

**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. 21/2015

In

Cr. PLA. No. 07/2015.

1. Safa son of Bakha.
 2. Gul Muhammad son of Safa r/o Parikha Thore District Diamer.
- Petitioners.**

Versus

1. The State

Respondent.

Cr. Appeal No. 20/2015

In

Cr. PLA. No. 27/2015.

1. Altaf son of Muhammad Diyar r/o Parikha Thore District Diamer.
2. The State.

Petitioners.

Versus

1. Safa & 02 others

Respondents.

PRESENT:-

1. Mr. Johar Ali Khan Advocate alongwith Mr. Munir Ahmed Advocate and Mr. Ali Nazar Khan Advocate-on-Record for the petitioners in Criminal Appeal No. 21/2015 and for the respondent in Criminal Appeal No. 20/2015.
2. The Advocate General Gilgit-Baltistan on behalf of the State.
3. Mr. Jahanzaib Khan Advocate on behalf of the complainant in both the appeals.

DATE OF HEARING: - 17.10.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the common impugned judgment dated 26.03.2014 in Criminal Appeal No. 15/2011 passed by the learned Gilgit-Baltistan Chief Court whereby the appeal of the petitioner No. 01 & 02 was dismissed by maintaining the conviction/sentences

awarded to them by the learned Additional Sessions Judge Chilas District Diamer while enhancing the amount of the compensation of Rs. 200,000/- to Rs. 300,000/- by accepting the Criminal Revision No. 13/2011 to this extent. In case of non-payment of the amount of compensation, the petitioner No. 01 & 02 shall undergo further imprisonment for 06 months. The petitioners being aggrieved by and dissatisfied with the impugned judgment dated 26.03.2014 passed by the learned Gilgit-Baltistan Chief Court filed this petition for leave to appeal. This court vide order dated 25.11.2015 granted leave to appeal in both the petitions. Consequently, notices were issued to the respondents in both the connected appeals and the case was heard today. Notices were also issued to respondent No. 03 & 04 in Criminal Appeal No. 20/2015 namely Mir Wali and Riaz sons of Bakha residents Parikha Thore District Diamer who were released after serving their sentences awarded to them by the learned Trial Court vide judgment dated 24.09.2011. The said respondents were also present in court today.

2. The brief facts of the case are that the complainant namely Altaf Hussain son of Diyar resident of Prikha Thore Chilas District Diamer lodged an FIR No. 32/2009 at Police Station Thore on 20.10.2008 at about 1700 hours. The complainant stated that at about 1600 hours Mst. Jahan wife of Safa left her cattle in our field which were got away by one Shafi son of Ghafoor by pelting stones etc. The said Mst. Jahan informed about the above incident to the inmates of her house namely Safa, Mir Wali, & Riaz sons of Bakha,

Gul Muhammad son of Safa who came out of their house equipped with lethal weapons with the common intention to kill the complainant parties. The above named accused opened fire which hit his brother namely Jamsheed present there who succumbed to injuries on the spot while Mst. Zulaikha daughter of Mir Khan was hit by the fire of Mir Wali and Riaz respectively. Who got injured.

3. After completion of the investigation the challan of the case was submitted by the police before the court of competent jurisdiction under Sections 302/324/34 PPC against the respondents/accused. The charge against them was framed on 26.08.2011 who shown their innocence and claimed for trial. The prosecution in support of their case against the accused produced and examined twelve (12) Prosecution Witnesses. The inquest report, chemical examiner report, Fire Armed Expert Report and report of serologist were also produced. The crime weapons were recovered by the Police on the pointation of the accused. The empties shells have also been recovered by the Police from the place of occurrence. After concluding the prosecution evidence the accused were examined under Section 342 Cr. PC. The accused had denied the allegations leveled against them but they have not opted to record their statements under Section 340 (2) Cr.PC. They have also not produced any witness or evidence in support of their defence.

4. The learned Trial Court Chilas District Diamer after appraising the evidence, hearing the learned counsels appearing on

behalf of the respective parties and on proven guilty against the accused convicted them in Session Case No. 61/2011 vide judgment dated 24.09.2011, as under:-

“Quote”

In the light of the evidence on the record it is proved that accused Safa and Gul Muhammad have committed the offence under Section 302 PPC by committing Qatal-e-amad of the deceased Jamsheed. However, during cross examination the PWs failed to identify whose fire shot was fatal. For the reason while taking the said reason as mitigating circumstance against both the accused, hence, I, convict the accused Safa and Gul Muhammad under Section 302 (B) PPC and is sentenced to life imprisonment . The accused is also ordered to pay an amount of Rs. 200,000/- each to the legal heirs of the deceased as compensation under the provision of Sections 544-A Cr.PC failing to pay the same they will undergo further imprisonment for six month R.I.

As regard the accused Mir Wali and Riaz, fatal firing was attributed with them at Mst. Zulaikha and they fully participated in the commission of the offence, Hence, they have committed offence under Section 324 PPC for attempting to commit of Qatal-e-Amd so each of them sentenced to 07 years each and fine of Rs. 30000/- each. Failing to pay the fine each of the accused shall undergo further imprisonment for three years.

Benefit of Section 382 (B) Cr. PC extended to the accused.

“Unquote”

5. The above conviction and sentences awarded by the learned Trial Court was upheld in appeal/revision by learned Gilgit-Baltistan Chief Court except the amount of compensation which was enhanced from Rs. 200,000/- to Rs. 300,000/- by accepting the Criminal Revision No. 13/2011 to this extent, which is to be paid to the legal heirs of the deceased.

6. Mr. Jahanzaib Khan Advocate appearing on behalf of the complainant submits that it was a day light occurrence and the FIR of the instant case has also been registered promptly. The convicts have been attributed specific and direct role in commission of the said brutal murder and injuring the lady. He also submits that the names of the eye witnesses are also mentioned in the FIR who during recording their examination-in-chief as well as during cross examination directly charged the accused attributing them the specific roles. He further submits that the prosecution has proved its case beyond any reasonable doubts by producing Eye witnesses, recovery of blood stained earth from the scene of occurrence, the Inquest Report, Chemical Examiner Report, Fire Arm Expert Report, report of Radiologist and the recovery of weapon of crime recovered by the police on the pointation of the convicts Safa & Gul Muhammad etc. He also submits that the convicts could not produce any defence in support of their version. He reiterates that all the eye witnesses are independent and inspiring confidence who corroborated each other. He prayed that the Criminal Appeal No. 21/2015 be

dismissed whereas the Criminal Appeal No. 20/2015 be allowed and sentences awarded to the respondent No. 01 Safa & respondent No. 02 Gul Muhammad may kindly be converted from life imprisonment into death sentence and the conviction /sentences i.e. seven (07) years imprisonment awarded to the respondent No. 03 Mir Wali & respondent No. 04 namely Riaz may also be enhanced from seven (07) years to life imprisonment to meet the ends of justice. The learned Advocate General supports the arguments of the learned counsel for the complainant.

7. On the other hand, Mr. Munir Ahmed Advocate alongwith Mr. Johar Ali Khan learned counsel for the respondents in Criminal Appeal No. 20/2015 support the impugned judgment dated 26.03.2014 in Criminal Revision N0. 13/2011 passed by the learned Gilgit-Baltistan Chief Court whereas the impugned judgment passed in Criminal Appeal No. 15/2011 is not tenable and liable to set aside as the prosecution has miserably failed to prove its case beyond the reasonable doubts. They contend that the FIR is doubtful as contrary to the facts of case. The Post Mortem of the dead body of the deceased has not been conducted which creates serious doubt in of prosecution case. The cause of the death is not known as to whether deceased Jamsheed expired due to bullet injuries or otherwise. Likewise the injury caused to Mst. Zulaikha has not been supported by the corroborative evidence and the same has also not been confirmed by the statement of any eye

witness. They contend that the crime weapons recovered from the accused on his pointation has not been proved. The crime weapon was sent to Lahore for expert opinion whereas the ballistic report was issued from Peshawar. They reiterate that the weapon of offence was sent for expert opinion after considerable unexplained delay which also creates doubt in the story of the prosecution. They submit that there are glaring contradictions in the statements of the PWs and medical evidences regarding the number of bullets received by the deceased and the injured lady who were allegedly fired/hit by the convict respondents. They further contend that the respondent No. 03 & 04 namely Mir Wali and Riaz have been released after serving their conviction/sentences. They finally argue that the case of the prosecution is full of doubts and the benefit of doubts has not been extended to the accused/respondents as per parameters laid down by the superior courts in administering criminal justice system. They pray that Criminal Appeal No. 21/2015 be allowed, conviction and sentences awarded to the respondent No. 01 & 02 may graciously be set aside or alternatively. Keeping in view the age factor of the convict the same may graciously be reduced into already undergone and the Criminal Appeal No. 20/2015 filed against Safa, Gul Muhammad, Mir Wali and Riaz be dismissed.

8. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 26.03.2014 in Criminal

Appeal No. 15/2011 & Criminal Revision No. 13/2011 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 24.09.2011 in Session Case No. 61/2011 passed by the learned Additional Sessions Judge Chilas District Diamer. No illegality, infirmity or misappreciation of evidence was pointed in the concurrent findings of both the courts below by the learned counsels appearing for the convicts/appellants/respondents in both the appeals. Consequently, no interference is warranted.

9. In view of the above discussions, we dismiss both the Criminal Appeal Nos. 21/2015 and 20/2015 filed by both the complainant and the convicted accused respectively. Consequent thereto, the impugned judgments dated 26.03.2014 passed in Criminal Appeal No. 15/2011 & Criminal Revision No. 13/2011 by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 24.09.2011 in Session Case No. 61/2011 passed by the learned Additional Sessions Judge Chilas District Diamer are maintained.

10. Both the appeals are dismissed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?