No.133-P/2015 by complainant, Mst. Nihar Begum, having become infructuous, is disposed of, accordingly.

Announced.
23.10.2017.

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Ayub

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