

HIGH COURT OF AZAD JAMMU & KASHMIR

[Shariat Appellate Bench]

Criminal Revision No. 233/2023.

Date of Institution 26.08.2023.

Date of decision 18.09.2023.

Afaq Mughal S/o Jan Muhammad (accused) presently detained at
Central Jail Muzaffarabad, AJ&K.

(Petitioner)

Versus

1. State through Advocate General of Azad Jammu and Kashmir, having his office at Muzaffarabad.
2. Muhammad Iqbal S/o Abdullah R/o Jalalabad Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

(Respondents)

CRIMINAL REVISION PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Raja Muhammad Altaf Khan, Advocate for the Petitioner/accused.

Raja Saeed Ahmed, A.A.G for the State.

M/s Sheikh Muhammad Saleem and Khurram Iqbal, Advocates for the respondent No.2.

ORDER:

1. The instant revision petition has been directed against the order passed by Additional District Court of Criminal Jurisdiction, Muzaffarabad dated 03.08.2023.

2. Brief facts forming background of the instant revision petition are that the accused-petitioner is facing trial before the Additional District Court of Criminal Jurisdiction, Muzaffarabad in

the offences under Sections 18 ZA and Section 302, APC, registered under FIR No.500/2020 at Police Station, City Muzaffarabad. During proceedings before the trial Court when the case was at the verge of the prosecution evidence, the accused-petitioner, herein, filed an application through his counsel for sending pictures of deceased, attached with the file, for forensic regarding expert's report. The other side filed objections upon the said application. The learned trial Court, heard the arguments upon the said application, from both parties. After hearing arguments, the learned trial Court rejected the application of the petitioner vide impugned order, hence, instant revision petition.

3. Raja Muhammad Altaf Khan, the learned counsel for the accused-petitioner contended that the impugned order is against the law and facts, hence, the same is liable to be set-aside. The learned counsel vehemently contended that the learned trial Court failed to appreciate injury form, FIR, death report etc. and pictures attached with the challan as well as provided by the petitioner. The learned counsel staunchly contended that it is the prime duty of the courts to provide free, fair trial and to give every opportunity for proving innocence of the accused, but in the instant matter, learned trial Court committed gross illegality while ignoring the settled principle of

law. The learned counsel forcefully contended that it is the basic and prime duty of the Court to make sure to provide opportunity to accused for proving his innocence but in the case in hand, the learned trial Court bypassed all the settled principles of law laid down by the superior courts and passed the impugned order in a hasty manner, which is liable to be set-aside. The learned counsel finally prayed that by accepting the revision petition, the impugned order dated 03.08.2023 may be set-aside and application submitted by the applicant/petitioner may be allowed as prayed.

4. Conversely, the learned counsel for the complainant/respondent No.2, vehemently contended that all the pictures have been exhibited and parts of prosecution's file and same have also been exhibited by the witnesses, while, the accused-petitioner was also given opportunity of cross-examination regarding the said pictures and during cross-examination, he did not raise any sort of claim as has been raised through the instant application. The learned counsel argued that the impugned order has rightly been passed by the trial court, which needs no interference by this Court, hence, the same may be maintained. The learned counsel lastly prayed for dismissal of the revision petition.

5. The learned A.A.G defended the impugned order on all counts and also prayed for dismissal of the revision petition.

6. I have heard the learned counsel for the parties at some considerable length and perused the record with due care.

7. No cavil to the proposition that photograph is a document and photographs may be admissible in evidence, however, to prove through witnesses that the prints are taken from negatives that are untouched.¹

8. Mere production of photographs as document cannot be accepted as means of proof of matter of fact.²

9. Evidence of almost 17 witnesses as per calendar of challan has already been recorded, as per prosecution version the accused/petitioner has failed to cross examine the witnesses on this points. Photographs are concocted and afterthought.

10. It reveals from the record that neither the petitioner accused attempted to bring on record their photographs at earlier stage nor cross-examined the witnesses on this point. Even otherwise law has given an equal opportunity to the accused to make his defence and produce evidence/witness in order to rebut and defuse the prosecution's version. Petitioner is equipped with chance to produce all documentary evidence in his statement,

¹. PLD 2003 K 148 + 2002 P.Cr.LJ 1765.

². 1990 CLC 331.

that too, to bring witness in response of the prosecution's case in order to falsifying the same.

(underlining is ours)

11. In prevailing criminal justice system an accused is always presumed and regarded as innocent and favourite child of law until the prosecution prove the guilt of the accused leaving no cloud of doubt upon the sky of charge.

12. So many corridors are provided to the accused to rebut the prosecution's case. At least the accused efficaciously bring on record his evidence under section 340(2) Cr.P.C which reads as under:-

"340. Right of person against whom proceedings are instituted to be defended and his competency to be a witness. (1) _____

(2) Any person accused of an offence before a Criminal Court or against whom proceedings are instituted under this Code in any such Court shall if he does not plead guilty, give evidence on Oath in disproof of the charges or allegations made against him or any person charged or tried together with him at the same trial."

13. On the other hand the accused in response of examination under 342 Cr.P.C can explain his version.

14. Section 340, Cr.P.C imparts a duty on Court to inform accused that he has a right under law to make his statement on Oath.³

³. 1992 PSC (SC) 457.

15. Right to avail the chance to get his statement recorded under Section 340, Cr.P.C the burden of proof is not shifted at all to the shoulders of an accused.

16. Statement under Section 340(2) and 342, Cr.P.C being valuable rights which accrue to for explaining incriminating evidence sanding against him as well as for the defending himself in his capacity as a witness.⁴

17. For the above multiple reason, the revision petition is bereft of merit, hence, dismissed.

18. File shall be kept in archive. Record of the trial Court be sent back, forthwith.

Muzaffarabad,

18.09.2023.

JUDGE

⁴. PLJ 2004 CRC Lah. 83 (DB).