

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 18/2016

In

Cr. PLA No. 29/2016.

Mudasir Ali

Petitioner.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. The Advocate General Gilgit-Baltistan on behalf of the respondent.

DATE OF HEARING: - 14.06.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Appeal has arisen out of the impugned order dated 28.04.2016 in Criminal Appeal No. 20/2014 passed by the learned Chief Court whereby the case of the petitioner was sent back to the learned Trial Court for denovo trial or for re-writing his judgment in the light of evidence available on file, but treating the prosecution evidence already recorded in proof of guilt of accused for the charge of Section 302 PPC. Consequently, the judgment dated 04.07.2014 in Session Case No. 17/2012 passed by the learned Additional Sessions Judge Gilgit was set aside and the charge sheet dated 07.09.2013 of the learned Trial Court was upheld wherein the

petitioner/accused was charged for offence of Section 302 PPC. The petitioner being aggrieved filed this petition for leave to appeal. This court vide order dated 07.11.2016 granted leave to appeal and notice issued to the respondent accordingly. The case was finally heard today on 14.06.2017.

2. Briefly the facts of the case are that an FIR No. 31/2012 under Section 302 PPC was registered on the written application of one Sakhawat Shah (complainant). The complainant stated that his son Imtiaz Hussain was playing cricket in the ground of High School Oshikandas, where a quarrel took place resulting to injuries to the deceased and the deceased was taken to the Hospital. The complainant further stated in his application that he reached in Sehat Foundation Hospital Danyore where his deceased son had already died. On queries by the complainant, Mr. Mushahid Hussain, Azfar Ali and Aitzaz Ahsan who are the eye witnesses of the occurrence told the FIR Lodger that accused Mudasir Ali resident of Bargo had watered the cricket ground and on that very reason deceased and the accused quarreled. The accused hit the deceased with the cricket bat on his chest resultantly the deceased died. The investigation of the case was conducted by the prosecution and the challan was submitted in the learned Trial Court. During the trial of the case the counsel for the petitioner/accused filed an application to alter the charge from 302 PPC to 316 PPC. The said application was accepted and charge under Section 316 PPC was framed. The prosecution in support of

its version, produced as many as five witnesses whereas no defence witnesses was examined. The learned Trial Court upon hearing the respective parties passed the impugned order dated 04.07.2014. The operative part of the said impugned order is reproduced as under:-

“Quote.

In the result, it is seen that accused Mudasir Ali son of Arshad Ali found guilty for committing offence under section 316 PPC, hence, I proceed to pass sentence against the accused person Mudasir Ali for his offence and he is liable to pay diyat, a sum of Rs. 2532073/- (Rupees Twenty Five lac Thirty two thousand and seventy three) as prescribed by the Government vide Notification No. F. 8(3) IF –IV/1991 dated 01.07.2012 which is payable to the legal heirs of the deceased in Five installments. First installment is be paid on 1st December, 2014 as Rs. 532073/- (Rupees Five lac thirty two thousands and seventy three). Second on 1st July , 2015 Rs. 500000/- (Rs. Five lac). Third on 1st December, 2015 Rs. 500000/- (Rs. Five lac). Fourth on 1st December, 2016 Rs. 500000/- (Rs. Five lac). Fifth on 1st July 2017 Rs. 500000/- (Rs. Five lac) which is recoverable as arrears of land revenue, and two years simple imprisonment. Benefit of Section 382-B Cr. PC is extended for undergone period.

Benefit of Section 331 PPC is also extended to the accused for arrangement of Diyat Amount as he is released on bail subject to furnishing of two sureties in like amount of diyat to the satisfaction of this Court.

Judgment announced in open Court and copy thereof is supplied to the convict free of cost with the advice that he should prefer an appeal against his conviction and sentence in the Honorable Gilgit-Baltistan Chief Court. File be consigned to the record after due completion”.

Unquote.

3. The petitioner being aggrieved by and dissatisfied with the Judgment of the learned trial Court filed Criminal Appeal No. 20/2014 in the learned Gilgit-Baltistan Chief Court. Upon hearing the learned Chief Court reversed the Judgment of the learned Trial Court by remanding back the case to the learned trial Court for denovo trial under Section 302 PP vide Impugned Order dated 28.04.2016 in the light of evidence available on file, treating the prosecution evidence already recorded in proof of guilt of accused for the charge of Section 302 PPC.

4. The learned counsel for the petitioner submits that basically this case falls under Section 316 PPC as the charge of committing alleged murder of the deceased was not intentional and deliberate rather it caused all of sudden due to clash of the accused with the deceased for watering the Cricket ground by the accused and for forbidding by the deceased. He submits that initially the petitioner was charged under section 302 which was controverted by the petitioner through an application which was accepted by the learned Trial Court on 11.12.2013. Per learned counsel the respondent challenged the order dated 11.12.2013 of the learned trial Court in the learned Chief Court by filing Civil Revision which was dismissed in default on 12.09.2014 which was not assailed by the complainant at any appropriate Forum. He submits that later on the learned Chief Court while hearing the Criminal Appeal set aside the said order of its own Court by exercising the Supervisory Jurisdiction which is not sustainable as no application was filed for

setting aside the same by the complainant. He adds that case of the complaint revolves upon the statement of the FIR lodger who is admittedly not an eye-witness of the case and the case is based on the hearsay evidence which has no value in the eyes of law. Moreover, his statement before the Court is altogether different from his written application which was submitted by him in the Police Station for lodging FIR. He submits that the Prosecution has miserably failed to prove the allegations against the petitioner /accused beyond any shadow of doubts as the Statements of the so called eye-witnesses are contradictory with each other's which shatter the story of the prosecution. He maintains that the alleged recovery of the cricket bat has been affected from the accused after an inordinate delay of 06 days and there is no explanation with regard to the delay by the Prosecution which also makes the case doubtful. He prays that the Judgment dated 04.07.2014 passed in Session Case No. 17/2017 by the learned trial Court and the Impugned order dated 28.04.2016 in Criminal Appeal No. 20/2014 passed by the learned Chief Court may kindly be set aside as the same are not sustainable being passed contrary to the law and facts of the case.

5. Conversely, the learned Advocate General contends that it is a day light occurrence whereby the accused has been charged directly by the independent eye witnesses who attributed specific role to the accused in commission of the alleged offence. He also contends that the crime article used in committing of offence i.e. the

(Cricket bat) has also been recovered on the pointation of petitioner which is admissible in evidence. He further contends that there are other corroborative evidence which connects the petitioner with the commission of the crime. Per learned Advocate General a rift was initially arose between the deceased and the accused on the issue of watering the cricket ground by the accused but the same was resolved by the intervention of PW-02 Shahid Hussain, PW Azfar and PW Aitzaz who were present at the scene of crime. He adds that after settlement of the dispute/quarrel by the said PWs, the petitioner intentionally and deliberately hit the deceased with a bat due to which he died. Per learned Advocate General it is an intentional murder (Qatl-e-Amd) not the murder by mistake (Qatl-e-Khata). He reiterates that the learned Trial Court has wrongly and illegally altered the charge of Section 302 PPC into Section 316 PPC which was rightly reversed by the learned Chief Court vide impugned order dated 28.04.2016. The learned Advocate General contends that the statement of PWs corroborates with each other. The recovery of alleged crime article was made on the pointation of the petitioner which is admissible in evidence. Likewise the medical evidence also corroborates the ocular account. He prays that in view of the above material on record, the Impugned order dated 28.04.2016 in Criminal Appeal No. 20/2014 passed by the learned Chief Court, may graciously not be interfered with.

6. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone

through the Impugned order dated 28.04.2016 in Criminal Appeal No. 20/2014 passed by the learned Chief Court as well as the Judgment dated 04.07.2014 passed in Session Case No. 17/2017 by the learned Trial Court. The careful perusal of the case file and material on record, prima facie the alleged offence falls under Section 302 PPC as rightly held by the learned Chief Court. Further the learned counsel for the petitioner could also not point out any illegality, irregularity and infirmity in the impugned order dated 28.04.2016 passed by the learned Chief Court.

7. In view of the above discussions, we dismiss this appeal. Consequently, the Impugned order dated 28.04.2016 in Criminal Appeal No. 20/2014 passed by the learned Chief Court is maintained.

8. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?