

HIGH COURT OF AZAD JAMMU & KASHMIR
(Shariat Appellate Bench)

Criminal Appeal No.83/2005;
Date of Institution 02.05.2005;
New No.06/2017, dated 01.11.2017;
Date of Decision 18.01.2023.

The State through Shahbaz Khan Caste
Khakha R/o Dogiyan Noorpur Nakran.

Petitioner

V E R S U S

Javaid S/o Ali Asghar R/o Village
Chanalbang/Tilpatra Tehsil & District,
Muzaffarabad.

Convict-Respondent

(2) *Criminal Appeal No.89/2014;*
Date of Institution 02.06.2014;
New No.66/2017, dated 01.11.2017;

Javaid S/o Ali Asghar R/o Village
Chanalbang/Tipatra Tehsil & District
Muzaffarabad.

Convict-Appellant

V E R S U S

1. The State through Advocate General,
Muzaffarabad;
2. Abdul Rasheed Khan S/o Tahawar Khan
father of decased Shakeel;

3. Mst. Rasham Jan W/o Abdul Rasheed Khan, mother of deceased Shakeel.
4. Muhammad Latif;
5. Shahid;
6. Shahbaz sons of Rasheed Khan real brother of Shakeel Khan deceased;
7. Mst. Raveen Bibi;
8. Mst. Shamim Bibi;
9. Mst. Tasleem Bibi real sisters of deceased Shakeel Khan. All respondents No.2 to 9 R/o village Rajkandi Dogian Tehsil & District Muzaffarabad;
10. Mst. Tasveera Bibi wife of Sohrab Khan (injured person) R/o Village Dogian Tilpatra Tehsil & District Muzaffarabad.

Respondents

APPEALS AGAINST THE JUDGMENT DATED 27.04.2005

**Before:- Justice Sardar Muhammad Ejaz Khan, J.
Justice Khalid Rasheed Chaudhary, J.
(Division Bench)**

PRESENT:

Nemo for the convict-appellant-Javaid.
Raja Saeed Khan A.A.G, Advocate for the State.
Ch. Shoukat Aziz, Advocate for the complainant/respondents.

JUDGMENT:

Sardar Muhammad Ejaz Khan, J. The captioned appeal No.89/2014 (66/2017) has been filed against the judgment passed by the learned District Court of Criminal Jurisdiction,

Muzaffarabad, on 27.04.2005 whereby convict-appellant was convicted and awarded sentence:-

- i) Under Section 302 (B) APC death penalty to convict-appellant-Javaid.*
- ii) Under Section 324 APC ten years rigorous imprisonment and fine of Rs.5000/-;*
- iii) Under Section 337/F(2) APC two years rigorous and Rs.5000/- as 'Daman' while the amount of fine and 'Daman' shall be paid to injured-Hina Naz whereas accused-Amjad, Tanveer and Ali Asghar were acquitted of the charge by extending the benefit of doubt.*

Earlier the appeal filed by the complainant was abated on account of death the accused-respondent-Amjad, Tanveer and Ali Asghar whereas a reference was sent by the learned trial Court for confirmation of death sentence of the convict-Javaid.

2. As common question of facts and law is involved in the captioned cases, therefore, the

same are being decided through this single judgment.

3. Facts of the prosecution case as it gleans from F.I.R. are that complainant-Muhammad Shahbaz S/o Abdul Rasheed submitted a written report at Police Station Danna on 08.08.1998 stating therein that his brother-in-law, Muhammad Irshad collected/gathered چلو تهر a few yards away from his house by spending 15 to 20 hours for construction of his house and there was a longstanding land dispute between Muhammad Irshard S/o Ali Akbar Khan R/o Dogiyan Chanal Bung and Muhammad Asghar Khan S/o Feroz Khan R/o Talitara Chanal Bung and his sons namely Javid, Amajd, Tanveer etc. His brother, Shakeel Ahmed went to house of his brother-in-law at about 10:00 A.M. to meet his sister and after some time, the complainant also went to said house to meet his sister where they spent day hours and at about 04:30 P.M. Muhammad

Asghar Khan S/o Feroz Khan and his sons namely Javaid, Amjad, Tanveer armed with lethal weapons came there where چلو تھر was gathered while Tanveer having in his hands gallon of Caroline oil and pistol, Javaid having Kalashnikov in hand, Muhammad Asghar having pistol in his hand and Amjad having 12 bore rifle came there by raising *Lalkara*. Tanveer sprinkled Kerosene oil on چلو تھر and set on fire on which Tasveera Bibi alias Hina Naz D/o Aliakbar Khan who was present in the house of his brother came out and stopped them from the short distance. On this Muhammad Asghar standing at short distance asked his sons to blast them with bullets, if anybody comes out. Javaid having intention of murder fired with Kalashnikov, which hit at Mst. Tasveera Bibi alias Hina Naz and on account of which she fell down on ground. His brother, Shakeel Ahmed was picking his injured sister up that Javaid started unprovoked firing, which hit at

his brother while he became severe injured and fell down on the ground. On spur of moment, Muhammad Asghar and his son Tanveer armed with pistols and Muhammad Amjad armed with 12 bore rifle started firing. Besides him and other people, this incident was witnessed by Gulfraz, Irshad sons of Ali Akbar Khan Caste Khakha Rajput R/o Dogiyan Chanal Bung, Muhammad Bashir Khan S/o Muhammad Nazir Khan R/o Basah Chanal Bung and Mst. Tasleem Bibi wife of Muhammad Irshad. While firing the accused-persons fled away from the place of occurrence. Complainant along-with other people shifting the injured persons to CMH Muzaffarabad, his brother Shakeel Ahmed succumbed to injuries on the way at Anayatabad Pachar Sharif. The injured lady was shifted to CMH Muzaffarabad, hence, necessary proceedings for the arrest of accused-persons may be initiated.

4. On this report a case in offences under Sections 302/34 324 APC was registered against the accused-persons on 08.08.1998 and the police started investigation and apprehended the accused-persons. The investigating agency after completion of investigation submitted a report under Section 173 of Cr.P.C. before the trial Court on 28.11.1998. On 27.02.1999, the accused-persons were examined under section 265-D, Cr.P.C, wherein they pleaded not guilty and opted for the trial of the case. The trial Court directed the prosecution to lead the evidence. The prosecution produced 17 P.Ws out of 19.

5. After conclusion of evidence, on 08.04.2002, the accused-appellants were examined under Section 342 of Cr.P.C. who denied the guilt of offence and after that they were provided an opportunity of defence evidence but they opted to produce defence evidence and thereafter, on the direction of the apex Court a

statement of Mst. Tasleem Bibi (P.W-5) was recorded and the accused-persons were again examined under Section 342 of Cr.P.C. while they produced witness Ghulam Haider whose statement was recorded on 06.09.2004. Convict-appellant after recording statement under Section 342 of Cr.P.C. became absent. After conclusion of trial the convict-appellant was convicted and sentence as mentioned in pre-paras vide impugned judgment dated 27.04.2005.

6. Although the convict-appellant filed an appeal on 02.06.2014 against the impugned judgment dated 27.04.2005 yet no satisfactory grounds appear to have been mentioned in appeal regarding delay, which shows that he deliberately absconded himself at the time of pronouncement of judgment just to avoid the consequences of the same. Later on, when he was arrested, he filed the instant appeal on 02.06.2014 against his conviction awarded through the impugned

judgment dated 27.04.2005, which appears to have been filed after elapsing more than nine years period, hence, the same has been filed beyond the prescribed period of limitation. However, for the sake of safe administration of justice, we deem it appropriate to decide the matter on merits instead of dismissing the same on the point of limitation because the convict-appellant was awarded major penalty through the impugned judgment. Arguments advanced on behalf of the State and complainant by their learned counsel have been heard. Raja Muhammad Hanif Khan, Advocate appeared before the Court and stated that he is unable to argue the case on behalf of the convict-appellant because he is still absconder.

7. The main stance of the convict-appellant taken in appeal is that the impugned judgment dated 27.04.2005 passed by the learned trial

Court in absentia of the convict-appellant, hence, the same is not maintainable in the eye of law.

8. It appears from the record that the conduct of the convict-appellant remained objectionable and offensive rather he himself avoided to appear before the learned Court below and deliberately became absconder just to escape him from the consequences and outcome of the impugned judgment after recording statement under Section 342 of Cr.P.C. It is evident from the record that the learned counsel for the convict-appellant remained present before the Court below during course of final arguments. During pendency of this appeal, he is still absconder whereas during the period of absentia, some other criminal cases were registered against the convict-appellant.

9. We have given our due consideration of the grounds taken in appeal filed by the convict-appellant and arguments advanced by the learned

counsel for the complainant as well as the learned AAG and gone through the impugned judgment with our utmost care & caution. After having a detailed scrutiny of the entire evidence in the instant case, F.I.R. was lodged without any delay wherein a specific role of committing murder of Shakeel Ahmed and causing injuries to Tasveera Bibi alias Hina Naz has been attributed to convict-appellant. Furthermore, ocular account Shahbaz (P.W-1), Tasveera Bibi alias Hina Naz (P.W-2), Muhammad Bashir (P.W-3), Gulfraz (P.W-4), Muhammad Irshad (P.W-5) and Tasleem Bibi (P.W-6) were nominated as eye witnesses of the alleged occurrence. While one of them Tasveera Bibi alias Hina Naz (P.W-2) is also injured witness. During the trial proceedings all cited eye witnesses appeared before the trial Court and got recorded their statements.

10. A deep scrutiny of statements of prosecution witnesses namely Shahbaz (P.W-1),

Tasveera Bibi alias Hina Naz (P.W-2), Muhammad Bashir (P.W-3), Gulfraz (P.W-4), Muhammad Irshad (P.W-5) and Tasleem Bibi (P.W-6) transpires that there is unanimity between all above mentioned prosecution witnesses regarding role of convict-appellant in the alleged occurrence that he armed with Kalashnikov came at the place of occurrence and started unprovoked firing on Tasveera Bibi alias Hina Naz (P.W-2) and Shakeel Ahmed on account of which both became severe injured while Shakeel Ahmed was rushed to CMH, Muzaffarabad but he succumbed to injuries on way at Annayatabad Pachar Sharif and injured-lady (P.W-2) was hospitalized.

11. It is obvious from the record that the occurrence took place in ray of daylight at about 04:30 P.M. and all the eye witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. In addition to

this, the eye-witnesses have also explained the mode and manner of taking place the occurrence qua the culpability of the convict-appellant. Although, they were cross examined by the defense at length, wherein the learned counsel for the defense asked multiple questions to shatter their confidence pertaining to presence of the convict-appellant at the place of occurrence but could not extract anything from P.Ws and they remained consistent on all material points. The parties are known to each other, so there was no chance of mistaken identity of the convict-appellant, Javaid. Thus, there is no hesitation in our mind that where the witnesses fall within category of natural witnesses and prove the manner of incident in a confidence inspiring manner then only escape available to an accused-person is that to satisfactorily establish that witnesses, in fact, are not the witnesses of truth but 'interested' one. An interested witness is not the one who is relative or

friend and is the one who has a motive to falsely implicate an accused but the defence has failed to bring on record any slightest evidence to which it can be believed that convict-appellant has falsely been implicated in the commission of offence. Therefore, the ocular account brought on record is itself sufficient for awarding sentence against the convict-appellant without any further corroboration. The eye witnesses appear to have been found '*Adil*' in purgation.

12. In the instant case sufficient corroborating and confirmatory evidence has been produced which fully supports the ocular version. Dr. Naseer Ahmed (P.W-14) who conducted the autopsy of the dead body of deceased Shakeel Ahmed and examined the injured witness Tasveera Bibi alias Hina Naz (P.W.2) found injury on the same part of the dead body of deceased and injured witness (P.W-2) whereat the same appears to have been alleged by the eye witnesses. The

postmortem report of the deceased reveals that he died on account of fire arm injury while in view of *Exh. "PC"*, a nature of injury of (P.W-2) appears to have been reported as under:-

- “1. *Penetrating wound measuring 1cm x 1cm on lateral aspect of right thigh 4” above the knee joint (wound of entry);*
2. *Perforating normal (exit) on the posterior of right thigh.*

13. It further reflects from the aforesaid report that the kind of weapon used in the incident has been reported as ‘*fire arm injury*’. The above mentioned medical evidence fully testifies the ocular account that the deceased was done to death by fire arm injury and Tasveera Bibi alias Hina Naz also got injured by fire arm weapon. The autopsy report of deceased Shakeel Ahmed *Exh. "PF"*, medical examination report of Tasveera Bibi alias Hina Naz (P.W-2) and other valuable material brought on record i.e. crime weapon, bloodstained cloths of deceased, the

report of chemical examiner and F.S.L. Punjab is also in nature of corroborating and supporting evidence.

14. It is evident from the record that the convict-appellant was present before the trial Court where his statement under section 342 Cr.P.C was recorded and on his behalf arguments were advanced but he deliberately did not appear before the trial Court at the time of judgment just to avoid the consequences of guilt of offence committed by him. Thereafter, he was apprehended by the police and after his arrest he filed the instant appeal No.89/2014 on 02.06.2014 rather the same has been filed beyond the prescribed period of limitation against the judgment dated 27.04.2005 and during the pendency of appeal before this Court, the convict-appellant became absconder again. It is well settled principle of law that conduct of an accused-person before the competent Court of law

is always relevant rather the record shows that the conduct of convict-appellant before the learned trial Court even before this Court itself indicates that the convict-appellant is a man of criminal mind while he has been deceiving the law enforcement agency since 2005, which is a big joke with law and such practice must be abandoned in future. Unfortunately, in the instant case, the concerned agency has miserably failed to fulfill its legal obligations, which is alarming sign for dispensation of speedy justice.

15. During the course of arguments the complainant appeared before the Court and stated that convict-appellant is residing in his house for the last many years while the learned A.A.G. was confronted on the said situation who after getting information from the concerned officials frankly conceded that the version narrated by the complainant regarding the presence of the convict-appellant in his native village is correct. It is found

that when the convict-appellant became absconder, during that period criminal cases illat No.18/2011 in offences under Section 10/16, 29 ZHA and illat No.23/2011 in offences under Section 341/504, 285 APC were registered against him dated 27.04.2005 & 16.06.2011 respectively at Police Station Danna, Muzaffarabad.

16. We are also aware of the fact that evidence of the prosecution witnesses was believed to the extent of convict-appellant, Javiad, but it has been disbelieved regarding other accused-persons by the learned trial Court. It is relevant to mention here that an appeal was filed by the complainant party against the acquittal of accused-Amjad and others, which was abated because of death of accused-persons during pendency of the same. However, it is an enumerated principal of criminal jurisprudence that a criminal court has to sift the grain of truth from the chaff of falsehood. On this account, the

statements of prosecution witnesses can be relied upon against the some accused by rejecting against others. Reliance can be placed on cases reported as [2000 S.C.R. 123] & [2001 S.C.R. 240].

17. From the above detailed discussion, it appears that prosecution has proved its case beyond any shadow of reasonable doubt against convict-appellant, Javaid. The ocular version is amply supported by supportive and corroborative evidence as discussed above, therefore, the convict-appellant, Javaid, appears to have been found guilty of murder of Shakeel Ahmed deceased and inflicted fire arm injuries to Tasveera Bibi alias Hina Naz (P.W-2) as apparent on the face of record. It depicts from the record that the conviction recorded by the learned trial Court against the convict-appellant was legally justified. In such like state of affairs, the findings recorded by the learned trial Court in view of

evidence brought on record are quite in right direction as such we found no irregularity and illegality in the impugned judgment dated 27.04.2005, which leaves no room to be interfered with by this Court.

18. The analysis of above discussion is that finding no merits in appeal No.89/14 (66/17), it is hereby dismissed while the reference sent by the learned trial Court for confirmation of death sentence of convict-appellant, Javaid, is answered in affirmative. A fresh warrant of arrest shall be issued against the convict-appellant, Javaid. A copy of this judgment shall be annexed along-with the other relevant file.

Muzaffarabad:
18.01.2023(J.ZEB)

JUDGE
(E)

JUDGE
(K)