

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

J Cr. A No. 215-P/2023

Abdullah
Vs
The State

JUDGMENT

Date of hearing: **26.06.2024**

Appellant by: Mr. Shabbir Hussain
Gigyani, Advocate.

The State by: Mr. Nouman-ul-Haq
Kakakhel, AAG

Complainant by: Syed Mubashir Shah &
Mr. Saddam Hussain, Advocates.

SAHIBZADA ASADULLAH, J.- Through this single judgment, this court shall also decide the connected Cr.R No. 38-P/2023 titled "***Raheem Khan vs Abdullah etc***" as both the matters are arising out of one and the same judgment dated 26.01.2023 passed by the learned Additional Sessions Judge-I, Swabi delivered in case FIR No.1125 dated 28.10.2017 under sections 302 PPC at police station Swabi, whereby the appellant Abdullah son of Ismail was convicted and sentenced as under:

Under section 302(b) PPC to imprisonment for life as Tazir

and to pay a fine of Rs.10,00,000/- (ten lacs) to be paid to the legal heirs of the deceased Haider Khan within the meaning of section 544-A CrPC to be recoverable as arrears of land revenue and in default of payment, he shall further suffer six months simple imprisonment. Benefit of section 382-B Cr.PC was extended in favor of the appellant.

2. Facts forming the background of the instant case are that on 28.10.2017 complainant Raheem Khan son of Zareef Khan reported the matter in the causality DHQ Hospital Swabi to the effect that he alongwith his son Haider Khan, after performing *Zuhar* prayer, were coming from the Mosque Khaista Khan; that his son was ahead of him to their house when in the meanwhile, Abdullah son of Ismail, duly armed with deadly weapon suddenly appeared and started firing at his son Haider Khan as a result of which, his son was hit and died on the spot. After the occurrence, the accused decamped from the spot. The occurrence was stated to be witnessed by Mursaleen son of Salat Khan (grandson of

complainant) alongwith other persons present there. Motive behind the occurrence is that the daughter of the deceased was married to accused and the accused divorced Mst.Sheema some 7/8 months ago and a dispute over womenfolk was existed. He charged the appellant for the commission of offence hence, the present FIR.

3. After completion of investigation, complete challan was put in court. Provisions of section 265-C CrPC were complied with and, the appellant was charge sheeted, to which he pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 08 witnesses. After closure of prosecution evidence, statement of appellant was recorded under section 342 CrPC, wherein he posed innocence, however, neither he wished to be examined on Oath as required under section 340 (2) Cr.PC, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial convicted and sentenced the appellant, fully detailed in the earlier part of this judgment, hence, this appeal.

4. Arguments of learned counsel for the parties and learned AAG representing the State were heard and record scanned through with their valuable assistance.

5. The tragic incident claimed life of the deceased. The dead body was shifted to the hospital and the matter was reported. The injury sheet and inquest report were prepared, the dead body was sent for postmortem examination. The Investigating Officer after receiving copy of the FIR visited the spot and on pointation of the witnesses, prepared the site plan. During spot inspection blood-stained earth was collected from the place of the deceased and 06 empties of .30 bore from the place of the accused. The collected empties were sent to the firearms expert and a report was received telling that the same were fired from one and the same weapon. Soon after the incident, the accused went into hiding till his arrest. The appellant faced the trial and on conclusion of the trial the learned trial court was pleased to hold him responsible for the murder of the deceased.

6. The learned trial court appreciated the evidence on file and it was after applying of

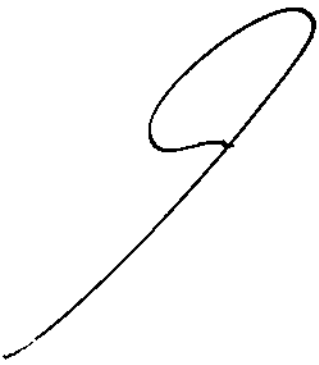
its judicial mind to the evidence collected by the prosecution that the learned trial court came to the conclusion that it was the appellant who killed the deceased. True that single accused is charged and equally true that in case of single accused substitution is a rare phenomenon. But the charge against single accused by itself is not the determining factor, rather under all circumstances, the prosecution is bound to prove its case, that too, by producing trust worthy and confidence inspiring witnesses. In order to appreciate the approach of the learned trial court we deem it essential to revisit the record of the case and to reconsider the statements of the witnesses so that miscarriage of justice could be avoided.

7. The points for determination before this court are as to whether the incident occurred in the mode, manner and at the stated time; as to whether the witnesses were present on the spot at the time of incident and in the hospital at the time of report; as to whether the medical evidence supports the case of the prosecution; as to whether the prosecution succeeded in proving the alleged motive and as to whether the prosecution

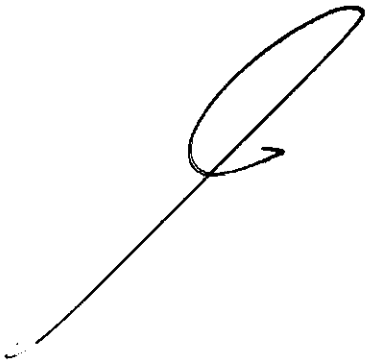
succeeded in bringing home guilt against the appellant.

8. The deceased after receiving firearm injuries died on the spot and for his murder single accused is charged that too by the father of the deceased and by an eye witness claimed to have seen the occurrence. This court is to see as to whether the prosecution succeeded in bringing home guilt against the appellant and that it was the appellant who killed the deceased. In order to appreciate the circumstances of the present case, we deem it essential to go through the statements of the witnesses. The complainant was examined as PW-3 whereas, the eye witness as PW-4. The complainant disclosed that on the day of incident while coming back from the mosque, the appellant fired at the deceased, and after receiving firearm injuries, the deceased died on the spot; that the dead body was hurriedly shifted to the hospital, where he reported the matter. The eye witness supported the report of the complainant and he also explained the circumstances in which the incident occurred and the dead body was shifted to the hospital. The witnesses were put

to lengthy cross examination with the strongest desire to extract something favourable to the appellant. Admittedly, the incident occurred in the village of the complainant, that too, when the deceased performed his Zuhar prayer. As the incident occurred at 13:30 hours so the stance of the complainant gets support regarding his prayer in the mosque. The site plan depicts that the mosque is situated adjacent to the place of incident and that by the time the deceased had already come out from the mosque followed by the complainant and the eye witness. As the complainant was a farmer by profession, so his presence in the village at the stated time is not only convincing, but also appeal to the prudent mind of this court. Keeping in view the age of the complainant, it can be expected from a person of the age to perform prayer in congregation, and keeping in view the time of incident we cannot take another view, but the one that after doing his work in the field, the complainant returned home to take meal and to perform his prayer. An attempt was made to convince that had he been a farmer by profession, then under all circumstances he would be present in



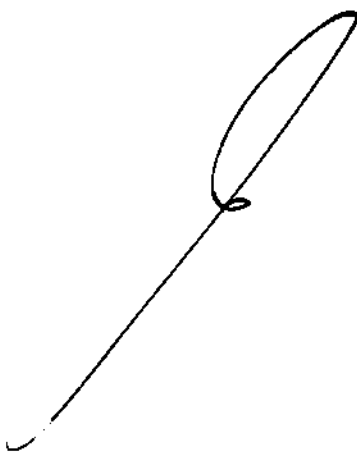
the fields instead, in the village and that in routine all the farmers come home in the evening. We are not persuaded with this limb of the argument, as it depends upon the nature of work, the kind of fields and the distance of the fields from the village which would determine the availability or otherwise of the complainant in the village. As admittedly, no specific question was asked from the complainant regarding the distance of field from the village, regarding the nature of his work and regarding the crops he sown, so this court is confident in holding that the availability of the complainant at the stated time is convincing and it appeals to the judicial mind of this court. The defence also questioned the presence of the eye witness at the time of incident, but when the eye witness was examined as PW-4, he explained his presence on the spot and in the mosque on the day of incident. True that during the days of incident, the eye witness was a student, but equally true that nothing was brought on record that at the stated time he was present in the school and even the investigating officer could not collect any document in that respect. An attempt was



made to convince the absence of eye witness from the spot at the stated time, so the attention of this court was invited towards the report of the complainant and towards the fact that while reporting the matter, the complainant did not disclose that the eye witness also performed his prayer in the mosque alongwith him. As the complainant is illiterate, so we cannot expect minute details from him and even the first information report is not an encyclopedia which would contain the complete details of the incident, rather its purpose is only to bring the law enforcement agency into motion and once the investigating agency accepts the task then it is for it to collect the evidence and to record statements of all concerned. Even otherwise, while reporting the matter the complainant has mentioned the name of the eyewitness and when the eyewitness was present at the stated time, no other inference can be drawn but the one that he was present with the complainant in the mosque and after performing his prayer he was also available in the street. Reliance in this respect is placed on the judgment cited as **2021 SCMR 1428** titled "***Abdul Latif vs Noor***

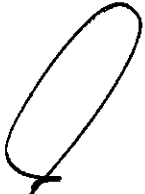
Zaman and another” wherein, it has been held as follow:

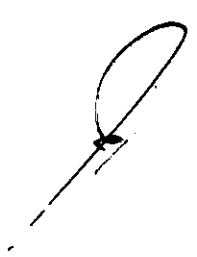
“No doubt, First Information Report is not an encyclopedia of prosecution's case, nonetheless, it does contain certain details that serves as its mainstay in the voyage; witnesses are the most prominent part of those details as their testimonies provide evidentiary certainty regarding the guilt of an offender.”



9. The dead body of the deceased was hurriedly shifted to the hospital and the matter was reported by the complainant. The scribe was examined as PW-5 who disclosed that on the day of incident he was performing his duty in the Casualty of DHQ Hospital, Swabi, on arrival of the dead body to the hospital the complainant reported the matter and he prepared the injury sheet and the inquest report. The dead body was examined by the doctor at 02:20 PM. The learned counsel wanted to convince that the quick succession of events by itself is a circumstance which belies the stance of the complainant and that neither the matter could be reported in the shortest possible time, nor the post mortem

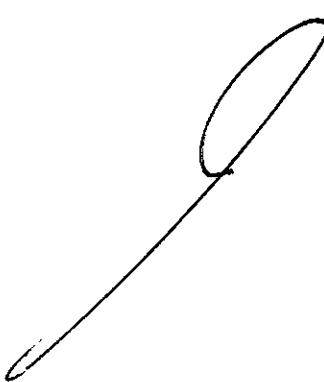
examination could be conducted. We are not inclined to accept the submission of the learned counsel on this particular aspect of the case, as admittedly, the hospital was situated at a short distance connected to the spot through a metal road. Even the doctor confirmed the time between injury and death as immediate and the time between death and post mortem about 40-minutes. The witnesses were cross-examined regarding the shifting of the dead body from the hospital, regarding the kind of transport used and arranged for the purpose. The witnesses explained that the motorcar was the ownership of one Said Qamar Khan. It was further explained by the witnesses that they shifted the dead body of the deceased with the help of PW Said Qamar Khan in his motorcar. It is pertinent to mention that the report was verified by the same very person. The consistency between the statements of the witnesses and the verification of report by the owner of the vehicle by itself is sufficient to tell that the dead body was promptly collected from the spot, hurriedly shifted to the hospital and the matter was reported with no loss of time. True that the





complainant in reply to a question responded that they visited the police station but he did not report the matter. The witness further explained that he stopped in the police station for few minutes and thereafter went to the hospital. As on one hand, the complainant was of extreme old age, whereas on the other being illiterate he did not understand the nitty gritty of the matter and he could not understand the intention of the learned counsel, when such a question was asked. There is no denial to this fact that the matter was promptly reported, the dead body was examined by the doctor soon after the report was made and that the post mortem examination was conducted within the shortest possible time. The prompt report by itself has excluded the possibility of consultation and deliberation and we are not inclined to hold that the matter was reported after preliminary investigation. As is held in case titled **Ghafar Ali Vs The State and another** (2021 SCMR 354), which reads as follows: -

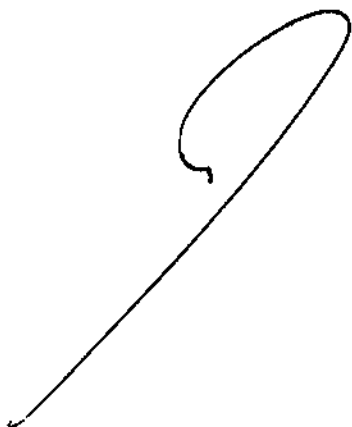
“The occurrence, according to prosecution, took place at 4 pm, injured and deceased were shifted to the hospital where injured was

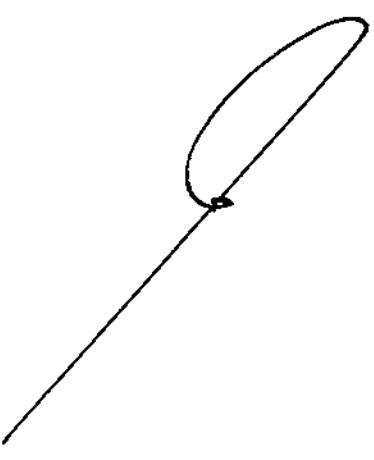


medically examined at 5.10 p.m. The report was lodged to the police in the hospital at 5.10 p.m. and formal FIR was chalked out at 5.40 p.m. So within one hour and ten minutes of the occurrence the injured and the deceased were shifted to the hospital and police arrived there and matter was reported by the complainant to the police at 5.10 p.m. There was hardly any time left in between for consultation and deliberation."

10. The investigating officer visited the spot and on pointation of the witnesses prepared the site plan. During spot inspection blood was collected from the place of the deceased and 6 empties of .30 bore near from the place assigned to the appellant. The investigating officer while preparing the site plan has shown the mosque in which the complainant and the eyewitness and the deceased performed their prayer. True that the investigating officer did not record the statement of any other witness in that respect and he did not record the statement of "*Pesh-e-Imam*" of the mosque, but that is not the determining factor, as people refrain to become witnesses because of fear of enmity. The

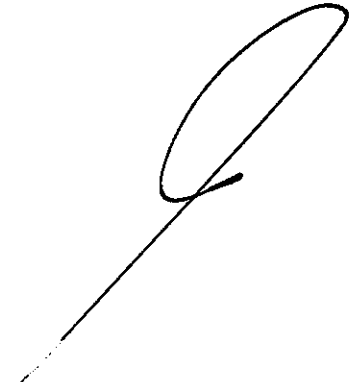
presence of all concerned in the premises is not beyond understanding. As the complainant disclosed the distance between his house and the mosque as 100 paces, so we are inclined to hold that the mosque was the only mosque which was situated near to the house of the complainant and so the complainant along with the eyewitness and deceased went to perform their prayer. True that no other witness apart from the complainant and the eyewitness came to confirm the presence of the witnesses in the mosque before the occurrence, but keeping in view the time of incident, the profession of the complainant and the age of the complainant this court is confident in holding that his presence in the mosque was natural and his presence near the spot at the time of incident is convincing. Both the witnesses were questioned regarding this aspect of the case, but we could not come across any substantial contradiction and we despite efforts could not lay hands on any evidence which would contradict the stance of the witnesses. The collection of blood and collection of empties from the spot are the circumstances which lend support to the statements of the witnesses and





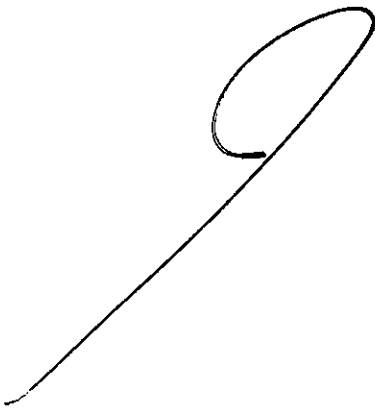
which has strengthened the prosecution case to a great extent. True that the witnesses are closely related to the deceased, but equally true that the defence could not bring on record any evidence confirming their mala fide or their interest to implicate falsely the appellant. Even otherwise, it does not appeal to the judicial mind of this court that a real father would substitute an innocent person for the killer of his son and under no circumstances would let off the actual culprits. The mere relationship of the witnesses would hardly be a circumstance for holding them unreliable and for excluding their testimony of consideration. Once the defence fails to allege mala fide to the witnesses and once it comes on record that the witnesses had no interest to falsely implicate, then under all circumstances the statements of the witnesses must be taken into consideration. In the like circumstances we are benefited from the judgment of the apex court reported as ***Muhammad Ijaz Vs. The State (2023 SCMR 1375)***, which reads as under: -

“There is no denial to this fact that these PWs were related with the deceased but the law in this regard is well settled. A related



witness cannot be termed as an interested witness under all circumstances. A related witness can also be a natural witness. If an offence is committed within the presence of the family members then they assume the position of natural witnesses. In case, their evidence is reliable, cogent and clear, the prosecution case cannot be doubted. However, a related witness would become an interested witness when his evidence is tainted with malice and it shows that he is desirous of implicating the accused by fabricating and concocting evidence but the learned counsel for the petitioner could not show us anything in this regard."

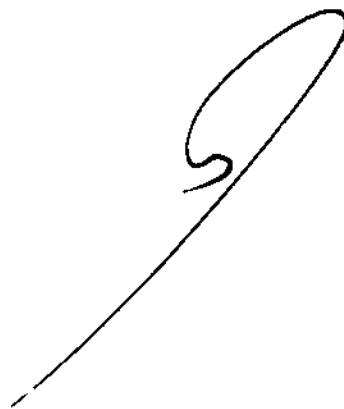
11. The appellant is singularly charged and the inter-se relationship between the appellant and the deceased cannot be ignored. The record tells that the daughter of the deceased was married to the appellant. The relationship between the spouses became strained and ultimately it led to the divorce. The relationship between the parties is established on record and even the marriage between the appellant and Mst. Sheema has also been admitted by all related. The unfortunate



deceased was working in UAE and it was few months back that he returned to his home. It is pertinent to mention that the marriage between the parties stood dissolved some 7/8 months before the incident and the unfortunate deceased lost his life because of the same. It was submitted that in case of divorce it was the deceased to retaliate and not the appellant, but we cannot ignore that it was the divorce which urged the appellant to retaliate and that it was the deceased who was suspected for bringing the spouses to the point of no return. As admittedly, before the divorce the parties had no ill-will and no serious incidents took place between the parties, which can be assessed as the cause of killing. As the witnesses remained consistent, as the accused is singularly charged, so the consistency between the witnesses and the strained relationship between the parties, are the circumstances which must be taken into consideration. Even otherwise, in case of single accused substitution is the rarest phenomenon. Reliance can be placed on the judgment of august Supreme Court of Pakistan titled ***Imran Mehmood Versus the State and***

another" (2023 SCMR 795), which reads as follows: -

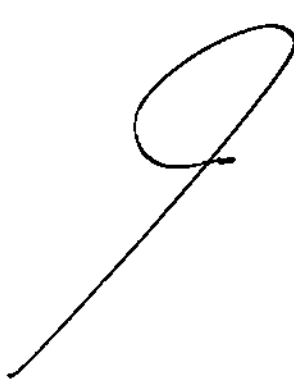
"Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has brutally murdered her father and uncle. Substitution in such like cases is a rare phenomenon."



12. The medical evidence supports the case of the prosecution. The doctor explained that the deceased received three firearm entry wounds and he also disclosed the time between injury and death i.e. instantaneous and time between death and postmortem about 40 minutes. The medical evidence is in line with the ocular account and we, despite efforts, could not come across any substantial conflict between the two. The harmony between the medical evidence and ocular account has further substantiated the claim of the complainant and, the same has strengthened the case of the prosecution. We are benefited from the judgment reported as (2022 YLR 324) titled ***"Sharfuddin alias***

Sharfu and another Vs. The State” it is held that: -

“The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem.”



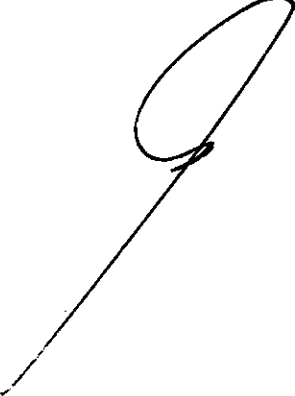
13. The Investigating Officer collected 06 empties of .30 bore from the place of accused, the same were sent to the firearms expert to ascertain that from how many weapons the same were fired. A report was received telling that the same were fired from one and the same .30 bore pistol. True that the laboratory report is supportive in nature and, it alone cannot be pressed into service for convicting an accused, but once the ocular account inspires confidence, then this piece of evidence can be taken into consideration and it by itself would lend support to the prosecution case and to the statements of the witnesses.

14. The motive was alleged that the daughter of the deceased was married to the appellant and that the relationship between the spouses became strained and ultimately it led to the divorce some 7/8 months prior to the

incident. The relationship between the parties is established on record and even the marriage between the appellant and Mst. Sheema has also been admitted by all related. A question was put to the appellant while recording his statement under section 342 CrPC regarding the divorce of the deceased, he admitted that he had divorced Mst. Sheema, who was the daughter of the deceased. It was submitted that in case of divorce it was the deceased to retaliate and not the appellant, but we cannot ignore that it was the divorce which urged the appellant to retaliate and that it was the deceased who was suspected for bringing the spouses to the point of no return. As admittedly, before the divorce the parties had no ill-will and no serious incidents took place between the parties, which can be assessed as the cause of killing.

15. The record tells that the appellant remained absconder for considerable long time as the occurrence took place on 28.10.2017 and the accused was arrested on 20.08.2020, which he failed to explain and as such the same can be taken into consideration in support of the other evidence on file. True that

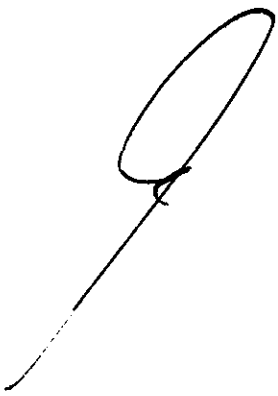
abscondance by itself is not sufficient to hold an accused guilty, but when the prosecution succeeds to bring home guilt against the accused charged, that too, through trustworthy and confidence inspiring witnesses, then unexplained abscondance can be taken into consideration and the same was rightly considered by the learned trial court.



16. The cumulative effect of what has been stated above leads this court to an irresistible conclusion that the prosecution fully succeeded in bringing home guilt against the appellant and the impugned judgment is suffering from no irregularity or inherent defects which would call for interference. The impugned is well reasoned and the learned trial court fully appreciated the evidence on file, which calls for no interference. The instant criminal appeal, being bereft of any merit, is hereby dismissed.

17. Now diverting to criminal revision **No.38-P/2023** titled ***"Raheem Khan vs Abdullah etc"*** through which the petitioner/complainant has requested for enhancement of the awarded sentence. In order to appreciate this aspect of the case, we once again went through the impugned judgment to know as to

why the learned trial court failed to award the normal penalty of death. Though no plausible reasons are given, yet this court is to see as to whether the learned trial court was justified to award the awarded sentence or the same calls for interference. As admittedly, the parties were closely related and the unfortunate incident occurred because of the divorce of the daughter of the deceased, who was married to the appellant. The record is silent that what happened between the spouses which led to the tragic incident and that why the appellant got instigated to such an extent that he killed the deceased. As the relationship between the spouses could not be explained and as the witnesses kept mum that what led the parties to separate and that who was instrumental for the divorce, so this court is inclined to hold that though the daughter of the deceased was divorced 5/6 months before the return of the deceased from UAE, but it was few months after the return of the deceased that the unfortunate incident occurred. As the deceased was done to death that too by the appellant who was the husband of his daughter, so the silence of the prosecution regarding the nature



of relationship between the parties had added to our anxiety and it is the concealment of some facts regarding the actual cause of killing which persuaded this court to take the same view as is taken by the learned trial court. As the actual cause of killing is still shrouded in mystery and as the witnesses failed to explain the circumstances prevailed between the spouses, before dissolution, so this uncertainty regarding the motive and regarding the cause of killing is a circumstance which persuades this court that the learned trial court was justified to award the awarded sentence and the same does not call for interference. The instant criminal revision petition is lacking substance, which is hereby dismissed.

Announced
26.06.2024


JUDGE


JUDGE

Muhammad Fiaz ***D.B.*** Hon'ble Mr. Justice Syed Arshad Ali, J
Hon'ble Mr. Justice Sahibzada Asadullah, J